

GUIDE TO ARBITRATION PLACES (GAP)

SINGAPORE

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

In 2021, Singapore was ranked, alongside London, as the most preferred seat of international arbitration.¹ This ranking neatly encapsulates Singapore's success in establishing itself as a leading arbitral seat.

Singapore's popularity as an arbitral seat is underpinned by several key factors. First, Singapore has a modern arbitration law, which is pro-arbitration and premised on minimal curial intervention. Second, Singapore has ratified the New York Convention, which allows arbitration awards issued in Singapore to be readily enforced in any New York Convention countries. Third, Singapore's courts adopt a generally pro-enforcement approach towards awards from other New York Convention countries. Fourth, Singapore's Government has demonstrated a sustained commitment to establishing Singapore as an attractive place for parties to arbitrate their disputes.

In 2022, Singapore legalised conditional fee agreements (CFAs) between parties and their lawyers for both domestic and international arbitration, and related mediation and court proceedings. This reform, which complements Singapore's existing Third-Party Funding framework, provides parties with welcome additional flexibility in how they fund their disputes. Reforms of this nature have contributed to Singapore's deserved reputation as a 'user-friendly' arbitral seat.

Key places of arbitration in the jurisdiction?	Singapore.
Civil law / Common law environment? (if mixed or other, specify)	Common law.
Confidentiality of arbitrations?	<p>Yes, there is an implied common law duty of confidentiality in arbitration,² with disclosure permissible only in limited circumstances such as where in the interests of justice.³</p> <p>Further, in 2020, the <i>International Arbitration Act 1994</i> ("IAA") was revised to give tribunals the power to enforce confidentiality obligations where such obligations arise from the parties' agreement or under any written law or rule of law or under the applicable arbitral rules adopted by parties.⁴ The General Division of the High Court of Singapore also has the power to enforce such confidentiality obligations.⁵</p>
Requirement to retain (local) counsel?	<p>There is no requirement to retain local counsel in international arbitrations seated in Singapore. Foreign counsel may represent parties in arbitrations even where the substantive law involved in the dispute is Singapore law.</p> <p>However, in arbitration-related proceedings in court, parties have to be represented by Singapore-qualified lawyers.⁶ One exception</p>

¹ 2021 International Arbitration Survey conducted by the Queen Mary University of London.

² See *Myanma Yangon Chi Oo Co Ltd v Win Win Nu and anor* [2003] 2 SLR(R) 547 (SGHC).

³ See *Myanma Yangon Chi Oo Co Ltd v Win Win Nu and anor* [2003] 2 SLR(R) 547 (SGHC), affirmed recently in *CJY v CJZ and others* [2021] 5 SLR 569 (SGHC).

⁴ IAA, ss 12(1)(j), 12A(2).

⁵ IAA, s 12A(2).

⁶ Legal Profession Act 1996, s 29; Rules of Court 2021, O 4 r 3.

	would be the Singapore International Commercial Court (SICC) where accredited foreign lawyers have rights of audience to act in offshore cases or make submissions on foreign law; nonetheless, even in the SICC, Singapore law matters have to be argued by Singapore lawyers. ⁷
Ability to present party employee witness testimony?	Yes, although tribunals have discretion to weigh such evidence.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Yes, if the parties agree. If parties are unable to agree, the tribunal may conduct proceedings in a manner it considers appropriate subject to the provisions of the Model Law. ⁸
Availability of interest as a remedy?	Yes, tribunals may award interest, unless this has been otherwise agreed by the parties. ⁹
Ability to claim for reasonable costs incurred for the arbitration?	Yes, tribunals have the power to order costs. ¹⁰
Restrictions regarding contingency fee arrangements and/or third-party funding?	Contingency fee (i.e., damages-based) arrangements are prohibited. ¹¹ However, conditional fee arrangements are expressly permitted following the 2022 amendments to the <i>Legal Profession Act 1966</i> . This allows Singapore-qualified lawyers and registered foreign lawyers to enter into conditional fee agreements in domestic and international arbitrations, as well as related court proceedings. ¹² Third-party funding in Singapore-seated arbitrations and related court proceedings is also allowed. ¹³ From 2021, third-party funding in domestic arbitrations and related court proceedings are also allowed. ¹⁴
Party to the New York Convention?	Yes, the New York Convention is implemented through the IAA.
Party to the ICSID Convention?	Yes, the New York Convention is implemented through the <i>Arbitration (International Investment Disputes) Act 1968</i> .
Compatibility with the Delos Rules?	Yes.

⁷ Legal Profession Act 1996, Part 4B; Legal Profession (Representation in Singapore International Commercial Court) Rules 2014.

⁸ Model Law, Art 19 (incorporated by the IAA). However, the Model Law (as incorporated by the IAA) does not expressly provide for the holding of hearings outside of the seat or remotely. Tribunals are furthermore required by Art 18 of the Model Law to give each party a “full opportunity” to present its case. See *CBS v CBP* [2021] SGCA 4 where the Singapore Court of Appeal set aside an award under the Singapore Chamber of Maritime Arbitration (SCMA) rules, holding that the tribunal’s decision to prohibit the parties from presenting any witness evidence at a hearing was a breach of natural justice.

⁹ IAA, s 20 ; AA, s 35.

¹⁰ See *VV and another v VW* [2008] 2 SLR(R) 929 (SGHC) at [28]-[31].

¹¹ Legal Profession Act 1966, Part 8A, Clause 115B(4)(b).

¹² Legal Profession Act 1966, Part 8A; Legal Profession (Conditional Fee Agreement) Regulations 2022, s 3.

¹³ Civil Law Act 1909, ss 5A, 5B. See also: Civil Law (Third-Party Funding) Regulations 2017, s 3.

¹⁴ Civil Law (Third-Party Funding) (Amendment) Regulations 2021, s 2.

Default time-limitation period for civil actions (including contractual)?	<p>For contractual or tortious actions in Singapore-seated international arbitrations or domestic arbitrations, the default limitation period is 6 years from the date the cause of action accrued,¹⁵ unless a foreign limitation period applies under the <i>Foreign Limitation Periods Act 2012</i>.¹⁶</p> <p>For the enforcement of arbitral awards before the Singapore courts, the limitation period is 6 years from the date on which the cause of action accrued (usually this is the date of issuance of award).¹⁷</p>
Other key points to note?	ϕ
World Bank, <i>Enforcing Contracts: Doing Business</i> score for 2020, if available?	Ranked 2 out of 190 with an overall score of 86.2. ¹⁸
World Justice Project, <i>Rule of Law Index: Civil Justice</i> score for 2022, if available?	Ranked 8 out of 140 with an overall score of 0.79.

¹⁵ Limitation Act 1959, s 6(1)(a), read with IAA, s 8A and AA, s 11(1).

¹⁶ Foreign Limitation Periods Act 2012, s 3, s 6(1)(a), read with IAA, s 8A and AA, s 11(1).

¹⁷ Limitation Act 1959, s 6(1)(c).

¹⁸ The latest 2020 scores are used as the World Bank Group management had discontinued the Doing Business Report from September 2021.

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	Singapore has two key arbitration statutes: the <i>Arbitration Act 2001</i> ("AA") for domestic arbitrations and the <i>IAA</i> for international arbitrations. The latest amendments to the IAA came into effect on 31 December 2021.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	Yes, Singapore adopts the 1985 UNCITRAL Model Law with only minor adjustments thereto. While Singapore has not adopted the 2006 UNCITRAL Model Law, certain aspects of it has been incorporated. For example, the <i>IAA</i> was amended in 2012 to adopt the revised definition of an arbitration agreement under the 2006 Model Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Yes, there is a specialised list of 6 docketed judges set up in the General Division of the High Court for arbitration; they are experienced in arbitration-related matters and are rostered to hear such matters. Additionally, there is also the Singapore International Commercial Court (SICC), which is a specialised branch of the General Division of the High Court designed to deal with transnational commercial disputes. The SICC may also hear international arbitration related cases. ¹⁹ It has a bench of international judges from common and civil law jurisdictions, including foreign judges with specialised knowledge of arbitration law. On 11 January 2023, the SICC launched a model clause giving parties the option to expressly agree that arbitration-related court proceedings in Singapore commenced under the <i>IAA</i> shall be commenced in and adjudicated by the SICC. This makes it easier for parties to exercise their autonomy to designate the SICC as the supervisory court.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Yes, the Singapore High Court has the power to make <i>ex parte</i> pre-arbitration interim measures if there is urgency and where it is necessary for the purpose of preserving evidence or assets. ²⁰
Courts' attitude towards the competence-competence principle?	Strongly supportive. ²¹
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Yes, tribunals may do so. As contrasted with arbitral awards wherein tribunals are required to provide reasons, there is no legal requirement for tribunals to provide reasons when issuing rulings on jurisdiction or other procedural issues. However, to the extent

¹⁹ Supreme Court of Judicature Act 1969, s 18D(2)(a).

²⁰ See *IAA* s 12A(4). Additionally, for arbitrations under the SIAC Rules, paragraph 7 of Schedule 1 of the SIAC Rules provides that an Emergency Arbitrator shall have the power to order "preliminary orders" that may be made pending any hearing or submissions.

²¹ See for e.g., *Malini Ventura v Knight Capital Pte Ltd & others* [2015] 5 SLR 707 (SGHC) at [37].

	the ruling is issued in the form of a Partial Final Award, it must contain reasons as with any award. ²²
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	<p>In addition to the grounds under Article 34(2) of the 1985 Model Law adopted by Singapore, the IAA provides two additional grounds for annulment: (a) where the making of the award was induced or affected by fraud or corruption; and (b) where 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.²³</p> <p>However, the courts have generally interpreted these provisions to be consistent with the due process and public policy rights already provided for under the Model Law.</p>
Do annulment proceedings typically suspend enforcement proceedings?	It is within the wide statutory discretion of the Singapore courts as to whether to suspend enforcement proceedings whilst annulment proceedings are pending. ²⁴ The court will be guided by the outcome which is the “most just or least unjust”, taking into account, <i>inter alia</i> , factors such as whether the applicant is demonstrably pursuing a meritorious annulment application, the strength of the annulment application and the likely length of delay to enforcement. ²⁵
Courts’ attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Unless there are particularly strong facts or reasons favouring enforcement, Singapore courts are likely to be dismissive.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party’s objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	A tribunal’s order for hearings to be conducted remotely is unlikely to adversely affect the enforceability of the award. The Singapore courts and SIAC have themselves embraced virtual hearings during the COVID-19 pandemic. In the present climate, the Singapore courts may find that it was reasonable for the tribunal to direct a remote hearing in view of the particular circumstances and the tribunal’s duty to conduct hearings efficiently and expediently.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	Arbitration awards against public bodies to the arbitration are not treated any differently before the Singapore courts; Singapore government bodies too do not enjoy immunity in civil proceedings and arbitrations. ²⁶
Is the validity of blockchain-based evidence recognised?	Tribunals have the power and discretion to decide the admissibility and weight of evidence, including that of blockchain-based evidence: see Section 7.1 below.

²² For arbitral awards, see the “reasons” requirement in Article 31(2) Model Law. Pure jurisdictional rulings are not regarded as arbitral awards: PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA [2007] 1 SLR(R) 597 (SGCA).

²³ IAA, s 24.

²⁴ IAA, s 31(5)(a): “Where, in any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the court is satisfied that an application for the setting aside or for the suspension of the award has been made to a competent authority of the country in which, or under the law of which, the award was made, the court may... (a) if the court considers it proper to do so, adjourn the proceedings or (as the case may be) so much of the proceedings as relates to the award”. This wide statutory discretion is affirmed in *Man Diesel Turbo SE v IM Skaugen Marine Services Pte Ltd* [2019] 4 SLR 537.

²⁵ *Man Diesel Turbo SE v IM Skaugen Marine Services Pte Ltd* [2019] 4 SLR 537 (SGHC) at [46] - [47].

²⁶ Government Proceedings Act 1956, ss 4, 5, 18.

Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	While this is yet untested before the courts, it is likely that blockchain-based arbitration agreements will be recognised as valid. On the other hand, blockchain-based awards may face more difficulty in being recognised as valid: see sections 7.1 and 7.4 below.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	While this is yet untested before the courts, it is more likely that blockchain-based arbitration agreements will be recognised as originals as compared to awards: see section 7.3 below.
Other key points to note?	ϕ

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

Singapore arbitration law is largely derived from two main statutes: (i) International Arbitration Act 1994 (“**IAA**”) for international arbitrations; and (ii) Arbitration Act 2001 (“**AA**”) for domestic arbitrations. As with common law jurisdictions, the case law and jurisprudence of the Singapore courts form an important part of the legal framework.

1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

Both the IAA and AA are based on the UNCITRAL Model Law, 1985 version.

1.1.1 If yes, what key modifications if any have been made to it?

The key modifications made to the UNCITRAL Model Law, 1985 version by the IAA are as follows:

- Definition: The IAA provides for a more encompassing wording to one limb of the definition of an international arbitration agreement (“at least one of the parties to an arbitration agreement, at the time of the conclusion of the agreement, has its place of business in any State other than Singapore”) as compared to the Model Law’s definition of requiring the parties to have their place of business in different States.²⁷
- Enforcement of arbitral agreements: The IAA modified the Model Law’s provisions to clarify that (i) the courts’ reference of parties to arbitration will be done by way of stay of court proceedings (not dismissal); (ii) the court has powers to order a stay on any terms it thinks fit (e.g., a partial stay for a particular dispute in a larger dispute), and may make interim orders in relation to any property which is the subject of the dispute; and (iii) the application for stay may be filed after appearance but before delivering any pleading or taking any other step in the proceedings;²⁸
- Default number of arbitrators: where the number of arbitrators is not determined by the parties, the IAA provides for a default of one arbitrator as compared to the Model Law’s default of three arbitrators;²⁹
- Appeals against jurisdictional rulings: The IAA allows parties to appeal against not only positive jurisdictional rulings (to which Model Law is restricted) but also negative jurisdictional rulings;³⁰
- Additional Grounds for Setting Aside: The IAA provides two additional grounds for setting aside arbitral awards: (i) where the making of the award was induced or affected by fraud or corruption; or (ii) where 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.³¹ However, a breach of the rules of natural justice is accepted to overlap with the Model Law’s grounds;³²
- Recognition and Enforcement of Foreign Awards: The IAA replaced the Model Law’s provisions on this aspect with its own provisions.³³

²⁷ IAA, s 5(2)(a).

²⁸ IAA, s 6.

²⁹ IAA, s 9.

³⁰ IAA, s 10. Where the applicant succeeds in appealing against a negative jurisdictional ruling, the tribunal shall continue the arbitral proceedings to render an award. Per *IAA*, s 10(6), any arbitrator who is unwilling or unable to continue the proceedings will be substituted in accordance with Model Law Article 15.

³¹ IAA, s 24.

³² *Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd* [2015] 1 SLR 114.

³³ IAA, s 3 and Part 3.

1.2 When was the arbitration law last revised?

Both the IAA and AA were last amended on 25 October 2022, with the amendments effective from 1 November 2022. While these amendments were minor, they are part of the constant updating and refining of the arbitration law in Singapore.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The Singapore courts determine the law governing the arbitration agreement by applying a three-step test:³⁴

- First Limb: Whether the parties expressly chose the law governing the arbitration agreement;
- Second Limb (if “no” to first limb): Whether the parties made an implied choice of the law governing the arbitration agreement. The courts will presume that the law otherwise governing the substantive contract will also be the governing law of the arbitration agreement. This presumption may be displaced in certain circumstances;
- Third Limb (if “no” to both first and second limb): Which system of law has the closest and most real connection to the arbitration agreement. In the absence of an express or implied choice of the governing law, the law which satisfies the third limb will be the governing law of the arbitration agreement.

For completeness, the Singapore Court of Appeal in *Anupam Mittal v Westbridge Ventures II Investment Holdings* [2023] SGCA 1 recently demonstrated the importance of this test. The Court held that when determining arbitrability of a dispute at the pre-award stage, such as in applications for stay of court proceedings or anti-suit injunctions, the dispute in question must be arbitrable under both the law of the seat and the law of the arbitration agreement. This represented a departure from the position in other common law jurisdictions, as well as the Singapore High Court’s judgment that prompted the appeal, where only the law of the seat determines arbitrability of the dispute at the pre-award stage while the law of the arbitration agreement is primarily concerned with the validity of the arbitration agreement.

The effect of *Anupam Mittal* is that when parties are disputing at the pre-award stage as to whether a stay of proceedings or anti-suit injunction should be granted, the three-step test takes on an important role. Should the dispute be found to be non-arbitrable under the law of the arbitration agreement, it would *ipso facto* be non-arbitrable at the pre-award stage.

2.2 In the absence of an express designation of a ‘seat’ in the arbitration agreement, how do the courts deal with references therein to a ‘venue’ or ‘place’ of arbitration?

While this depends on the Court’s interpretation of the specific arbitration agreement, references to a “place” of arbitration in an arbitration agreement are likely deemed to mean the seat of arbitration,³⁵ while references to a “venue” of arbitration are likely taken to refer merely to the physical location in which the arbitration is to take place.³⁶

In a recent Singapore Court of Appeal case wherein the arbitration agreement provided for “arbitration in Shanghai”, the court applied a natural reading to mean that Shanghai was chosen as the seat of the arbitration and not merely its venue.³⁷ However, the court also acknowledged that this natural reading could

³⁴ BNA v BNB and another [2020] 1 SLR 456 (SGCA) at [44]-[48] (when traced to its origin, the test follows the English case of *Sulamérica Cia Nacional de Seguros SA and others v Enesa Engenharia SA and others* [2013] 1 WLR 102 (EWCA)).

³⁵ *PT Garuda Indonesia v Birgen Air* [2001] SGHC 262.

³⁶ *PT Garuda Indonesia v Birgen Air* [2001] SGHC 262.

³⁷ BNA v BNB and another [2020] 1 SLR 456 (SGCA) at [94].

be displaced if there were admissible evidence to the contrary. On the facts of that case, there were no such contrary indications and thus the natural reading was upheld.

2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Yes, the doctrine of separability of the arbitration agreement is recognised in Singapore pursuant to section 3 of the IAA which adopts Article 16 of the UNCITRAL Model Law. Accordingly, even if a contract is found by the tribunal to be void, this does not render the arbitration clause invalid.

2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?

The only formal requirement of an arbitration agreement is that it has to be in writing.³⁸ This requirement is satisfied in the following list of non-exhaustive circumstances provided in the AA and IAA:³⁹

1. The arbitration agreement's content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or by other means;
2. The arbitration agreement is made by an electronic communication and the information contained therein is accessible so as to be useable for subsequent reference;
3. A party asserts the existence of an arbitration agreement in a pleading, statement of case or any other document in circumstances in which the assertion calls for a reply and the other party does not deny that assertion;
4. A contract refers to any document containing an arbitration clause, making that clause part of the contract; or
5. A bill of lading refers to a charterparty or other document containing an arbitration clause, making that clause part of the bill of lading.

2.5 To what extent, if at all, can a third-party to the contract containing the arbitration agreement be bound by said arbitration agreement?

Generally under Singapore law, a third party (i.e. a non-signatory to the arbitration agreement) is not bound by an arbitration agreement to which it is not a party to or privy to.

Singapore does not recognise the "group of companies" doctrine or the single economic entity concept.⁴⁰ Thus, even where a third party company is related to another to whom the arbitration agreement applies, the courts will generally not construe such a third party as being bound to the arbitration agreement.⁴¹

However, note that third parties may be considered party to the arbitration agreement in the following circumstances:⁴²

³⁸ AA, s 4(3); IAA, s 2A(3).

³⁹ AA, s 4(4)-(8); IAA, s 2A(4)-(8).

⁴⁰ *Manuchar Steel Hong Kong Ltd v Star Pacific Line Pte Ltd* [2014] 4 SLR 832 (SGHC) at [76], [101].

⁴¹ *BC Andaman Co Ltd and others v Xie Ning Yun and another* [2017] 4 SLR 1232 (SGHC) at [98], citing *Rals International Pte Ltd v Cassa di Risparmio di Parma e Piacenza SpA* [2016] 5 SLR 455 (SGCA).

⁴² *Jiang Haiying v Tan Lim Hui and another suit* [2009] SGHC 42.

1. Where the arbitration agreement is incorporated by reference;
2. Where there is an assumption of rights of liabilities to a contract with an arbitration clause (e.g., assignment or novation);
3. Where the agreement was entered into by an agent;
4. Corporate veil-piercing on the basis of alter ego principle; and/or
5. Where the doctrine of estoppel applies.

2.6 Are there restrictions to arbitrability? In the affirmative: do these restrictions relate to specific domains (such as anti-trust, employment law etc.) and/or to specific persons (i.e., State entities, consumers etc.)?

Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless it is contrary to public policy to do so.⁴³

2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?

The Singapore courts have decided on the matter of arbitrability in specific domains on a case-by-case basis. The arbitrability of the following domains have been the subject of specific court decisions:

1. Employment disputes are *arbitrable*;⁴⁴
2. Minority oppression claims under the *Companies Act 1967* are generally *arbitrable* because they generally do not engage any public policy considerations;⁴⁵
3. Matters that involve or concern the interests of third parties, public rights or concerns, and other matters of uniquely governmental authority, would be *non-arbitrable*.⁴⁶
4. Insolvency disputes which affect the substantive rights of other creditors (such as avoidance and wrongful trading actions) are generally non-arbitrable.⁴⁷ However, disputes which stem from pre-insolvency rights and obligations (such as pre-insolvency debt claims) are generally arbitrable.⁴⁸

Outside of the courts, the Singapore Parliament has expressly legislated for the arbitrability of IP disputes.⁴⁹

2.6.2 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?

No. As mentioned above, the test for arbitrability is whether it is contrary to the public policy of Singapore. No claims against specific persons are non-arbitrable.

⁴³ IAA, s 11(1).

⁴⁴ Sim Chay Koon and others v NTUC Income Insurance Co-operative Limited [2015] 2 SLR 871 (SGCA).

⁴⁵ Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 (SGCA) at [84].

⁴⁶ Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 (SGCA) at [71].

⁴⁷ Larsen Oil and Gas Pte Ltd v Petroprod Ltd (in official liquidation in the Cayman Islands and in compulsory liquidation in Singapore) [2011] 3 SLR 414 (SGCA) at [44]-[51]; AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Company) [2020] 1 SLR 1158 (SGCA) at [68]-[70].

⁴⁸ Larsen Oil and Gas Pte Ltd v Petroprod Ltd (in official liquidation in the Cayman Islands and in compulsory liquidation in Singapore) [2011] 3 SLR 414 (SGCA) at [44]-[51]; AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Company) [2020] 1 SLR 1158 (SGCA) at [68]-[70].

⁴⁹ AA, Part 9A; IAA, Part 2A.

In relation to State entities, Singapore law expressly provides that a State has no immunity in arbitration-related proceedings in the Singapore courts, if that State has agreed in writing to submit a dispute to arbitration.⁵⁰

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

Yes, Singapore courts are likely to stay litigation if there is a valid arbitration agreement covering the dispute. This reflects their strong pro-arbitration stance and their approach of “upholding, rather than defeating, the typical expectations of commercial parties who choose arbitration”.⁵¹

3.1.1 If the place of the arbitration is inside of the jurisdiction?

For domestic arbitrations seated in Singapore, a stay is discretionary and may be granted where, *prima facie*, the court is satisfied that:⁵² (i) there is no sufficient reason why the matter should not be resolved in accordance with the arbitration agreement;⁵³ and (ii) the party applying for a stay remains ready and willing to arbitrate.

For international arbitrations seated in Singapore, the IAA provides that a stay is mandatory and the court is to make an order to stay the court proceedings where, *prima facie*, the court is satisfied that:⁵⁴ (i) the applicant is a party to the arbitration agreement; (ii) the court proceedings instituted involve a matter which is the subject of the arbitration agreement; and (iii) the arbitration agreement is not null and void,⁵⁵ inoperative⁵⁶ or incapable of being performed.⁵⁷

3.1.2 If the place of the arbitration is outside of the jurisdiction?

Where the place of arbitration is outside of the jurisdiction, the IAA applies.⁵⁸ The position is thus similar to that for international arbitrations seated in Singapore (see section 3.1.1 above).

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

For international arbitrations seated in Singapore, the IAA empowers the tribunal to grant interim injunctions or any other interim measures,⁵⁹ which includes interim anti-suit injunctions to restrain parties from initiating

⁵⁰ State Immunity Act 1979, s 11(1).

⁵¹ Cassa di Risparmio di Parma e Piacenza SpA v Rals International [2016] 1 SLR 79 at [133].

⁵² AA, s 6(2); Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 (SGCA) at [65].

⁵³ One important factor would be the arbitrability of the matter as discussed in section 2.5 above: see Larsen Oil & Gas Pte Ltd v Petroprod Ltd (in official liquidation in the Cayman Islands and in compulsory liquidation in Singapore) [2011] 3 SLR 414 (SGCA) at [23]-[26].

⁵⁴ IAA, s 6(1)-(2); Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 (SGCA) at [63].

⁵⁵ The term “null and void” refers to cases where the arbitration agreement suffers from invalidity from the outset, such as due to misrepresentation, duress, fraud, mistake, or undue influence: Dyna-Jet Pte Ltd v Wilson Taylor Asia Pacific Pte Ltd [2017] 3 SLR 267 (SGHC) at [143].

⁵⁶ The term “inoperative” covers cases where the arbitration agreement has ceased to have effect, such as revocation or waiver by the parties: Dyna-Jet Pte Ltd v Wilson Taylor Asia Pacific Pte Ltd [2017] 3 SLR 267 (SGHC) at [143]. This includes a situation where a dispute is non-arbitrable: Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 (SGCA) at [74].

⁵⁷ The term “incapable of being performed” covers cases where the arbitration cannot effectively be set into motion, such as where the arbitration clause is too vaguely worded, or other terms of the contract contradict the parties’ intention to arbitrate: Dyna-Jet Pte Ltd v Wilson Taylor Asia Pacific Pte Ltd [2017] 3 SLR 267 (SGHC) at [143]. This also includes a situation where a dispute is non-arbitrable: Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 (SGCA) at [74].

⁵⁸ IAA, s 6(1); Coop International Pte Ltd v Ebel SA [1998] 1 SLR(R) 615 (SGHC) at [149].

⁵⁹ IAA, s 12(1)(i).

or continuing litigation proceedings.⁶⁰ Per section 12(6) of the IAA, such orders are enforceable (with the General Division of the High Court's leave) in the same manner as if they were orders made by a court.⁶¹

Such powers to issue anti-suit injunctions are not afforded to tribunals in domestic arbitration seated in Singapore. Instead, parties to domestic arbitration usually go before the Singapore courts to obtain such injunctions.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

Singapore courts have discretion to grant interim orders in support of arbitration seated outside of Singapore too.⁶² Such interim orders include:

1. Anti-suit injunctions;⁶³
2. Orders for the preservation of any property which forms the subject-matter of the dispute;⁶⁴
3. Orders for the prevention of dissipation of assets;⁶⁵
4. Orders to enforce obligations of confidentiality;⁶⁶
5. Interim injunctions or any other interim measures.⁶⁷

Several considerations enumerated in the IAA guide the exercise of the Singapore court's discretion. Courts may make the above orders where the case is urgent and it is necessary to preserve evidence or assets.⁶⁸ To the contrary, if the case is not one of urgency, the court will only make such orders with the tribunal's permission or the parties' agreement.⁶⁹ Also, the courts may refuse to make such orders if the fact that the place of arbitration is outside Singapore makes it inappropriate to do so.⁷⁰ Finally, in every other case (aside from those listed above), the court will only make such orders if or to the extent that the tribunal has no power or is unable for the time being to act effectively.⁷¹

4. The conduct of the proceedings

4.1 Can parties retain foreign counsel or be self-represented?

Parties can either retain external counsel or be self-represented in arbitration proceedings.⁷² Foreign lawyers may represent parties in arbitrations even where the substantive law involved in the dispute is Singapore.

⁶⁰ PT Pukuafu Indah and others v Newmont Indonesia Ltd and another [2012] 4 SLR 1157 (SGHC) at [16] and [18].

⁶¹ IAA, s 12(6). See also PT Pukuafu Indah and others v Newmont Indonesia Ltd and another [2012] 4 SLR 1157 (SGHC) at [19], where the Singapore High Court held that the interim anti-suit injunction issued by the tribunal was an order or direction under s 12(1) of the IAA and not an "award", and thus was not susceptible to a setting aside under s 24 of the IAA or Art 34 of the Model Law.

⁶² IAA, s 12A.

⁶³ Maldives Airports Co Ltd v GMR Malé International Airport Pte Ltd [2013] 2 SLR 449 (SGCA) at [42].

⁶⁴ IAA, ss 12A(2) read with Sections 12(1)(c)-(i).

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ IAA, s12A(4).

⁶⁹ IAA, s12A(5).

⁷⁰ IAA, s 12A(3).

⁷¹ IAA, s 12A(6).

⁷² CGS v CGT [2021] 3 SLR 672 (SGHC).

However, in arbitration-related proceedings in court, parties would have to be represented by Singapore-qualified lawyers.⁷³ One exception would be the Singapore International Commercial Court (SICC) where accredited foreign lawyers have rights of audience to make submissions on foreign law but Singapore law matters will have to be argued by Singapore lawyers.⁷⁴

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?

The courts control arbitrators' independence and impartiality through: (i) challenge proceedings; and (ii) setting aside proceedings.

In challenge proceedings, a party who was unsuccessful in challenging an arbitrator (either before the tribunal or through an agreed upon challenge procedure) may apply to the court, challenging the arbitrator on the basis that "circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence".⁷⁵

In setting aside proceedings, a party may apply to the court to set aside the arbitral award on the grounds that the arbitrator lacked independence and impartiality.⁷⁶

In both types of proceedings, the test is the same: at the very least, the applicant has to prove *apparent bias*.⁷⁷ Of course, an arbitrator may be shown to lack independence and impartiality where *actual or imputed bias* is proven (this is a higher threshold).⁷⁸

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

Courts generally do not intervene in the constitution of the tribunal in *ad hoc* arbitrations seated in Singapore. Instead, the IAA provides a default framework to assist the parties where they fail to agree to a procedure for the constitution of the tribunal and/or appointment of arbitrator.

1. Where the parties fail to agree on the number of arbitrators, there is to be a single arbitrator.⁷⁹ Where the parties then fail to agree on the appointment of the single arbitrator, the SIAC President may appoint the single arbitrator at the request of either party.⁸⁰
2. Where the parties fail to agree on the procedure for appointment of the arbitrators (where there is to be three arbitrators), each party must appoint one arbitrator and the parties must agree on the appointment of the third arbitrator. Where a party fails to appoint the arbitrator or where the two

⁷³ Legal Profession Act 1996, s 29; Rules of Court 2021, O 4 r 3.

⁷⁴ Legal Profession Act 1996, Part 4B; Legal Profession (Representation in Singapore International Commercial Court) Rules 2014.

⁷⁵ Model Law, Articles 12(2) and 13(3) read with IAA, s 3; AA, ss 14(3) and 15(4).

⁷⁶ This was the case in *BYL and another v BYN* [2020] 4 SLR 1 (SGHC(I)). While not expressed in the judgment, the basis for this application to set aside on grounds of lack of independence and impartiality of the arbitrator can come possibly from IAA, s 24(b); Model Law, Article 34(2)(b) read with IAA, s 3; or AA, s 48(1)(a)(vii), (1)(b)(ii).

⁷⁷ *PT Central Investindo v Franciscus Wongso and others and another matter* [2014] 4 SLR 978 (SGHC) at [18]; *BYL and another v BYN* [2020] 4 SLR 1 at [50].

⁷⁸ *PT Central Investindo v Franciscus Wongso and others and another matter* [2014] 4 SLR 978 (SGHC) at [15].

⁷⁹ IAA, s 9.

⁸⁰ IAA, s 8(2), 9 read with Model Law, Article 11(3)(b).

arbitrators fail to agree on the appointment of the third arbitrator, the SIAC President may make the appointment at the request of either party.⁸¹

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

Courts have the power to issue interim measures such as injunctions and orders in connection with both domestic and international arbitrations.⁸² See section 3 above.

Courts are willing to consider *ex parte* requests if the case is one of urgency.⁸³ However, note that while such requests are *ex parte*, the Practice Directions provide that the opponent should generally be given notice of the hearing at least 2 hours in advance failing which an explanation for such failure has to be provided.⁸⁴

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

Yes, Article 18 of the Model Law requires that the parties are treated with equality and that each party shall be given a full opportunity to present its case.

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

Yes. While the IAA and Model Law do not expressly provide for arbitral confidentiality, the Singapore courts have consistently confirmed that there is an implied obligation of confidentiality in every arbitration governed by Singapore procedural law, subject to several exceptions.⁸⁵ Parties and the Tribunal are obligated to not disclose confidential information obtained in the arbitration proceedings or use them for any extraneous purposes. Exceptions to the confidentiality obligation include where there is consent (express or implied) or where the public interest or the interests of justice required disclosure.⁸⁶

Recently in 2020, the IAA was revised to expressly recognise that tribunals and courts have the power to enforce confidentiality obligations, where the obligation arises from parties' agreement, or under any written law or rule of law or under the applicable arbitral rules adopted by parties.⁸⁷ This strengthens the framework of arbitral confidentiality.

4.5.2 Does it regulate the length of arbitration proceedings?

No.

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

No, Article 20 of the Model Law provides that the tribunal may, unless otherwise agreed by the parties, meet "at any place" it considers appropriate. The parties are free to agree on the place of arbitration, and failing such agreement, the tribunal shall determine the place of arbitration having regard to the circumstances of the case including the parties' convenience.

The above arguably applies even if a party objects to remote hearings. While the objecting party may attempt to claim that having a remote hearing deprives it of its full rights to be heard by the tribunal, the Singapore court has observed that "the right of each party to be heard does not mean the Tribunal must sacrifice all

⁸¹ AA, s 9A.

⁸² AA, s 31; IAA, s 12A.

⁸³ Rules of Court 2021, O 48 r 3(3).

⁸⁴ Supreme Court Practice Directions 2021, paragraph 71 (1) - (2).

⁸⁵ Republic of India v Vedanta Resources plc [2021] 2 SLR 354 (SGCA).

⁸⁶ AAY and others v AAZ [2009] 1 SLR 1093 (SGHC).

⁸⁷ IAA, ss 12(1)(j), 12A(2).

efficiency in order to accommodate unreasonable procedural demands by a party.”⁸⁸ It will likely be an uphill task for the objecting party to claim that the decision to hold remote hearings led to a breach of its rights to natural justice.

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

Yes, Singapore arbitration law allows arbitrators to issue interim measures, such as injunctions and security for costs.⁸⁹

Save for an order of security for costs (which a tribunal should not issue merely by reason that the claimant is ordinarily resident / incorporated outside Singapore), Singapore arbitration law does not impose any statutory conditions for the exercise of the arbitrators’ power to issue interim measures.⁹⁰

4.5.5 Does it regulate the arbitrators’ right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

No, Singapore arbitration law does not regulate the arbitrators’ right to admit/exclude evidence. Instead, Singapore arbitration law expressly gives the tribunal (i) wide discretion to conduct the arbitration in such manner as it considers appropriate, and (ii) wide powers to determine the admissibility, relevance, materiality and weight of any evidence.⁹¹ It is common for parties, by agreement, to adopt the IBA Rules on the Taking of Evidence in International Arbitration.

For completeness, it should be noted that the rules of evidence under the *Evidence Act 1893* do not apply to arbitration proceedings.⁹²

4.5.6 Does it make it mandatory to hold a hearing?

It depends on whether the parties request a hearing.

If a party requests that a hearing be held (and there is no prior contrary agreement between the parties), it is mandatory for the tribunal to hold a hearing at an appropriate stage.⁹³ Otherwise, the tribunal is empowered to decide whether to hold a hearing or to conduct the proceedings on the basis of documents and other materials.⁹⁴

4.5.7 Does it prescribe principles governing the awarding of interest?

No, unless otherwise agreed by the parties, the tribunal has discretion to award interest.⁹⁵

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

No, tribunals have broad discretion to allocate arbitration costs. If the tribunal does not quantify the costs, the costs are to be assessed by the Registrar of the Supreme Court (for domestic arbitrations) and the Registrar of SIAC (for international arbitrations).⁹⁶

⁸⁸ *Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd* [2015] 1 SLR 114 at [151].

⁸⁹ AA, s 28; IAA, s 12.

⁹⁰ AA, s 28(3); IAA, s 12(4).

⁹¹ AA, s 23; Model Law, Article 19 read with IAA, s 3.

⁹² Evidence Act 1893, s 2(1).

⁹³ AA, s 25(2); Model Law, Article 24(1) read with IAA, s 3.

⁹⁴ Ibid.

⁹⁵ AA, s 35; IAA, s 20.

⁹⁶ AA, s 39 (for domestic arbitrations); IAA, s 21 (for international arbitrations).

For international arbitrations seated in Singapore, the IAA expressly recognises that fees of the tribunal may be fixed by written agreement, and that parties may agree on the determination of the fees by a person or institution.⁹⁷

For domestic arbitrations seated in Singapore, note that if parties agree *before a dispute arises* that they are to bear their own costs for the arbitration, such an agreement will be void.⁹⁸

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

Yes, Singapore arbitration law provides that arbitrators are not liable for negligence in respect of anything done or omitted to be done in their capacity as arbitrators; or any mistake of law, fact or procedure made in the course of arbitral proceedings or in the making of an arbitral award.⁹⁹

Arbitral institutions are also generally immune from civil liability, except where the act or omission in question is shown to have been in bad faith.¹⁰⁰

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

No.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Yes, parties can waive the requirement for an award to provide reasons.¹⁰¹

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

This is still untested in Singapore. Singapore arbitration law does not expressly provide for the waiver of the right to set aside an award. Despite the general principle that parties should be free to make their own agreements, it will be an uphill task for any party to convince the courts to give effect to their agreement to surrender the protections granted by the IAA and Model Law.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no atypical mandatory requirements.

The mandatory requirements are typical and are set out in Article 31 of the Model Law: that the award shall: (i) be made in writing, (ii) be signed by the arbitrator(s), (iii) state the reasons upon which it is based unless the parties agree otherwise, and (iv) state the date and place of arbitration, (v) be delivered to each party in the form of a signed copy.

⁹⁷ IAA, s 21(2).

⁹⁸ AA, s 39(2).

⁹⁹ AA, s 20; IAA, s 25.

¹⁰⁰ AA, s 59; IAA, s 25A.

¹⁰¹ AA, s 38(2); Model Law, Article 31(2) read with IAA, s 3.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

No, it is not possible to appeal an award in international arbitrations (as opposed to setting it aside in accordance with the IAA and Model Law). The award made by the tribunal is “final and binding” on the parties.¹⁰²

As for domestic arbitrations, parties may appeal to the General Division of the High Court on a question of law arising out of the award, subject to the stringent requirements in section 49 of the AA. This includes the requirement that either all parties agree to the appeal being brought or the court grants permission for the same.¹⁰³

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

The procedures for both domestic and international arbitration awards are largely similar. They are recognised and enforced by *ex parte* applications to the General Division of the High Court. If the *ex parte* application is successful, the respondent will have 14 days (after service of the enforcement order) to set aside the enforcement order. The award may not be enforced until the 14 days limit has expired or until the set aside application has been disposed of.¹⁰⁴

For the enforcement of arbitral awards before the Singapore courts, the limitation period is 6 years from the date on which the cause of action accrued (usually this is the date of issuance of award).¹⁰⁵

Regardless of whether the award is foreign or local, while the Singapore courts will not set aside awards based on unjustified procedural complaints, it is clear the Singapore courts will scrutinise awards to ensure that they do not violate rules of natural justice.¹⁰⁶

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

No, the exercise of the right to enforce an award is not automatically suspended. The party against whom the award is sought to be enforced has to apply to set aside the enforcement order within 14 days.¹⁰⁷

In such circumstances, in relation to both international arbitration awards seated outside Singapore¹⁰⁸ and international arbitration awards seated in Singapore,¹⁰⁹ where the court considers it proper to do so, it has discretion to suspend the enforcement proceedings.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

When a foreign award (i.e. an international arbitration award seated outside Singapore) has been annulled at its seat, such annulment is likely to provide grounds for the Singapore court to refuse to enforce the award.

¹⁰² IAA, s 19B.

¹⁰³ AA, s 49(3).

¹⁰⁴ Rules of Court 2021, O 34, r 14 for proceedings under the AA; O 48, r 6 for proceedings under the IAA.

¹⁰⁵ Limitation Act 1959, s 6(1)(c).

¹⁰⁶ See *CEF and CEG v CEH* [2022] SGCA 54. For a commentary of this case, see: <https://www.shearman.com/en/perspectives/2022/10/singapore-court-of-appeal-partially-sets-aside-arbitral-award-for-a-flexible-approach-to-damages>.

¹⁰⁷ Rules of Court 2021, O 34, r 14 for proceedings under the AA; O 48, r 6 for proceedings under the IAA.

¹⁰⁸ IAA, s 31(5).

¹⁰⁹ *PT First Media TBK v Astro Nusantara International BV and ors and another appeal* [2013] SGCA 57 at [86] – [90] and [99].

Section 31(2)(f) of the IAA specifically provides that the court may refuse enforcement of a foreign award if the respondent proves that the award has been set aside or suspended by the court of the foreign seat.

The Singapore Court of Appeal, in *obiter dictum*, went further to also opine that where an award has been set aside in its seat, it would “generally lead to the conclusion that there is simply no award to enforce”.¹¹⁰ While this has not been the subject of a definitive ruling by the Singapore courts, this *dicta* could mean that the courts may have no option but to refuse enforcement of such a foreign award which has been set aside in its seat.

5.8 Are foreign awards readily enforceable in practice?

Foreign awards from contracting states to the New York Convention are readily enforceable in practice.

Additionally, the Singapore High Court in *CVG v CVH* [2022] SGHC 249 clarified that interim awards issued by emergency arbitrators in a foreign-seated arbitration are enforceable in Singapore. Interim awards can meet the definition of “foreign award” under the IAA.

6. Funding arrangements

6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

Contingency fee (i.e., damages-based) arrangements are prohibited.¹¹¹ However, conditional fee arrangements are expressly permitted by the 2022 amendments to the *Legal Profession Act 1966*. This allows Singapore-qualified lawyers and registered foreign lawyers to enter into conditional fee agreements with their clients in domestic and international arbitrations, as well as related court proceedings.¹¹²

Third-party funding in Singapore-seated arbitrations and related court proceedings is allowed subject to regulations.¹¹³ From 2021, third-party funding in domestic arbitrations and related court proceedings were also allowed.¹¹⁴

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

Tribunals are afforded the discretion to determine the admissibility, relevance, materiality and weight of any evidence.¹¹⁵

In a recent and notable decision of the Singapore High Court in *CLM v CLN and Ors* [2022] SGHC 46 held that cryptocurrencies, which are blockchain-based, satisfy the definition of a property right and are capable of being protected via a proprietary injunction. In so finding, the Court cited with approval authority from New Zealand that “the blockchain methodology which cryptocurrency systems deploy provides stability to cryptocurrencies, and a particular cryptocurrency token stays fully recognised, in existence and stable unless and until it is spent through the use of the private key, which may never happen”.¹¹⁶ The Court also explained that blockchains “provide an accurate, verifiable and permanent audit trail with which one can track the transmission of cryptocurrencies”.¹¹⁷

¹¹⁰ PT First Media TBK v Astro Nusantara International BV and ors and another appeal [2013] SGCA 57 at [77].

¹¹¹ Legal Profession Act 1966, Part 8A, Clause 115B(4)(b).

¹¹² Legal Profession Act 1966, Part 8A; Legal Profession (Conditional Fee Agreement) Regulations 2022, s 3.

¹¹³ Civil Law Act 1909, ss 5A, 5B. See also: Civil Law (Third-Party Funding) Regulations 2017, s 3.

¹¹⁴ Civil Law (Third-Party Funding) (Amendment) Regulations 2021, s 2.

¹¹⁵ AA, s 23(3); Model Law, Article 19(2) read with IAA, s 3.

¹¹⁶ *CLM v CLN and Ors* [2022] SGHC 46 at [45(d)].

¹¹⁷ *Ibid*, at [10].

On 21 October 2022, the Singapore High Court issued another judgment, in *Janesh s/o Rajkumar v Unknown Person* (“CHEFPIERRE”) [2022] SGHC 264, which held amongst other things that NFTs (non-fungible tokens) may be recognised as property and protected by a proprietary injunction. Underpinning this decision was the finding at [58] that *“NFTs, when distilled to the base technology, are not just mere information, but rather, data encoded in a certain manner and securely stored on the blockchain ledger [...], which enables the transfer of this encoded data from one user to another in a secure and verifiable fashion”*.

The above findings on the reliability, security and accuracy of blockchain-based evidence is likely to provide strong positive support for the validity of blockchain-based evidence, subject to the specific circumstances of each case.

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

7.2.1 Arbitration agreement

While this is untested in Singapore, arbitration agreements recorded on a blockchain can, in principle, be recognised as valid.

The only relevant formal requirement (that the arbitration agreement has to be in writing) would likely be satisfied.¹¹⁸ As mentioned in section 2.4, this requirement is satisfied if the arbitration agreement is constituted in an electronic communication, provided that the information contained therein is accessible so as to be useable for subsequent reference.¹¹⁹ Given the Court’s observations in *CLM v CLN and Ors* [2022] SGHC 46 (see section 7.1 above) that blockchains provide an *“accurate, verifiable and permanent audit trail”*, it is likely the ‘writing’ requirement is satisfied and such an arbitration agreement can in principle be valid.

Furthermore, the party relying on the arbitration agreement will then have to adduce blockchain-based evidence to prove the existence of the arbitration agreement in line with the principles stated in section 7.1 above.

7.2.2 Arbitral awards

This is also untested in Singapore. However, in principle, for an arbitration award to be upheld as valid, the relevant formal requirements are that the award has to be (i) made in writing; and (ii) signed by the arbitrators.¹²⁰

While the ‘writing’ requirement is likely satisfied, it may be difficult to prove that the ‘signature’ requirement is satisfied by the arbitrators “signing” onto the award with their private keys on the blockchain: see section 7.4 below. A party intending to enforce such an award will likely have to heavily rely on expert evidence.

All things considered, the blockchain-based arbitral award is unlikely to be recognised as valid.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

While there is no case law on this, blockchain-based arbitration agreements and awards would need to cross two hurdles in order to be presumed to be originals under the *Evidence Act 1893*: (i) it must be shown that the electronic record reflects the arbitration agreement or award accurately;¹²¹ and (ii) it must be shown that the

¹¹⁸ AA, s 4(3); IAA, s 2A(3).

¹¹⁹ AA, s 4(4)-(8); IAA, s 2A(4)-(8).

¹²⁰ AA, s 38(1); Model Law, Article 31(1) read with IAA, s 3.

¹²¹ Evidence Act 1893, s 64 (Explanation 3).

device or process producing that record is of a kind that, if properly used, ordinarily produces or accurately communicates an electronic record.¹²²

As long as sufficient evidence is adduced to meet these two requirements, the Singapore courts may consider a blockchain arbitration agreement and/or award to be the originals for the purposes of recognition and enforcement. However, the separately hurdle, of persuading the court to recognise as valid the “original” arbitral award recorded solely on the blockchain, remains as detailed in section 7.2.2 above.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

Singapore recognises electronic signatures if (a) a method is used to identify the person and indicate the person's intention; and (b) the method used is reliable and/or functional in accord with the requirements of section 8 of the *Electronic Transactions Act 2010*.

As to secured digital signatures, while it could in principle, and in the correct circumstances and with proper encryption, satisfy the requirements of the Electronic Transactions Act 2010, this is yet untested in the context of arbitral awards in the Singapore courts. Arbitrators should appreciate the risk and uncertainty therein before considering whether to use such digital signatures.

As to unsecured image-based signatures, it is highly unlikely that the requirement for the method to be reliable will be satisfied.

8. Is there likely to be any significant reform of the arbitration law in the near future?

8.1 International Arbitration Act amendments

There is no indication of upcoming significant reform or any new public consultation on reform of the arbitration law at the time of writing. The IAA and AA was last amended on 25 October 2022, with the amendments effective from 1 November 2022.

8.2 Costs in arbitration-related court proceedings

As for costs in arbitration-related court proceedings, the Law Reform Committee of the Singapore Academy of Law held a public consultation between January – March 2018 to consider the following reforms:¹²³

1. Whether the Singapore High Court should be awarding costs to the successful party on an indemnity basis, save where the unsuccessful party is able to provide compelling reasons otherwise in (i) unsuccessful proceedings to set aside an arbitration award; and (ii) proceedings to enforce an arbitration award where the respondent is unsuccessful in resisting enforcement; and
2. That proceedings to enforce an arbitration award, where contested, be fixed at first instance before a High Court Judge instead of an Assistant Registrar.

This project has been put on hold pending the outcome of other proposals to reform the wider civil justice system by the Ministry of Law and the Supreme Court.

¹²² Evidence Act 1893, s 116A(1).

¹²³ Law Reform Committee, "Consultation Paper on Certain Issues concerning Arbitration-Related Court Proceedings" (January 2018) <[https://www.sal.org.sg/sites/default/files/PDF%20Files/Law%20Reform/2018-01%20-%20Court-related%20Arbitration%20Proceedings%20\(consultation%20paper\).pdf](https://www.sal.org.sg/sites/default/files/PDF%20Files/Law%20Reform/2018-01%20-%20Court-related%20Arbitration%20Proceedings%20(consultation%20paper).pdf)> accessed 24 August 2022.

9. Compatibility of the Delos Rules with local arbitration law

The 2021 Delos Rules (with effect from 1 November 2021) are generally compatible with Singapore arbitration law.

Most notably the 2021 Delos Rules provides for a “Compliance Reinforcement Mechanism”. Once the time-limit for all recourse against the award has expired at the seat of arbitration, the mechanism allows the award creditor to apply for publication on Delos’s website a “compliance failure notice”. The award debtor may comment on the application, and Delos has the discretion as to whether to publish the “compliance failure notice”.

While the common law in Singapore implies an obligation of confidentiality in every arbitration governed by Singapore procedural law (as set out at section 4.5.2 above), this is subject to several exceptions. One such notable exception is where the parties consent (expressly or impliedly) to waive such obligation of confidentiality. In a separate context, the Singapore Court of Appeal in *Republic of India v Vedanta Resources plc* [2021] 2 SLR 354 at [49] held that: “[...] it is open to parties in any investment treaty to expressly agree and stipulate that there is no general obligation of confidentiality by incorporating the UNCITRAL Transparency Rules. This is a matter for the parties’ agreement.”

Similarly, parties are likely to have consented to waive the obligations of confidentiality from the onset by incorporating the 2021 Delos Rules and its “Compliance Reinforcement Mechanism”.

Parties in Singapore-seated arbitrations are therefore able to agree to the Delos Rules as the institutional rules governing their arbitration.

10. Further reading

1. R Merkin, J Hjalmarsson, Singapore Arbitration Legislation, 2nd Edition, Informa Law, 2020.
2. Chief Justice S Menon, F Xavier SC, YL Chong, L Reed, Arbitration in Singapore – A Practical Guide, 2nd Edition, Sweet and Maxwell, 2018.
3. D Foxton QC, D Joseph QC, Singapore International Arbitration: Law and Practice, 2nd Edition, Lexis Nexis, 2018.
4. T Cooke, International Arbitration in Singapore: Legislation and Materials, 1st Edition, Sweet & Maxwell, 2018.

ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	<p>Singapore International Arbitration Centre (SIAC)</p> <p>Permanent Court of Arbitration (PCA)</p> <p>International Chambers of Commerce (ICC)</p> <p>Singapore Chamber of Maritime Arbitration (SCMA)</p> <p>WIPO Arbitration and Mediation Center Singapore</p> <p>ICDR-AAA Singapore Asia Case Management Centre</p>
Main arbitration hearing facilities for in-person hearings?	Maxwell Chambers
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	The Room, Maxwell Chambers Suites, 28 Maxwell Road, Singapore 069120
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	<p>The Singapore Supreme Court has approved the following service providers for court proceedings:</p> <p><u>Epiq Singapore Pte Ltd</u> 16 Raffles Quay, #35-01, Hong Leong Building, Singapore 048581 Tel No: (+65) 6800 0268 / Email: singapore@epiqglobal.com Website: www.epiqglobal.com/asia</p> <p><u>Opus 2 International Singapore Pte Ltd</u> 28 Maxwell Road, Maxwell Chambers Suites #04-12/13, Singapore 069120 Tel No: (+65) 3158 5095 / Email: bd@opus2.sg Website: www.opus2.com</p>
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	The Singapore Supreme Court offers their own Interpreters Section to provides interpretation services to court parties with limited knowledge of English and who require interpretation in Chinese languages (Mandarin, Hokkien, Teochew and Cantonese), Malay languages (Malay, Javanese and Boyanese) and Indian languages (Tamil, Malayalam).
Other leading arbitral bodies with offices in the jurisdiction?	ϕ