



# ICLG

The International Comparative Legal Guide to:

## **International Arbitration 2014**

**11th Edition**

A practical cross-border insight into international arbitration work

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## Published by

Global Legal Group Ltd.  
59 Tanner Street  
London SE1 3PL, UK  
Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
Email: info@glgroup.co.uk  
URL: www.glgroup.co.uk

## GLG Cover Design

F&F Studio Design

## GLG Cover Image Source

iStockphoto

## Printed by

Ashford Colour Press Ltd  
July 2014

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ISBN 978-1-910083-09-3

ISSN 1741-4970

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# Singapore

Ashurst LLP



Ben Giaretta



Rob Palmer

## 1 Arbitration Agreements

Singapore maintains a regime for international arbitration (under the *International Arbitration Act* (“IAA”)) and a regime for domestic arbitration (under the *Arbitration Act* (“AA”)). While parties can opt in to either regime, this guide principally addresses the position in respect of the IAA, being the legislation that applies to the majority of international arbitrations in Singapore.

### 1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of Singapore?

To be valid, an arbitration agreement must: (1) be in writing; and (2) clearly and unequivocally submit the parties’ dispute(s) to arbitration. If the agreement was finalised orally or by conduct, the writing requirement is still satisfied if the content of the agreement is recorded in any form (including in an accessible electronic communication) (section 2A of the IAA).

### 1.2 What other elements ought to be incorporated in an arbitration agreement?

Aside from the above formalities, there are no other absolute requirements. We recommend, however, that any international arbitration agreement should, at a minimum:

- clearly define the scope of the arbitration agreement;
- specify a seat of arbitration in a country that is signatory to the United Nations Conference on International Commercial Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (“**New York Convention**”);
- specify the rules that will govern the arbitration;
- identify the number of arbitrators; and
- specify the language of the arbitration.

### 1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The Singapore courts will stay court proceedings brought in breach of a valid arbitration agreement (see question 3.3).

The courts will uphold an arbitration agreement even if certain aspects of the agreement may be ambiguous, inconsistent, incomplete or lacking in certain particulars. The courts will prefer an interpretation which gives effect to an arbitration clause or agreement over one which does not: *Insignia Technology Co Ltd v Alstom Technology Ltd* [2009] SGCA 24.

## 2 Governing Legislation

### 2.1 What legislation governs the enforcement of arbitration proceedings in Singapore?

The IAA governs the enforcement of international arbitration proceedings in Singapore, as well as arbitrations where the parties have agreed in writing that Part II of the IAA or the 1985 UNCITRAL Model Law on International Commercial Arbitration (“**Model Law**”) shall apply (section 5 IAA).

The AA governs arbitrations where the place of arbitration is Singapore and which are not governed by the IAA, i.e. domestic arbitrations where the parties have not elected for the IAA or Model Law to apply (section 3 AA).

### 2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

No: as discussed above, international arbitration and domestic arbitration are governed by separate legislation in Singapore (keeping in mind, however, that parties to domestic arbitration can opt in to the IAA).

The most important difference between the two regimes is that awards under the AA are subject to greater judicial oversight. For example, under the AA, a party may appeal to the High Court on a question of law arising out of an award, which can result in the Court confirming, varying or setting aside the award, or remitting it back to the arbitral tribunal for reconsideration in light of the Court’s determination (section 49 AA). Under the IAA, awards cannot be appealed in this way.

### 2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes. Section 3 of the IAA gives the Model Law the force of law in Singapore. Singapore has not adopted the entirety of the 2006 amendments to the Model Law, but has made a number of amendments to the original 1985 version. For example:

- Chapter VIII of the Model Law relating to the recognition and enforcement of foreign awards is excluded, and replaced with Part III of the IAA, enacting the New York Convention (section 3 IAA);
- if the parties fail to determine the number of arbitrators, the default under the IAA is one arbitrator (section 9 IAA);

- in an arbitration with three arbitrators, unless agreed otherwise, each party shall appoint one arbitrator, and the parties shall by agreement appoint the third arbitrator (section 9A IAA); and
- the IAA adds two further grounds to those set out in Article 34(2) of the Model Law for the setting aside of an award, namely, for fraud or corruption or a breach of the rules of natural justice (section 24 IAA).

#### 2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in Singapore?

There are certain provisions in the IAA from which the parties cannot derogate, including:

- the right of a party to seek a stay of court proceedings brought in breach of an arbitration agreement (see questions 1.3 and 3.3);
- the application of the *Limitation Act and Foreign Limitation Periods Act* to the arbitral proceedings (see question 3.6); and
- the right of a party to apply for, and the power of the court to order, the setting aside of an award on the grounds listed in the IAA (see question 10.1).

The IAA also contains a number of procedural rules from which the parties cannot derogate. These are discussed in detail in question 6.2 below, and include the requirement that each party shall be treated with equality and be given a full opportunity of presenting its case (Article 18 Model Law).

Subject to these mandatory rules:

- the parties are generally free to agree the manner in which the arbitration proceedings will take place, and the rules which will govern the arbitration (section 15A IAA and article 19(1) Model Law); and
- failing such agreement, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate (article 19(2) Model Law).

### 3 Jurisdiction

#### 3.1 Are there any subject matters that may not be referred to arbitration under the governing law of Singapore? What is the general approach used in determining whether or not a dispute is “arbitrable”?

All disputes are arbitrable unless it would be “contrary to public policy” to arbitrate the dispute (section 11 IAA) or the subject matter of the dispute is “not capable of settlement by arbitration” (sections 24 and 31 IAA).

The Court of Appeal has affirmed that issues which have “public interest elements” may not be arbitrable. This includes things like citizenship or legitimacy of marriage, grants of statutory licences, validity of registration of trademarks or patents, and administration of estates.

#### 3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

Yes (section 10(2) IAA; Article 16(1) Model Law).

#### 3.3 What is the approach of the national courts in Singapore towards a party who commences court proceedings in apparent breach of an arbitration agreement?

Under the IAA, Singapore courts must, on the application of a party,

stay any court proceedings brought in breach of an arbitration agreement, unless satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed (section 6 IAA).

The stay application must be made before delivering any pleading or taking any other step in the proceedings.

#### 3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal? What is the standard of review in respect of a tribunal’s decision as to its own jurisdiction?

The Singapore courts will have occasion to address the issue of the jurisdiction and competence of the tribunal:

- when considering an application for stay of court proceedings under section 6 of IAA (see question 3.3 above);
- if an appeal is made from a tribunal’s preliminary ruling on jurisdiction (section 10 IAA); or
- during any application to set aside an award (section 24 IAA/Article 34(2) Model Law) or refuse its enforcement (section 31 IAA) (see sections 10 and 11 below);

In reviewing a tribunal’s decision as to its own jurisdiction, the Singapore courts will consider the question of jurisdiction afresh or “*de novo*”: *First Media v Astro* [2013] SGCA 57.

#### 3.5 Under what, if any, circumstances does the national law of Singapore allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

Singapore law does not generally allow an arbitral tribunal to assume jurisdiction over individuals or entities which are non-signatories to the arbitration agreement, unless consent of all the parties is obtained. The courts have emphasised that the forced joinder of non-signatories impinges upon party autonomy and confidentiality: *First Media v Astro* [2013] SGCA 57.

However, the tribunal may assume jurisdiction over non-signatories, where such non-signatories are, in law, considered to be parties to the arbitration agreement. This can occur, for example, where the actual signatory is held to be acting as agent for a non-signatory.

The IAA itself allows a third party claiming “through or under” a party who is a party to an arbitration agreement (e.g. an insurer), to apply to stay court proceedings in favour of arbitration (section 6(5)(a) IAA). Any award made by an arbitral tribunal will also bind any such persons claiming “through or under” a party to the arbitration agreement (section 19B IAA).

Finally, the *Contracts (Rights of Third Parties) Act* permits a third party beneficiary to be treated as a party to the arbitration agreement in certain circumstances.

#### 3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in Singapore and what is the typical length of such periods? Do the national courts of Singapore consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

The IAA provides that the *Limitation Act* and the *Foreign Limitation Periods Act* (“FLPA”) apply to arbitral proceedings as they apply to court proceedings (section 8A IAA).

The FLPA provides that in any matter where, in accordance with the rules of private international law, the law of a country other than Singapore applies, the law relating to limitation of actions is to be



treated as a matter of substance rather than procedure. That is, the foreign limitation periods will apply in respect of the matter, not Singapore limitation periods. The exception is where the application of a foreign limitation period would cause undue hardship to a party or potential party, or otherwise conflict with public policy.

Where the Singapore law on limitation applies, actions in contract or tort cannot be brought after the expiration of six years from the date on which the cause of action accrued (section 6 *Limitation Act*).

### 3.7 What is the effect in Singapore of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

For insolvency proceedings in Singapore under the Companies Act, any Singapore-seated arbitration proceedings will be stayed upon the issuance of a winding up order (section 262(3) Companies Act) or, at the discretion of the court, upon the filing of a winding up application (section 258 Companies Act). Under the Bankruptcy Act, which applies to personal insolvency, the court may stay the arbitral proceedings at any time after an application for bankruptcy (section 74 Bankruptcy Act).

## 4 Choice of Law Rules

### 4.1 How is the law applicable to the substance of a dispute determined?

Where the parties have chosen the rules of law applicable to the substance of the dispute, the arbitral tribunal will decide the dispute in accordance with those rules (article 28(1) Model Law).

Failing any designation by the parties, the arbitral tribunal will apply the law determined by the conflict of laws rules which it considers applicable (article 28(2) Model Law).

### 4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

In a Singapore-seated arbitration, the mandatory laws discussed in question 2.4 above will prevail over the law chosen by the parties (section 15A IAA and article 19(1) Model Law).

### 4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

Where the parties have expressly chosen the proper law of the arbitration agreement (which may differ from the law applicable to the substance of the dispute), that law will be applied to any questions concerning the formation, validity and legality of an arbitration agreement.

If no choice has been made, the tribunal will apply the conflict of law principles it considers appropriate to determine which law will govern these issues.

## 5 Selection of Arbitral Tribunal

### 5.1 Are there any limits to the parties' autonomy to select arbitrators?

No there are not.

### 5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

Yes. Under the IAA, any party may request the President of the Court of Arbitration of the SIAC to take the necessary measures to secure the appointment of the tribunal (in line with the parties' chosen method) (article 11(4) Model Law and section 8(2) IAA).

### 5.3 Can a court intervene in the selection of arbitrators? If so, how?

A court cannot intervene in the selection of arbitrators in the first instance. However, the High Court can decide applications which are brought by a party to challenge the appointment of any arbitrator (article 13(2) Model Law).

### 5.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators imposed by law or issued by arbitration institutions within Singapore?

The IAA requires a potential arbitrator to disclose any circumstance likely to give rise to justifiable doubts as to his impartiality or independence before being appointed. This is also a continuing obligation throughout the course of the arbitration proceedings (article 12(1) Model Law). Similar requirements exist under the Rules of Arbitration of the Singapore International Arbitration Centre ("SIAC") and the SIAC Code of Ethics for an Arbitrator.

## 6 Procedural Rules

### 6.1 Are there laws or rules governing the procedure of arbitration in Singapore? If so, do those laws or rules apply to all arbitral proceedings sited in Singapore?

The mandatory procedural standards in the IAA/Model Law apply to all arbitral proceedings in Singapore under that regime (see question 6.2 below).

Subject to these mandatory standards, parties are free to agree on the procedure to be followed by the arbitral tribunal (section 15A IAA and article 19(1) Model Law).

### 6.2 In arbitration proceedings conducted in Singapore, are there any particular procedural steps that are required by law?

The IAA contains various mandatory or procedural rules/steps that must be followed by the parties and/or the tribunal. For example:

- the claimant must submit a statement of claim by the time agreed by the parties or determined by the tribunal (article 23(1) Model Law), failing which, the arbitral tribunal shall terminate the proceedings (article 25(a) Model Law);
- the parties must be given sufficient advance notice of any hearing (article 24(2) Model Law);
- all statements, documents or other information supplied to the tribunal by one party must be communicated to the other party (article 24(3) Model Law);
- any expert report or evidentiary document on which the tribunal may rely in making its decision must be communicated to the parties (article 24(3) Model Law); and
- the parties must be treated with equality and each given a full opportunity of presenting its case (article 18 Model Law).

**6.3 Are there any particular rules that govern the conduct of counsel from Singapore in arbitral proceedings sited in Singapore? If so: (i) do those same rules also govern the conduct of counsel from Singapore in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than Singapore in arbitral proceedings sited in Singapore?**

Any advocate or solicitor who has a Singapore practising certificate is subject to the professional conduct rules contained in the *Legal Profession Act* (“LPA”) and the *Legal Profession (Professional Conduct) Rules* (the “Conduct Rules”).

The Conduct Rules, in particular, contain detailed obligations regarding the conduct of a solicitor’s or advocate’s practice in Singapore, and these would appear to apply to their practice in international arbitration. However, there are no rules at present specifically governing the conduct of Singapore counsel in arbitral proceedings, whether in Singapore or elsewhere. Nor at present are there specific rules governing the conduct of foreign counsel in arbitral proceedings in Singapore (see question 6.5 below).

**6.4 What powers and duties does the national law of Singapore impose upon arbitrators?**

A tribunal is empowered by law to, among other things:

- rule on a plea that it has no jurisdiction at any stage of the arbitral proceedings (section 10 IAA and article 16 Model Law);
- make orders or give directions for, among other things, security for costs, discovery of documents and interrogatories, the preservation and interim custody of any property or evidence, and interim injunctions or other interim measures (section 12(1) IAA); and
- award any remedy or relief that could have been ordered by the High Court if the dispute had been heard in that court (section 12(5)(a) IAA), including interest (sections 12(5)(b) and 20(1) IAA) and costs.

Arbitrators have a duty to, among other things:

- disclose any circumstances which are likely to give rise to justifiable doubts as to the arbitrator’s impartiality or independence (article 12(1) Model Law);
- ensure that each party is treated equally and that the parties have a full opportunity to present their case (article 18 Model Law);
- give the parties sufficient advance notice of any hearing (article 24(2) Model Law); and
- deliver an award complying with the requirements of the Model Law (article 31 Model Law).

**6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in Singapore and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in Singapore?**

Yes: the LPA restricts the ability of foreign lawyers to appear in legal matters in Singapore. Such restrictions, however, do not apply to arbitration, and foreign lawyers may represent a party in, and give advice in relation to, Singapore arbitrations, even if the law applicable to the substance of the dispute is Singapore law (section 35 LPA).

**6.6 To what extent are there laws or rules in Singapore providing for arbitrator immunity?**

Section 25 of the IAA excludes an arbitrator’s liability for:

- negligence in respect of anything done or omitted to be done in the capacity of arbitrator; and
- any mistake in law, fact or procedure made in the course of arbitral proceedings or in the making of an arbitral award.

**6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?**

While the IAA has been drafted to allow minimal court intervention, the High Court retains various powers to deal with procedural issues, including:

- power to adjudicate on a challenge to an arbitrator (article 13 Model Law and section 8(1) IAA) (see question 5.3 above);
- power to order that a subpoena to testify or a subpoena to produce documents be issued to compel attendance of a witness before the tribunal (section 13 IAA) (see question 8.3 below); and
- power to assist the tribunal in taking evidence (article 27 Model Law) (see question 8.1 below).

## 7 Preliminary Relief and Interim Measures

**7.1 Is an arbitrator in Singapore permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?**

Pursuant to section 12 of the IAA, an arbitrator can, without the assistance of the Singapore courts, make interim orders or directions for, among other things:

- security for costs;
- discovery of documents and interrogatories;
- the preservation, interim custody or sale of any property which is part of the subject-matter of the dispute;
- the preservation and interim custody of any evidence for the purposes of the proceedings;
- securing the amount in dispute;
- ensuring that any award is not rendered ineffectual by the dissipation of assets by a party; and
- an interim injunction or any other interim measure.

**7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party’s request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?**

Yes: under section 12A IAA, the High Court is empowered to grant the same interim orders as the tribunal with the exception of an order for security for costs, discovery of documents and interrogatories, which is reserved for the tribunal. The court will only order interim relief if, or to the extent that, the tribunal or other institution vested by the parties with power in that regard, has no power (e.g. in respect of third parties) or is unable for the time being to act effectively. Further, any interim order of the court will cease to have effect if the tribunal or other institution makes an order which expressly relates to the whole or part of the court’s order.

A party’s request to the court for interim relief will not in itself impact on the jurisdiction of the tribunal.

### 7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

The Singapore courts generally abide by the principle of limited curial intervention, and will only grant interim relief within the narrow guidelines provided in section 12A IAA. Parties are encouraged to make the tribunal, rather than the court, their first port of call for interim measures.

### 7.4 Under what circumstances will a national court of Singapore issue an anti-suit injunction in aid of an arbitration?

The Singapore courts will issue an anti-suit injunction in aid of an arbitration where it is satisfied that:

- it has jurisdiction over the respondent (e.g. because the arbitration is seated in Singapore);
- there exists a valid agreement referring the particular dispute to arbitration; and
- the foreign proceedings have been commenced in breach of such agreement.

### 7.5 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

The IAA empowers the arbitral tribunal to order security for costs (sections 12(1) and 12A(2)).

## 8 Evidentiary Matters

### 8.1 What rules of evidence (if any) apply to arbitral proceedings in Singapore?

The Evidence Act of Singapore does not generally apply to arbitration proceedings in Singapore. Instead:

- the parties are generally free to agree which rules of evidence will apply to the proceedings (section 15A IAA and article 19(1) Model Law); and
- failing agreement, the tribunal has broad power to determine the admissibility, relevance, materiality and weight of any evidence (article 19(2) Model Law).

### 8.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure (including third party disclosure)?

Unless constrained by agreement of the parties, the arbitral tribunal can conduct the arbitration in such manner as it considers appropriate, including making any orders for the disclosure of documents under its express powers in the IAA (section 12(1)(b) IAA).

However, a tribunal cannot order disclosure of documents by a third party. If this is required, any party to the arbitration can apply to the High Court to issue a subpoena to that third party to compel them to produce documents or testify in front of the tribunal (section 13 IAA).

### 8.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

Under the IAA, the court has no power to make interim orders for

discovery of documents and interrogatories (section 12A(2) IAA). It can, however, make orders necessary for preserving evidence (within the limits of section 12A), and issue subpoenas to any witness in Singapore to produce documents or testify to the tribunal (section 13 IAA).

### 8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal or is cross-examination allowed?

There are no mandatory rules regarding the production of written and/or oral witness testimony, and the parties are generally free to agree on the applicable rules (article 19(1) Model Law). Where the parties have not specifically agreed, the tribunal can adopt the rules it deems appropriate, and may decide whether evidence is to be adduced in written or oral form (article 24 Model Law), order the giving of evidence by affidavit (section 12(1)(c) IAA), and administer oaths or take affirmations (section 12(2) IAA).

### 8.5 What is the scope of the privilege rules under the law of Singapore? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

Despite the codified laws of privilege in Singapore not being applicable to arbitration (section 2(1) Evidence Act), it is generally accepted that the common law rules of privilege, including both legal advice privilege and litigation privilege will apply in a Singapore-seated arbitration. These rules of privilege apply to communications between the client and their in-house counsel, provided the in-house counsel is acting in a legal, rather than executive capacity.

Privilege will be deemed waived if the party holding privilege expressly consents to waiver or discloses or relies upon the privileged material.

## 9 Making an Award

### 9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of Singapore that the Award contain reasons or that the arbitrators sign every page?

The IAA requires the award to:

- be made in writing;
- be signed by the arbitrator or arbitrators (where there is more than one arbitrator, the signatures of the majority of all members of the tribunal will suffice, provided the reason for any omitted signature is stated);
- state the reasons upon which it is based (unless the parties agree otherwise or if the award was made by consent);
- state its date and the place of arbitration; and
- be delivered to each party (article 31 Model Law).

## 10 Challenge of an Award

### 10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in Singapore?

In *First Media v Astro* [2013] SGCA 57, the Court of Appeal highlighted that the Model Law contained at its heart a “choice of remedies” approach – that is, a party could choose whether to



pursue active challenges to an award at the seat of the arbitration, or wait to resist passively at the place of enforcement.

In regard to “active” challenges to an award made in Singapore under the IAA, parties can seek to set-aside an award under the well-known grounds in article 34(2) of the Model Law, as well as on the additional grounds that:

- the making of the award was induced or affected by fraud or corruption; or
- a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced (section 24 IAA).

A “passive” challenge can also be made to an award made in Singapore on the grounds set out in article 36 Model Law, when enforcement of the award is sought in Singapore under section 19 IAA (see question 11.3 below).

### 10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

The IAA is silent on whether parties can exclude or waive any basis of challenge against an arbitral award. In their review of the IAA in 2011, the Ministry of Law considered, but ultimately rejected, a proposal to include an express provision in the IAA allowing parties to waive their right to bring an action to set aside.

### 10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

No. Under the IAA/Model Law, there is no right of appeal, nor any provision for such.

### 10.4 What is the procedure for appealing an arbitral award in Singapore?

An award under the IAA cannot be appealed, except in the case of a tribunal’s preliminary ruling on its own jurisdiction (see question 3.4 above).

## 11 Enforcement of an Award

### 11.1 Has Singapore signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Yes, Singapore has ratified the New York Convention and adopted its provisions in the IAA, subject to the reciprocity reservation.

### 11.2 Has Singapore signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

No, it has not.

### 11.3 What is the approach of the national courts in Singapore towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

Both Singapore and foreign, New York Convention awards can,

with the leave of the High Court, be enforced in the same manner as a judgment or order of the High Court (sections 19 and 29 IAA).

The High Court will only refuse enforcement of a foreign award on the limited grounds set out in section 31 IAA (which mirror those in Article V of the New York Convention and article 36 of the Model Law). In respect of Singapore awards, the IAA is silent as to the grounds on which the court may refuse enforcement. However, the Court of Appeal in *First Media v Astro* [2013] SGCA 57 has recently clarified that awards made in Singapore under the IAA can be refused enforcement in Singapore on the same grounds as those set out in article 36 Model Law.

To enforce the award, parties must file an application seeking the leave of the court, and must provide the court with the duly authenticated original award or a duly certified copy, the original or duly certified copy of the arbitration agreement, and any necessary translations to English (section 30 IAA).

### 11.4 What is the effect of an arbitration award in terms of *res judicata* in Singapore? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

With the exception of a tribunal’s decisions on jurisdiction (which can be re-opened by the court – see question 3.4 above), an arbitral award generally has preclusive effect in terms of the claims (*res judicata*) and issues (*issue estoppel*) that have been finally determined in the award.

### 11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

In *AJU v AJT* [2011] SGCA 41, the Court of Appeal confirmed that where enforcement of a foreign arbitral award is resisted on public policy grounds, the public policy objection in question must involve either “exceptional circumstances which would justify the court in refusing to enforce the award” or a violation of “the most basic notions of morality and justice”.

The Court confirmed that unless the tribunal’s decision or decision-making process is tainted by fraud, breach of natural justice or any other vitiating factor, any errors of fact or law made by an arbitral tribunal are not *per se* contrary to public policy.

## 12 Confidentiality

### 12.1 Are arbitral proceedings sited in Singapore confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

Even where the parties have not specifically agreed that the arbitration is to be confidential, Singapore common law recognises that the obligation of confidentiality (which is subject to certain limited exceptions) applies as a default rule in Singapore seated arbitrations: *AAV v AAZ* [2011] 1 SLR 1093. Sections 22 and 23 of the IAA also extend confidentiality to court proceedings under the IAA which arise out of the arbitration.

### 12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Only if the parties so agree, the court orders disclosure, or the information is already in the public domain.

## 13 Remedies / Interests / Costs

### 13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

Generally, the arbitral tribunal will decide the dispute in accordance with the law chosen by the parties as applicable to the substance of the dispute (article 28 Model Law).

Without prejudice to that rule, an arbitral tribunal in a Singapore-seated arbitration has the power to award any remedy or relief that: (a) the parties have agreed is available; and (b) could have been ordered by the High Court if the dispute had been heard in that court (section 12(5)(a) IAA), including damages, injunctions, declarations, specific performance, interest and costs.

Unless the parties have agreed that punitive damages are available, or selected a governing law which allows such damages to be awarded, arbitral tribunals applying Singapore law will not award punitive damages in the context of commercial contracts.

### 13.2 What, if any, interest is available, and how is the rate of interest determined?

Unless the parties agree otherwise, the tribunal may award simple or compound interest from such date, at such rate and with such rest as the tribunal considers appropriate, up to the date of payment, on the whole or any part of:

- any sum awarded by the tribunal in the proceedings;
- any sum in issue in the proceedings but paid before the date of the award; or
- costs awarded by the tribunal in the proceedings.

Unless the tribunal otherwise directs, the sum payable under an award will carry interest from the date of the award and at the same rate as a judgment debt (sections 12(5)(b) and 20 IAA; Order 42 rule 12 Rules of High Court and Supreme Court Practice Direction No.1 of 2007).

### 13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

Unless the parties agree otherwise, allocation of costs will be at the discretion of the tribunal who will ordinarily award costs in favour of the successful party. Such an award will generally include the costs of the arbitration (tribunal's fees and expenses and the administrative costs of the relevant arbitral institution), and all or part of the parties' legal costs.

### 13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

There may be tax consequences arising from an award, depending on the nature of the award and compensation. As such, we recommend obtaining specialist tax advice on a case-by-case basis.

### 13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of Singapore? Are contingency fees legal under the law of Singapore? Are there any "professional" funders active in the market, either for litigation or arbitration?

Third party funding of litigation and arbitration in Singapore is

currently restricted under the doctrines of champerty and maintenance.

## 14 Investor State Arbitrations

### 14.1 Has Singapore signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

Yes it has.

### 14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is Singapore party to?

Singapore is currently a party to 43 BITs and 20 regional and bilateral FTAs, with more still under negotiation.

### 14.3 Does Singapore have any noteworthy language that it uses in its investment treaties (for example in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

A large portion of Singapore's investment treaties contain "most favoured nation" language designed to ensure investments by Singapore nationals are treated no less favourably than investments of nationals of other countries (see, for example, article 3 of the UK-Singapore BIT; article 4 of the China-Singapore BIT). Fewer BITs contain "national treatment" provisions which ensure investments by Singapore nationals are treated no less favourably than investments of nationals of the other contracting State.

### 14.4 What is the approach of the national courts in Singapore towards the defence of state immunity regarding jurisdiction and execution?

Issues of state immunity in Singapore are governed by the *State Immunity Act* ("SIA"). The SIA provides that a State is immune from the jurisdiction of the courts of Singapore, subject to certain defined exceptions, including where:

- the State has submitted to the jurisdiction of the courts of Singapore (section 4);
- the proceedings relate to a commercial transaction entered into by the State, or an obligation of the State which by virtue of a contract (whether a commercial transaction or not) is to be performed wholly or partly in Singapore (section 5); and
- the State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, and the proceedings relate to that arbitration (section 11).

In terms of immunity from execution, the SIA provides that relief shall not be given against a State by way of injunction or order for specific performance or for the recovery of land or other property; and the property of a State shall not be subject to any process for the enforcement of a judgment or arbitration award or, in an action *in rem*, for its arrest, detention or sale. This is subject to a number of exceptions, the most important of which is that such immunity does not prevent the issue of any process in respect of property which is for the time being in use or intended for use for commercial purposes (section 15).

## 15 General

**15.1 Are there noteworthy trends in or current issues affecting the use of arbitration in Singapore (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?**

There are two significant developments: first, the Singapore International Mediation Centre (“SIMC”) will be launched in November 2014. It will be designed to promote mediation in international commercial disputes, and specifically in disputes that have been referred to arbitration.

Secondly, the Singapore International Commercial Court (“SICC”) is due to be launched within the next year. This will be a forum for

disputes with no connection to Singapore, arising from contracts not governed by Singapore law, and heard by judges who may not be Singaporean; though it would still be part of the Singapore court system. It thus would combine some of the flexibility of arbitration with the set procedure found in litigation. However, the result will be a court judgment enforceable through the treaties that Singapore has with other nations, rather than an arbitration award enforceable via the New York Convention.

**15.2 What, if any, recent steps have institutions in Singapore taken to address current issues in arbitration (such as time and costs)?**

Time and cost issues were addressed by the SIAC in 2010 with the introduction of expedited and emergency arbitration procedures.

**Ben Giaretta**

Ashurst LLP  
12 Marina Boulevard  
24-01 Marina Bay Financial Centre Tower 3  
Singapore 018982

Tel: +65 6416 3353  
Fax: +65 6221 5484  
Email: [ben.giaretta@ashurst.com](mailto:ben.giaretta@ashurst.com)  
URL: [www.ashurst.com](http://www.ashurst.com)

Ben Giaretta is a partner based in Singapore and is Ashurst's Head of International Arbitration in Asia. He appears as Counsel in international arbitration and often sits as arbitrator. He is recommended for international arbitration in various directories including *Chambers*, *Best Lawyers* and *Benchmark Litigation*. He is a Fellow of the CI Arb and SI Arb, and is on the panel of arbitrators of several arbitration institutions including the SIAC and the KLRCA. He specialises in the resolution of disputes in the energy, construction, engineering and infrastructure sectors. Projects on which he has worked have involved oil and gas exploration, mining, offshore platforms, pipelines, shipping, LNG marketing, power stations and petrochemical facilities.

**Rob Palmer**

Ashurst LLP  
12 Marina Boulevard  
24-01 Marina Bay Financial Centre Tower 3  
Singapore 018982

Tel: +65 6416 9504  
Fax: +65 6221 5484  
Email: [rob.palmer@ashurst.com](mailto:rob.palmer@ashurst.com)  
URL: [www.ashurst.com](http://www.ashurst.com)

Rob is a partner in Ashurst's dispute resolution team in Singapore and has a particular focus on dispute resolution in energy, construction and infrastructure projects. He is recognised in legal directories as one of the leading construction lawyers in Singapore.

Based in Southeast Asia since 2003, Rob has conducted numerous arbitrations under the rules of major arbitral institutions including the SIAC, AAA, ICC, LCIA, KLRCA, TAI and BANI. Rob is qualified in New Zealand, New South Wales and England, and is a Fellow of the CI Arb, the SI Arb and the Australian Centre for International Commercial Arbitration (ACICA). He is a member of the panel of arbitrators of the KLRCA and ACICA.

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59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

[www.iclg.co.uk](http://www.iclg.co.uk)