CHALLENGING AND ENFORCING ARBITRATION AWARDS GUIDE

THIRD EDITION

General Editor
J William Rowley KC

Editor
Benjamin Siino

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Publisher's Note

Global Arbitration Review is delighted to publish this new edition of the *Challenging and Enforcing Arbitration Awards Guide*.

For those new to Global Arbitration Review, we are the online home for international arbitration specialists, telling them everything they need to know about all the developments that matter. We provide daily news and analysis, alongside more in-depth books and reviews. We also organise conferences and build workflow tools that help you to research arbitrators and enable you to read original arbitration awards. And we have an online 'academy' for those who are newer to international arbitration. Visit us at www.globalarbitrationreview.com to learn more.

As the unofficial 'official journal' of international arbitration, sometimes we are the first to spot gaps in the literature. This guide is a fine example. As J William Rowley KC observes in his excellent preface, it became obvious recently that the time spent on post-award matters had increased vastly compared with, say, 10 years ago, and a reference work focusing on this phase was overdue.

The *Challenging and Enforcing Arbitration Awards Guide* fills that gap. It is a practical know-how text covering both sides of the coin – challenging and enforcing – first at thematic level, and then country by country. We are delighted to have worked with so many leading firms and individuals to produce it.

If you find it useful, you may also like the other books in the GAR Guides series. They cover construction, energy, evidence, intellectual property, M&A, mining disputes and telecommunications in the same unique, practical way. We also have books on advocacy in international arbitration, the assessment of damages, and investment treaty protection and enforcement.

My thanks to the editors for their vision and energy in pursuing this project and to our authors and my colleagues in production for achieving such a polished work.

David Samuels
London
April 2023

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Preface

During the past two decades, the explosive and continuous growth in cross-border trade and investments that began after World War II has jet-propelled the growth of international arbitration. Today, arbitration (whether *ad hoc* or institutional) is the universal first choice over transnational litigation for the resolution of cross-border business disputes.

Why parties choose arbitration for international disputes

During the same period, forests have been destroyed to print the thousands of papers, pamphlets, scholarly treatises and texts that have analysed every aspect of arbitration as a dispute resolution tool. The eight or 10 reasons usually given for why arbitration is the best way to resolve cross-border disputes have remained pretty constant, but their comparative rankings have changed somewhat. At present, two reasons probably outweigh all others.

The first must be the widespread disinclination of those doing business internationally to entrust the resolution of prospective disputes to the national court systems of their foreign counterparties. This unwillingness to trust foreign courts (whether based on knowledge or simply uncertainty as to whether the counterparty's court system is worthy – in other words, efficient, experienced and impartial) leaves international arbitration as the only realistic alternative, assuming the parties have equal bargaining power.

The second is that, unlike court judgments, arbitral awards benefit from a series of international treaties that provide robust and effective means of enforcement. Unquestionably, the most important of these is the 1958 New York Convention, which enables the straightforward enforcement of arbitral awards in 169 countries (at the time of writing). When enforcement against a sovereign state is at issue, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1966 requires that ICSID awards are to be treated as final judgments of the courts of the relevant contracting state, of which there are currently 158.

Awards used to be honoured

International corporate counsel who responded to the 2008 Queen Mary/PricewaterhouseCoopers Survey on Corporate Attitudes and Practices in Relation to Investment Arbitration (the 2008 Queen Mary Survey) reported positive outcomes on the use of international arbitration to resolve disputes. A very high percentage (84 per cent) indicated that, in more than 76 per cent of arbitration proceedings, the non-prevailing party voluntarily complied with the arbitral award. Where enforcement was required, 57 per cent said that it took less than a year for awards to be recognised and enforced, 44 per cent received the full value of the award and 84 per cent received more than three-quarters of the award. Of those who experienced problems in enforcement,

most described them as complications rather than insurmountable difficulties. The survey results amounted to a stunning endorsement of international arbitration for the resolution of cross-border disputes.

Is the situation changing?

As an arbitrator, my job is done with the delivery of a timely and enforceable award. When the award is issued, my attention invariably turns to other cases, rather than to whether the award produces results. The question of enforcing the award (or challenging it) is for others. This has meant that, until relatively recently, I have not given much thought to whether the recipient of an award would be as sanguine today about its enforceability and payment as those who responded to the 2008 Queen Mary Survey.

My interest in the question of whether international business disputes are still being resolved effectively by the delivery of an award perked up a few years ago. This was a result of the frequency of media reports – pretty well daily – of awards being challenged (either on appeal or by applications to vacate) and of prevailing parties being required to bring enforcement proceedings (often in multiple jurisdictions).

Increasing press reports of awards under attack

In the year before the first edition of this guide, Global Arbitration Review's daily news reports contained hundreds of headlines that suggested that a repeat of the 2008 Queen Mary Survey today could well lead to a significantly different view as to the state of voluntary compliance with awards or the need to seek enforcement. Indeed, in the first three months of 2023, there has not been a day when the news reports have not headlined the attack on, survival of, or a successful or failed attempt to enforce an arbitral award.

A sprinkling of recent headlines on the subject are illustrative:

- Nigeria seeks to overturn US$11 billion award;
- Russia fails to quash jurisdictional awards in Crimea cases;
- Swiss court upholds multibillion-dollar Yukos award;
- Swedish courts annul intra-EU treaty awards;
- Indian court annuls billion-dollar award for 'fraud';
- Malaysia challenges mega-award in French court;
- GE pays out after losing corruption challenge in legacy case;
- Ukrainian bank's billion-dollar award against Russia reinstated;
- Burford wins enforcement against Kyrgyzstan;
- India loses Dutch appeal over treaty award;
- ECJ dismisses London award in oil spill saga;
- 'Fifteen years is long enough': US court enforces Conoco award;
- Pakistan fails to stay Tethyan award in US; and
- India fails to upend latest award in protracted oil and gas dispute.

Regrettably, no source of reliable data is available as yet to test the question of whether challenges to awards are on the increase or the ease of enforcement has changed materially since 2008. However, the importance of the subject (without effective enforcement, there really is no effective resolution), and my anecdote-based perception of increasing concerns, led me to raise the possibility of doing a book on the subject with David Samuels (Global

Arbitration Review's publisher). Ultimately, we became convinced that a practical, 'know-how' text that covered both sides of the coin – challenges and enforcement – would be a useful addition to the bookshelves of those who more frequently than in the past may have to deal with challenges to, and enforcement of, international arbitration awards. Being well equipped (and up to date) on how to deal with a client's post-award options is essential for counsel in today's increasingly disputatious environment.

David and I were obviously delighted when Gordon Kaiser and the late Emmanuel Gaillard agreed to become partners in the project. It was a dreadful shock to learn of Emmanuel's sudden death in April 2021. Emmanuel was an arbitration visionary. He was one of the first to recognise the revolutionary changes that were taking place in the world of international arbitration in the 1990s and the early years of the new century. From a tiny group defined principally by academic antiquity, we had become a thriving, multicultural global community, drawn from the youngest associate to the foremost practitioner. Emmanuel will be remembered for the enormous contribution he made to that remarkable evolution.

Editorial approach

As editors, we have not approached our work with a particular view on whether parties are currently making inappropriate use of mechanisms to challenge or resist the enforcement of awards. Any consideration of that question should be made against an understanding that not every tribunal delivers a flawless award. As Pierre Lalive said some 40 years ago:

> *an arbitral award is not always worthy of being respected and enforced; in consequence, appeals against awards [where permitted] or the refusal of enforcement can, in certain cases, be justified both in the general interest and in that of a better quality of arbitration.*

Nevertheless, the 2008 Queen Mary Survey, and the statistics kept by a number of the leading arbitral institutions, suggest that the great majority of awards come to conclusions that should normally be upheld and enforced.

Structure of the guide

The guide is structured to include, in Part I, coverage of general issues that will always need to be considered by parties, wherever situate, when faced with the need to enforce or to challenge an award. In this third edition, the 15 chapters in Part I deal with subjects that include initial strategic considerations in relation to prospective proceedings; how best to achieve an enforceable award; challenges generally and a variety of specific types of challenges; enforcement generally and enforcement against sovereigns; enforcement of interim measures; how to prevent asset stripping; grounds to refuse enforcement; and admissibility of new evidence.

Part II of the guide is designed to provide answers to more specific questions that practitioners will need to consider when reaching decisions concerning the use (or avoidance) of a particular national jurisdiction – whether this concerns the choice of that jurisdiction as a seat of an arbitration, as a physical venue for the hearing, as a place for enforcement, or as a place in which to challenge an award. This edition includes reports on 29 national

jurisdictions. The author, or authors, of each chapter have been asked to address the same 58 questions. All relate to essential, practical information about the local approach and requirements relating to challenging or seeking to enforce awards. Obviously, the answers to a common set of questions will provide readers with a straightforward way in which to assess the comparative advantages and disadvantages of competing jurisdictions.

With this approach, we have tried to produce a coherent and comprehensive coverage of many of the most obvious, recurring or new issues that are now faced by parties who find that they will need to take steps to enforce these awards or, conversely, find themselves with an award that ought not to have been made and should not be enforced.

Quality control and future editions

Having taken on the task, my aim as general editor has been to achieve a substantive quality consistent with the *Challenging and Enforcing Arbitration Awards Guide* being seen as an essential desktop reference work in our field. To ensure content of high quality, I agreed to go forward only if we could attract as contributors those colleagues who were some of the internationally recognised leaders in the field. My fellow editors and I have felt blessed to have been able to enlist the support of such an extraordinarily capable list of contributors.

In future editions, we hope to fill in important omissions. In Part I, these could include chapters on successful cross-border asset tracing, the new role of funders at the enforcement stage, and the special skill sets required by successful enforcement counsel. In Part II, we plan to expand the geographical reach even further.

Without the tireless efforts of the Global Arbitration Review team at Law Business Research, this work never would have been completed within the very tight schedule we allowed ourselves; David Samuels and I are greatly indebted to them. Finally, I am enormously grateful to Doris Hutton Smith (my long-suffering PA), who has managed endless correspondence with our contributors with skill, grace and patience.

I hope that all my friends and colleagues who have helped with this project have saved us from error – but it is I alone who should be charged with the responsibility for such errors as may appear.

Although it should go without saying, this edition of the publication will obviously benefit from the thoughts and suggestions of our readers on how we might be able to improve the next edition, for which we will be extremely grateful.

J William Rowley KC
London
April 2023

CHAPTER 34

Singapore

Kohe Hasan, Min Jian Chan and Anand Tiwari[1]

Applicable requirements as to the form of arbitral awards

Applicable legislation as to the form of awards

1 Must an award take any particular form?

Under Section 38(1) of the Arbitration Act (Cap. 10) (AA) or Article 31(1) of the UNCITRAL Model Law on International Commercial Arbitration 1985 (the Model Law), which is given the force of law in Singapore under Section 3(1) of the International Arbitration Act (Cap. 143A) (IAA), an arbitration award must be made in writing and be signed by the arbitrator in person (in the case of a sole arbitrator) or at least the majority of the arbitrators (in the case of two or more arbitrators), provided that the reasons for any omitted signatures are stated.

The award must state the reasons on which it is based (AA, Section 38(2); Model Law, Article 31(2)). It must also state the date of the award and the place of arbitration (AA, Section 38(3); Model Law, Article 31(3)). After the award is made, a copy of the signed award must be delivered to each party (AA, Section 38(5); Model Law, Article 31(4)). The award is deemed to have been made at the place of arbitration (AA, Section 38(4)).

Section 49(2) of the AA provides that 'the parties may agree to exclude the jurisdiction of the Court under this section and an agreement to dispense with reasons for the arbitral tribunal's award is to be treated as an agreement to exclude the jurisdiction of the Court under this section'.

1 Kohe Hasan is a partner and Min Jian Chan is an associate at Reed Smith LLP. Anand Tiwari is an associate at Resource Law LLC.

Applicable procedural law for recourse against an award (other than applications for setting aside)

Applicable legislation governing recourse against an award

2 Are there provisions governing modification, clarification or correction of an award? Are there provisions governing retractation or revision of an award? Under what circumstances may an award be retracted or revised (for fraud or other reasons)? What are the time limits?

For international and domestic arbitrations, the applicable provisions are in Article 33 of the Model Law and Section 43 of the AA, respectively, although the grounds are the same in both.

A party may request that the tribunal correct clerical or typographical errors in the award, or that it provide an interpretation of a specific point or part of an award. The request must be made within 30 days of receipt of the award unless agreed otherwise. The tribunal will make the correction or clarification, if it considers it to be justified, within 30 days of receipt of the request.

A party may also request an additional award with regard to claims presented in the arbitration but omitted from the award, within 30 days of receipt of the award. The tribunal will make the additional award, if it considers it to be justified, within 60 days of receipt of the request.

The court may set aside an arbitral award on a number of grounds, including the arbitral award having been induced or affected by fraud or corruption (Model Law, Article 34(2); IAA, Section 24; AA, Section 48(1)).

A setting-aside application must be made within three months of the later of the date that the applicant received the arbitral award or the date that the request, if any, to correct, interpret or issue an additional award is disposed of by the tribunal (Model Law, Article 34(3); Rules of Court 2021, Order 48, Rule 2(3); AA, Section 48(2)). If an arbitration is conducted in accordance with the rules of a particular arbitral institution, those rules may have specific provisions on these issues.

Appeals from an award

3 May an award be appealed to or set aside by the courts? What are the differences between appeals and applications to set aside awards?

An arbitral award is final and binding under Singapore law pursuant to Section 19B of the IAA and Section 44 of the AA. For domestic arbitrations (i.e., those governed by the AA), a limited ground of appeal is available when a question of law arises out of an award. Arbitral awards can be set aside by Singapore courts under the IAA and the AA.

Setting aside is distinct from an appeal insofar as 'setting aside' refers to the annulment of an arbitration award for specific jurisdictional, procedural or public policy issues, whereas 'appeal' refers to challenges on the basis of errors of fact and law contained in an award (i.e., a review of substantive matters by a court of appeal).

Appeals (under the AA only)

A party to the arbitral proceedings may appeal (upon notice to the other parties and to the arbitral tribunal) to the Singapore courts on a question of law arising out of an award with the agreement of all the other parties to the proceedings or with leave of court (AA, Section 49, Paragraphs (1) and (3)). The right of appeal, however, can be excluded by agreement. An agreement to dispense with reasons for the tribunal's award is deemed an agreement to exclude the right to appeal (AA, Section 49(2)).

The permission of the Court of Appeal is required for any appeal from a decision of the High Court under Section 49 of the AA to grant or refuse leave to appeal. The Court of Appeal may give permission to appeal only if the question of law before it is one of general importance or one that for some other special reason should be considered by the Court of Appeal (AA, Section 49, Paragraphs (7) and (11)).

As a prerequisite to making an appeal, the applicant must exhaust all available arbitral processes of appeal or review and any available recourse under Section 43 of the AA (AA, Section 50(2)).

Unless the appeal is being brought by the consent of the parties, there are various conditions with which the court must be satisfied before leave to appeal may be granted (AA, Section 49(5); see also a summary in *Ng Tze Chew Diana v. Aikco Construction Pte Ltd* [2020] 3 SLR 1196 at [59]). In addition, the application must be made within 28 days of the award being made (AA, Section 50(3)).

Not every decision on a question of law made in an award is appealable. A question of law is a finding of law that the parties dispute and requires the guidance of the court to resolve. When an arbitrator incorrectly applies a principle of law, that is an error of law against which the aggrieved party is not entitled to appeal (*Oxley Consortium Pte Ltd v. Geetex Enterprises Singapore (Pte) Ltd and another matter* [2021] 2 SLR 782 at [6]).

On appeal, the court may confirm, vary or remit the award to the tribunal, in whole or in part, for reconsideration in light of the court's determination, or set aside the award in whole or in part (AA, Section 49(8)). The court will not exercise its power to set aside the award unless satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration (AA, Section 49(9)).

Setting aside

Under the AA

Arbitral awards made under the AA may be set aside. The grounds, under Section 48(1), are as follows:

- one of the parties was incapacitated;
- the arbitration agreement is invalid under the law of the agreement;
- proper notice was not given of the appointment of arbitrators or commencement of proceedings, or a party was unable to present his or her case;
- the dispute or award falls outside the submission to arbitration;
- the composition of the arbitral tribunal, or conduct of the arbitral proceedings, is contrary to the parties' agreement;
- any fraudulent or otherwise corrupt act has induced or affected the making of the award;
- there was a breach of natural justice;

- the subject matter of the dispute cannot be resolved through arbitration; and
- the award is contrary to the public policy of Singapore.

Under the IAA

The only recourse against an award under the IAA is to set it aside. The grounds and method to do so are essentially the same as those under the AA (IAA, Section 24 read with Model Law, Article 34(2) (*Soh Beng Tee & Co Pte Ltd v. Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 at [61])).

In what must be a rare occurrence anywhere in the world, the Singapore High Court set aside an award issued under the Arbitration Rules of the Singapore Chamber of Maritime Arbitration (the SCMA Rules) on the basis that a party's right to natural justice had been breached by the arbitrator refusing the party permission to call any of the seven witnesses it had wanted to call, preferring instead an oral hearing for submissions only (*CBP v. CBS* [2020] SGHC 23). The Court ruled that the power to 'gate' witnesses available under several rules of arbitration and guidance (such as the International Bar Association Rules) was not available to the arbitrator under the SCMA Rules. The decision was subsequently upheld by the Court of Appeal in *CBP v. CBS* [2021] 1 SLR 935.

The grounds to set aside an award are exhaustive, and the court hearing an application to set aside an award has no power to investigate the merits of the dispute or to review any decision of law or fact made by the tribunal. The Singapore courts have consistently applied a policy of minimal curial intervention even with regard to domestic cases.

In *Republic of India v. Vedanta Resources plc* [2021] 2 SLR 354 at [47], the Court of Appeal reaffirmed the principle of minimal curial intervention, which dictates that courts should not without good reason interfere with the arbitral process and should act with a view to respecting and preserving the autonomy of the arbitral process. It is, therefore, clear that the Singapore courts will adopt a generous approach and will not undertake a hypercritical or excessive syntactic analysis of what the arbitrator has written (*Lao Holdings NV and another v. Government of the Lao People's Democratic Republic* [2022] SGCA(I) 9 at [60]).

Applicable procedural law for setting aside of arbitral awards

Time limit

4 Is there a time limit for applying for the setting aside of an arbitral award?

An application to set aside an award must be made by an originating application supported by an affidavit within three months of the later of the date that the applicant received the arbitral award or the date that the request, if any, to correct, interpret or issue an additional award is disposed of by the tribunal (Model Law, Article 34(3); Rules of Court 2021, Order 34, Rule 5 and Order 48, Rule 2(3); AA, Section 48(2)).

The three-month time limit is strict, favouring the policy of the finality of arbitral awards and legal certainty. The Singapore courts will not extend the three-month time limit even in the case of fraud discovered at a later date (*BXS v. BXT* [2019] 4 SLR 390 at [40]; *Bloomberry Resorts and Hotels Inc and another v. Global Gaming Philippines LLC and another* [2021] 3 SLR 725 at [28]).

Award

5 What kind of arbitral decision can be set aside in your jurisdiction? What are the criteria to distinguish between arbitral awards and procedural orders in your jurisdiction? Can courts set aside partial or interim awards?

A party may only apply to set aside an award as defined in Section 2(1) of the AA and Section 2(1) of the IAA. This includes interim, interlocutory or partial awards.

A partial award is defined as one that finally disposes of part of, but not all, the parties' claims in arbitration, leaving some claims for further consideration and resolution in future proceedings under the arbitration. By contrast, an interim award is one that does not dispose finally of a particular claim but instead decides a preliminary issue relevant to the disposing of a claim (*PT Perusahaan Gas Negara (Persero) TBK v. CRW Joint Operation* [2015] 4 SLR 364 at [46] to [53]).

Interim measures issued by an arbitral tribunal, such as measures covering security for costs or specific disclosure, are not awards for the purposes of the AA and the IAA, and the Singapore courts do not have the jurisdiction to consider any application to set aside such an interim measure (*PT Pukuafu Indah and others v. Newmont Indonesia Ltd and another* [2012] 4 SLR 1157 at [19]). All such orders or directions made or given by the tribunal are, with leave of court, enforceable in the same manner as if they were orders made by the court, and, where leave is given, judgment may be entered in terms of the order or direction (AA, Section 28(4); IAA, Section 12(6)).

Competent court

6 Which court has jurisdiction over an application for the setting aside of an arbitral award? Is there a specific court or chamber in place with specific sets of rules applicable to international arbitral awards?

The General Division of the High Court has jurisdiction over an application to set aside an arbitral award (IAA, Section 24; AA, Section 48(1) read with Section 2(1)).

Form of application and required documentation

7 What documentation is required when applying for the setting aside of an arbitral award?

Under Order 34, Rule 5 (for awards under the AA) and Order 48, Rule 2 (for awards under the IAA) of the Rules of Court 2021, the following documentation is required:

- the originating application; and
- a supporting affidavit that exhibits a copy of the arbitration agreement or a record of the content of the arbitration agreement, the arbitral award, and any other document relied on by the applicant. The supporting affidavit must set out any evidence relied on by the applicant.

Translation of required documentation

8 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with the application for the setting aside of an arbitral award? If yes, in what form must the translation be?

Under Order 3, Rule 7 of the Rules of Court 2021, all documents filed or used in court must be in English, and a document that is not in English must be accompanied by a translation into English duly certified by a court interpreter or verified by an affidavit of a person qualified to translate the document. The affidavit must accompany the original and translated documents when the original document is received, filed or used in court.

Other practical requirements

9 What are the other practical requirements relating to the setting aside of an arbitral award? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?

All submissions must be in English. Under Order 15, Rule 19 of the Rules of Court 2021, an affidavit must be in Form 31 of Appendix A of the Supreme Court Practice Directions 2021. Under Paragraph 78 of the Supreme Court Practice Directions, the affidavit should have a blank margin not less than 35mm wide on all four sides of each page, and the page numbers of the affidavit (including the dividing sheets and the exhibits) should be inserted at the centre top of the page. The top right-hand corner of the first page of the affidavit should also list the following information:

- the party on whose behalf the affidavit is filed;
- the name of the maker of the affidavit;
- the ordinal number of the affidavit in relation to the previous affidavits filed on the matter by the maker of the affidavit; and
- the date the affidavit is to be filed.

Under Paragraph 80 of the Supreme Court Practice Directions 2021, if documentary exhibits are filed in the affidavit, each exhibit should be separately bookmarked and follow the initials of the maker of the affidavit. If there are more than 10 different documentary exhibits, a table of contents should be inserted before the first of these exhibits, enumerating every exhibit in the affidavit.

Form of the setting-aside proceedings

10 What are the different steps of the proceedings?

Proceedings are commenced by filing an originating application under Section 24 of the IAA and Section 48 of the AA, where applicable. In general, setting-aside applications are heard before an arbitration judge. A case conference will usually be conducted within two weeks of the filing of the originating application with the supporting affidavit. The court may hold as many case conferences as it thinks appropriate and at any stage of the

proceedings to monitor compliance with any directions given and ensure readiness for the hearing. The court will generally endeavour to fix the hearing within eight to 12 weeks of the date of service of the originating application with the supporting affidavit.

Suspensive effect

11 May an arbitral award be recognised or enforced pending the setting-aside proceedings in your jurisdiction? Do setting-aside proceedings have suspensive effect? If not, which court has jurisdiction over an application to stay the enforcement of the award pending the setting-aside proceedings, what are the different steps of the proceedings, and what are the criteria to be met?

Under Article VI of the Convention on the Enforcement and Recognition of Foreign Arbitral Awards of 1958 (the New York Convention) (IAA, Schedule 2), which applies to the enforcement in Singapore of international arbitration awards made in Singapore as well as foreign awards, if an application for the setting aside or the suspension of an award has been made, the Singapore court may, if it considers it proper, adjourn a decision on the enforcement of the award. It may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

In respect of foreign awards, an application may be made to adjourn enforcement proceedings under Section 31(5)(a) of the IAA. This is granted at the discretion of the court, having considered:

- the merits of the setting-aside application, in particular whether the application is pursued in good faith;
- the likely consequences and resulting prejudice to either party of an adjournment; and
- all other relevant circumstances of the case (*Man Diesel & Turbo SE v. I.M. Skaugen Marine Services Pte Ltd* [2019] 4 SLR 537 at [46]to [47]).

Procedurally, the party seeking to enforce the arbitral award will, without notice, make an application supported by an affidavit to the High Court (enforcement proceedings) for an *ex parte* order for leave to enforce the arbitral award (*ex parte* order). This is an administrative application, and the High Court will likely grant the *ex parte* order.

The party seeking to stay the enforcement proceedings can challenge the *ex parte* order by applying for it to be set it aside in a separate set of proceedings (setting-aside proceedings) under Order 48, Rule 6(5) of the Rules of Court 2021. Once this is done, the party seeking to adjourn the enforcement proceedings files an interlocutory application to the High Court in the enforcement proceedings seeking to adjourn the proceedings in light of the setting-aside proceedings. The interlocutory application must be accompanied by a supporting affidavit containing the facts regarding why the enforcement proceedings should be stayed.

Grounds for setting aside an arbitral award

12 What are the grounds on which an arbitral award may be set aside?

Under the AA

Arbitral awards made under the AA may be set aside. The grounds, under Section 48(1), are as follows:

- one of the parties was incapacitated;
- the arbitration agreement is invalid under the law of the agreement;
- proper notice was not given of the appointment of arbitrators or commencement of proceedings, or a party was unable to present his or her case;
- the dispute or award falls outside the submission to arbitration;
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- any fraudulent or otherwise corrupt act has induced or affected the making of the award;
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- the subject matter of the dispute cannot be resolved through arbitration; and
- the award is contrary to the public policy of Singapore.

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Scope of power of the setting-aside judge

13 When assessing the grounds for setting aside, may the judge conduct a full review and reconsider factual or legal findings from the arbitral tribunal in the award? Is the judge bound by the tribunal's findings? If not, what degree of deference will the judge give to the tribunal's findings?

The grounds to set aside an award are exhaustive, and the court hearing an application to set aside an award has no power to investigate the merits of the dispute or to review any decision of law or fact made by the tribunal. The Singapore courts have consistently applied a policy of minimal curial intervention even with regard to domestic cases.

In *Republic of India v. Vedanta Resources plc* [2021] 2 SLR 354 at [47], the Court of Appeal reaffirmed the principle of minimal curial intervention, which dictates that courts should not without good reason interfere with the arbitral process and should act with a view to respecting and preserving the autonomy of the arbitral process. It is, therefore, clear that the Singapore courts will adopt a generous approach and will not undertake a hypercritical or excessive syntactic analysis of what the arbitrator has written (*Lao Holdings NV and another v. Government of the Lao People's Democratic Republic* [2022] SGCA(I) 9 at [60]).

Waiver of grounds for setting aside

14 Is it possible for an applicant in setting-aside proceedings to be considered to have waived its right to invoke a particular ground for setting aside? Under what conditions?

Several institutional rules have incorporated rules regarding the waiver of recourse against arbitral awards. For instance, Rule 32.11 of the Singapore International Arbitration Centre Rules 2016 (the SIAC Rules 2016) provides that:

> *by agreeing to arbitration under these Rules, the parties agree that any Award shall be final and binding on the parties from the date it is made, and undertake to carry out the Award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any State court or other judicial authority with respect to such Award insofar as such waiver may be validly made.*

Rule 32.11 of the SIAC Rules 2016 nevertheless remains subject to Singapore's arbitration laws, which do not expressly permit or disallow the contractual exclusion of setting-aside proceedings; however, Section 44(4) of the AA and Section 19B(4) of the IAA state: 'This section does not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Act.' This seems to suggest that contractual exclusion of setting-aside proceedings is likely to have little or no effect in setting-aside proceedings under the AA or the IAA before the Singapore courts.

Rule 32.11 of the SIAC Rules 2016 was also referred to in *CIX v. CHY* [2021] SGHC 53 at [103], where the High Court noted that the claimant in proceedings to set aside an arbitral award under the AA had decided to discontinue an appeal against the same award after the defendant had pointed out to the claimant that the claimant had, by agreeing to arbitrate under the SIAC Rules 2016, irrevocably waived its rights to any appeal. This is not unexpected given that Section 49(2) of the AA allows parties to contractually exclude appeals against an arbitral award.

The High Court in *CIX v. CHY* [2021] SGHC 53 also considered the merits of the claimant's setting-aside application, and dismissed it despite the parties' apparent agreement to Rule 32.11 of the SIAC Rules 2016. This also suggests that contractual exclusion of setting-aside proceedings is likely to have little or no effect in setting-aside proceedings under the AA or the IAA before the Singapore courts.

The Singapore courts have not otherwise had the opportunity to consider the contractual exclusion of setting-aside proceedings.

Decision on the setting-aside application

15 What is the effect of the decision on the setting-aside application in your jurisdiction? What challenges or appeals are available?

The immediate effect of setting aside an award is that the award ceases to have legal effect in this jurisdiction. If an award has been set aside, this does not affect the continued validity and force of the arbitration agreement between the parties, unless the award was set aside on the ground of no arbitration agreement existing between parties.

On that basis, subject to certain limitations, a party that obtained an award in arbitration that is then set aside by the court may start a new arbitration on the basis that the dispute has not yet been resolved, and the arbitration agreement remains binding on the parties for dispute resolution (*AKN and another v. ALC and others and other appeals* [2016] 1 SLR 966 at [52]).

Effects of decisions rendered in other jurisdictions

16 Will courts take into consideration decisions rendered in relation to the same arbitral award in other jurisdictions or give effect to them?

Court decisions from other jurisdictions in relation to the same matter are not legally binding on the Singapore courts. Although the Singapore courts may look to these decisions for guidance, they will not necessarily follow them.

If the courts are satisfied that the doctrine of *res judicata* is applicable on any issue, they will likely give effect to that decision. This applies only to decisions made by a foreign court. For example, if a party seeks to set aside a foreign award in the jurisdiction where the arbitration is seated on the basis of the arbitrator allegedly having been bribed and that foreign court finds no evidence of the alleged bribery, the Singapore courts are likely to follow the decision of the foreign court on the bribery issue if the same issue is raised in Singapore at the enforcement stage.

Applicable procedural law for recognition and enforcement of arbitral awards

Applicable legislation for recognition and enforcement

17 What is the applicable procedural law for recognition and enforcement of an arbitral award in your jurisdiction? Is your jurisdiction party to treaties facilitating recognition and enforcement of arbitral awards?

Singapore is a signatory to the New York Convention and enforces awards from other states on the basis of reciprocity.

Both the IAA and the AA govern the recognition and enforcement of arbitral awards in Singapore. The IAA applies to arbitral awards made in international arbitrations seated in Singapore (IAA, Section 19) and to arbitral awards made in pursuit of an arbitration agreement in the territory of a contracting state of the New York Convention other than Singapore (IAA, Section 29).

Section 5 of the IAA sets out the elements for determining whether an arbitration seated in Singapore is to be treated as an international arbitration. The AA applies to the recognition and enforcement of arbitral awards made in domestic arbitration proceedings to which the AA applies (AA, Section 46(1)) and to arbitral awards that are made in a state that has not contracted to the New York Convention (AA, Section 46(3)).

Sections 19 and 29 of the IAA and Section 46(1) of the AA provide that an award made by the arbitral tribunal pursuant to an arbitration agreement may, with the leave of the court, be enforced in the same manner as a judgment or order to the same effect of the High Court in Singapore. If leave is granted, the judgment may be entered in terms of the award.

Matters of Singapore procedure relating to the recognition and enforcement of an arbitral award are governed by the Rules of Court 2021, in particular, Orders 34 (AA) and 48 (IAA).

The New York Convention

18 Is the state a party to the 1958 New York Convention? If yes, what is the date of entry into force of the Convention? Was there any reservation made under Article I(3) of the Convention?

Singapore is a signatory to the New York Convention, which was enacted in Singapore law on 19 November 1986. A reciprocity reservation made under Article I(3) of the Convention is in effect.

Recognition proceedings

Time limit

19 Is there a time limit for applying for the recognition and enforcement of an arbitral award?

An application for leave to enforce must be made within six years of the date of the award (Limitation Act (Chapter 163), Section 6(1)(c)).

Competent court

20 Which court has jurisdiction over an application for recognition and enforcement of an arbitral award? Is there a specific court or chamber in place with specific sets of rules applicable to international arbitral awards?

On 5 November 2019, Parliament passed the Republic of Singapore (Amendment) Bill, the Judges' Remuneration (Amendment) Bill and the Supreme Court of Judicature (Amendment) Bill. As a result, the High Court now comprises the General Division of the High Court and a new Appellate Division. There has been no restructuring of the Court of Appeal, which remains the apex court.

An application for leave to enforce an arbitral award (domestic or international) is made to the General Division of the High Court in Singapore. Appeals from a decision of the General Division of the High Court on arbitration matters must be made before the Court of Appeal.

Jurisdictional and admissibility issues

21 What are the requirements for the court to have jurisdiction over an application for recognition and enforcement and for the application to be admissible? Must the applicant identify assets within the jurisdiction of the court that will be the subject of enforcement for the purpose of recognition proceedings?

The Singapore High Court is bound to recognise and enforce arbitral awards falling under the IAA unless one of the grounds for refusing recognition and enforcement is established (New York Convention, Article V; IAA, Section 31).

Singapore courts may assume jurisdiction over an award debtor when one or more of the conditions under Section 16 of the Supreme Court of Judicature Act (Cap. 322) (SCJA) are met. Before Singapore courts may assume jurisdiction over the debtor of a foreign arbitral award, an application for leave to enforce must be made by the award creditor by way of an originating application supported by an affidavit (Rules of Court 2021, Order 34, Rule 14 and Order 48, Rule 6).

For the purpose of recognition and enforcement proceedings, there is no express requirement that the applicant must first identify assets within the jurisdiction of the courts that will be the subject of enforcement.

Form of the recognition proceedings

22 Are the recognition proceedings in your jurisdiction adversarial or *ex parte*? What are the different steps of the proceedings?

The Rules of Court 2021 permit the application for leave to enforce an award under Section 19 of the IAA and Section 46(1) of the AA to be made *ex parte* (see Rules of Court 2021, Order 34, Rule 14 for enforcement under the AA, and Order 48, Rule 6 for enforcement under the IAA).

If the court grants leave to enforce the award *ex parte*, the defendant will be served with the order and will have 14 days to apply to set aside the order. If the order is served out of jurisdiction, the court may fix a longer period, during which the debtor may apply to set aside the order (see Rules of Court 2021, Order 34, Rule 14(4) for enforcement under the AA and Order 48, Rule 6(5) for enforcement under the IAA).

The court adopts a 'mechanistic' approach to determining whether there has been a valid and binding arbitration agreement and award, which means it does not seek to look 'behind the face' of the agreement or award (*Aloe Vera of America, Inc v. Asianic Food (S) Pte Ltd* [2006] 3 SLR(R) 174 at [42] (a case under the IAA); *AUF v. AUG and other matters* [2016] 1 SLR 859 at [163] (a case under the AA)).

Form of application and required documentation

23 What documentation is required to obtain recognition?

An application for leave to enforce an award is made by way of an originating application (or by summons if there is already an action pending). An application to enforce an award under the IAA must be supported by an affidavit exhibiting the duly authenticated

original award and the original arbitration agreement under which the award was made. If an original cannot be produced for either, a duly certified copy must be produced instead (Rules of Court 2021, Order 48, Rule 6, Paragraphs (1) to (2)).

An application to enforce an award under the AA must be supported by an affidavit exhibiting the arbitration agreement, a record of the content of the arbitration agreement and the original award or, in either case, a copy thereof (Rules of Court 2021, Order 34, Rule 14(1)).

Translation of required documentation

24 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with an application to obtain recognition? If yes, in what form must the translation be?

For applications under the IAA, if the arbitration agreement, award or records are in a language other than English, a translation into English is required. The translation must be duly certified in English as a correct translation by a sworn translator, an official or a diplomatic or consular agent of the country in which the award was made (see Rules of Court 2021, Order 48, Rule 6(1)(a)).

A translation must also be filed for an application under the AA if the award or agreement is in a language other than English. The translation must be certified by a court interpreter or verified by the affidavit of a person qualified to translate the application (Rules of Court 2021, Order 3, Rule 7).

Other practical requirements

25 What are the other practical requirements relating to recognition and enforcement? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?

For the actual filing of the originating summons, the applicable filing fee is S$500 (for matters with a value of up to S$1 million) or S$1,000 (for matters with a value of more than S$1 million) (Rules of Court 2021, Fourth Schedule, Part 1, Paragraph 1).

On filing the supporting affidavit, for every page or part thereof (including any exhibit annexed thereto or produced therewith), the filing fee is S$2 per page, subject to a minimum fee of S$50 per affidavit (Rules of Court 2021, Fourth Schedule, Part 1, Paragraph 44). Additional court fees are payable when applying for execution against the award debtor's assets.

There are also electronic filing charges in respect of the above-mentioned documents, as well as other documents, such as written submissions or bundles of documents. For submissions and bundle of documents or authorities, the electronic filing charge is S$4 per document plus 60 cents per page, and the charge for all other documents is S$4 per document plus 80 cents per page (Rules of Court 2021, Fourth Schedule, Part 1, Paragraph 49(1), Sub-paragraphs (b) and (c)). A document that is composed remotely using the computer system of the electronic filing service provider is deemed to comprise two pages.

The estimated costs recoverable for an uncontested hearing of an *ex parte* application for leave to enforce an award are between S$1,000 and S$5,000 (excluding disbursements). The estimated costs recoverable for a contested hearing of a setting aside of the order granting leave to enforce an award are between S$9,000 and S$22,000 (excluding disbursements), depending on the duration of the hearing and the complexity and length of the application (Supreme Court Practice Directions 2021, Appendix G).

A party seeking leave to enforce an award on an *ex parte* basis is subject to a duty of full and frank disclosure.

Recognition of interim or partial awards

26 Do courts recognise and enforce partial or interim awards?

Yes. An arbitral tribunal may make more than one award either at different points in time, or on different aspects of the matter (IAA, Section 19A(1); AA, Section 33(1)). This may be for the whole award, or for part of the claim or of any counterclaim or cross-claim (IAA, Section 19A(2); AA, Section 33(2)). If multiple awards are made, the tribunal must specify the subject matter of each award on its face (IAA, Section 19A(3); AA, Section 33(3)).

Under Section 19 of the IAA and Section 46 of the AA, only awards can be enforced. An award is further defined under the IAA and AA as 'a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award' (IAA, Section 2(1); AA, Section 2(1)).

Both partial and interim awards are considered awards for the purposes of the IAA or the AA and can be recognised and enforced. They are also susceptible to being set aside. A partial award is defined as one that finally disposes of part, but not all, of the parties' claims in arbitration, leaving some claims for further consideration and resolution in future proceedings under the arbitration. By contrast, an interim award is one that does not dispose finally of a particular claim but instead decides a preliminary issue relevant to the disposing of a claim (*PT Perusahaan Gas Negara (Persero) TBK v. CRW Joint Operation* [2015] 4 SLR 364 at [46] to [53]).

Interim measures issued by an arbitral tribunal, such as measures covering security for costs or specific disclosure, are not awards for the purposes of the AA and the IAA, and the Singapore court does not have the jurisdiction to consider any application to resist the enforcement of, or for the setting aside of, such an interim measure (*PT Pukuafu Indah and others v. Newmont Indonesia Ltd and another* [2012] 4 SLR 1157 at [19]). All such orders or directions made or given by the tribunal are, with leave of the court, enforceable in the same manner as if they were orders made by the court. Where leave is given, the judgment may be entered in terms of the order or direction (AA, Section 28(4); IAA, Section 12(6)).

Grounds for refusing recognition of an arbitral award

27 What are the grounds on which an arbitral award may be refused recognition? Are the grounds applied by the courts different from the ones provided under Article V of the New York Convention?

The enforcement of an award is preceded by its recognition and, under Singapore law, no specific distinction is made between the recognition of an award and its enforcement. An award made by the arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties and on any person claiming through or under them. The award may be relied on by any of the parties by way of defence, set-off or otherwise in any proceedings in any court of competent jurisdiction (AA, Section 44(1); IAA, Sections 19B(1), 27(2) and 29(2)).

Under Section 31 of the IAA the following are the grounds to resist enforcement of an award:

- there is evidence of the incapacity of a party to the arbitration agreement, under the law applicable to the party, when the agreement was made;
- the arbitration agreement is invalid under the law to which the parties are subject, or in the absence of any indication in that respect, under the law of the country where the award was made;
- a party was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case during the arbitration proceedings;
- the award deals with a dispute not contemplated by, or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. If the award, however, contains decisions on matters not submitted to arbitration but those decisions can be separated from decisions on matters submitted to arbitration, the award may be enforced to the extent that it contains decisions on matters so submitted;
- the composition of the tribunal or conduct of the arbitral proceedings was not in accordance with the parties' agreement or the law of the country where the arbitration took place;
- the award is not yet binding on the parties, or has been set aside or suspended by a competent authority of the country in which the award was made, under the law of that country;
- the subject matter of the dispute between the parties to the award cannot be settled by arbitration under the law of Singapore; and
- the enforcement of the award would be contrary to the public policy of Singapore.

Scope of power of the recognition judge

28 When assessing the grounds for refusing recognition, may the recognition judge conduct a full review and reconsider factual or legal findings from the arbitral tribunal in the award? Is the judge bound by the tribunal's findings? If not, what degree of deference will the judge give to the tribunal's findings?

The enforcement of an award is preceded by its recognition and, under Singapore law, no specific distinction is made between the recognition of an award and its enforcement.

An award made by the arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties and on any person claiming through or under them. The award may be relied on by any of the parties by way of defence, set-off or otherwise in any proceedings in any court of competent jurisdiction (AA, Section 44(1); IAA, Sections 19B(1), 27(2) and 29(2)).

The court adopts a 'mechanistic' approach to determining whether there has been a valid and binding arbitration agreement and award, which means it does not seek to look 'behind the face' of the agreement or award (*Aloe Vera of America, Inc v. Asianic Food (S) Pte Ltd* [2006] 3 SLR(R) 174 at [42] (a case under the IAA); *AUF v. AUG and other matters* [2016] 1 SLR 859 at [163] (a case under the AA)).

In applications to resist enforcement, the Singapore courts have consistently applied a policy of minimal curial intervention even with regard to domestic cases. In *Republic of India v. Vedanta Resources plc* [2021] 2 SLR 354 at [47], the Court of Appeal reaffirmed the principle of minimal curial intervention, which dictates that courts should not without good reason interfere with the arbitral process and should act with a view to respecting and preserving the autonomy of the arbitral process. It is clear, therefore, that the Singapore courts will adopt a generous approach and will not undertake a hypercritical or excessive syntactic analysis of what the arbitrator has written (*Lao Holdings NV and another v. Government of the Lao People's Democratic Republic* [2022] SGCA(I) 9 at [60]).

Waiver of grounds for refusing recognition

29 Is it possible for a party to be considered to have waived its right to invoke a particular ground for refusing recognition of an arbitral award?

The enforcement of an award is preceded by its recognition and, under Singapore law, no specific distinction is made between the recognition of an award and its enforcement. An award made by the arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties and on any person claiming through or under them. The award may be relied on by any of the parties by way of defence, set-off or otherwise in any proceedings in any court of competent jurisdiction (AA, Section 44(1); IAA, Sections 19B(1), 27(2) and 29(2)).

Several institutional rules have incorporated rules regarding the waiver of recourse against arbitral awards. For instance, Rule 32.11 of the SIAC Rules 2016 provides that:

> *by agreeing to arbitration under these Rules, the parties agree that any Award shall be final and binding on the parties from the date it is made, and undertake to carry out the Award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any State court or other judicial authority with respect to such Award insofar as such waiver may be validly made.*

Effect of a decision recognising an arbitral award

30 What is the effect of a decision recognising an arbitral award in your jurisdiction?

Once an award has been recognised, a party seeking to enforce the award has to seek permission from the Singapore court, and the order obtained must be served on the award debtor (Rules of Court, Order 48, Rule 6(3)). The debtor has 14 days after the service of the order granting permission or, if the order is to be served out of jurisdiction, within the period stipulated by the court granting leave to apply to set aside the order.

The award must not be enforced during that period or, if the debtor applies within that period to set aside the order, until after the debtor's application is finally disposed of (Rules of Court 2021, Order 48, Rule 6(5)). Subsequently, a judgment may be entered in terms of the award, and the award can be enforced in the same manner as any judgment of the Singapore courts (IAA, Sections 19 and 29). An award may also be enforced in court by action (IAA, Section 29(1)).

Decisions refusing to recognise an arbitral award

31 What challenges are available against a decision refusing recognition in your jurisdiction?

There is an automatic right of appeal to the Court of Appeal against a decision of the General Division of the High Court refusing leave to enforce an award (SCJA, Section 29C read with Section 1(c) of the Sixth Schedule).

Recognition or enforcement proceedings pending annulment proceedings

32 What are the effects of annulment proceedings at the seat of the arbitration on recognition or enforcement proceedings in your jurisdiction?

Section 31(5) of the IAA provides the Singapore courts with the option to adjourn an application to enforce a foreign award, if an application to set aside or suspend an arbitration award is pending in the courts of the seat of the arbitration.

When the Singapore court elects to do so, it may (1) if the court considers it proper to do so, adjourn the proceedings or, as the case may be, the part of the proceedings that relates to the award, and (2) on the application of the party seeking to enforce the award, order the other party to give suitable security (IAA, Section 31(5)).

In *Man Diesel & Turbo SE v. IM Skaugen Marine Services Pte Ltd* [2019] 4 SLR 537, the Singapore High Court refused to adjourn an enforcement application on the ground that an application to set aside the award was pending in the Danish courts, noting that Section 31(5) of the IAA gave the Court a wide discretion. In exercising its discretion to refuse the adjournment, the Court took into account the merits of the setting-aside application, the impact on the award creditor of the delay in obtaining the fruits of the award and the chances of dissipation of assets by the judgment creditor during the period of adjournment.

Security

33 If the courts adjourn the recognition or enforcement proceedings pending annulment proceedings, will the defendant to the recognition or enforcement proceedings be ordered to post security?

If a court adjourns recognition or enforcement proceedings pending annulment proceedings at the seat of the arbitration, it may but is not obliged to, on the application of the party seeking to enforce the award, order the other party to give suitable security (IAA, Section 31(5)(b)).

This provision has not been examined by the Singapore courts; however, given that the statute does not expressly dictate the factors that Singapore courts may take into account when dealing with the issue of security in the above circumstances, the Singapore courts are likely to take the view that they have broad discretion to take into account any relevant factor. The Singapore courts are also likely to refer to decisions from other jurisdictions for guidance on the issue.

Recognition or enforcement of an award set aside at the seat

34 Is it possible to obtain the recognition and enforcement of an award that has been fully or partly set aside at the seat of the arbitration? If an arbitral award is set aside after the decision recognising the award has been issued, what challenges are available?

If an award has been set aside at the seat of the arbitration, it is likely that the Singapore courts would refuse enforcement of that award as Section 31(2)(f) of the IAA, which is modelled after Article V(1)(e)) of the New York Convention, provides that:

> *(2) A court so requested may refuse enforcement of a foreign award if the person against whom enforcement is sought proves to the satisfaction of the court that —*
> *(f) the award has not yet become binding on the parties to the arbitral award or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.*

Further, the Singapore courts in *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v. Astro Nusantara International BV and others and another appeal* [2014] 1 SLR 372 at [76] to [77], in *obiter* comments, expressed 'serious doubt' regarding whether it would retain a discretion to enforce an award that has been set aside at the seat of the arbitration.

In *BAZ v. BBA* [2020] 5 SLR 266, the reverse situation arose. The High Court had occasion to determine a setting-aside application in relation to a Singapore-seated award that had already been part-enforced in the Delhi High Court (with part of the award, which had been made against minors, being refused enforcement on the ground of public policy). One of the issues that arose was whether any issue estoppel would arise from the judgment in the enforcing court to bind the seat court. The High Court suggested that if the seat court is tasked with a *de novo* review on a ground of challenge, the seat court would be accorded 'a certain level of primacy', and it would be slow to recognise an issue

estoppel arising from the determination of a foreign enforcement court. It also stated that it was 'plain' that where the issue before the court was one of public policy or arbitrability, no issue estoppel would arise as these are unique to each state.

In *BAZ v. BBA*, the High Court set aside the portion of the award that had been refused enforcement by the Delhi High Court, so it did not have to consider how an award duly recognised for enforcement elsewhere was to be treated should it subsequently be set aside in Singapore. The Singapore High Court did not regard the refusal of enforcement in Delhi as relevant to its decision to set aside the award. It has also not had occasion to consider the situation where it enforced an award that had subsequently been set aside in the seat court. It is anticipated that these instances would be rare as the law of most countries sets out strict time limits for the institution of applications to set aside an award, and Section 31(5) of the IAA allows a party to apply for enforcement proceedings to be adjourned pending disposal of an application to set aside. Having said that, as seen in *Man Diesel & Turbo SE v. I.M. Skaugen Marine Services Pte Ltd* [2019] 4 SLR 537, this could become a live issue depending on the outcome of the setting-aside proceedings in the Danish courts.

In *ST Group v. Sanum Investments* [2019] SGCA 65, the Court of Appeal refused enforcement of an award in which the tribunal had determined an incorrect seat. The Court also held that it was not necessary for a party to demonstrate that it had suffered prejudice as a result of the incorrect choice of seat; it would be sufficient for the party to show that, had the arbitration been correctly seated, a different court would have supervisory jurisdiction.

Service

Service in your jurisdiction

35 What is the procedure for service of extrajudicial and judicial documents to a defendant in your jurisdiction? If the extrajudicial and judicial documents are drafted in a language other than the official language of your jurisdiction, is it necessary to serve these documents together with a translation? When is a document considered to be served to the opposite party?

In general, service of court documents may be served by 'personal service' or 'ordinary service'. These methods of service are described in Order 7, Rules 1 to 3 of the Rules of Court 2021.

The requirements for an application for permission to enforce an award are set out in Order 48, Rule 6(1) of the Rules of Court 2021 (for proceedings under the IAA) and Order 34, Rule 14(1) of the Rules of Court 2021 (for proceedings under the AA). The application for permission to enforce a foreign award must be supported by an affidavit that exhibits the arbitration agreement and the duly authenticated original award and, if the agreement or award are in a language other than English, a translation of it in English, duly certified in English as a correct translation by a sworn translator, or by an official or a diplomatic or consular agent in the country in which the award was made (Rules of Court 2021, Order 48, Rule 6(2)).

Once a court order for permission to enforce an award is obtained, the creditor must draw up the order and serve it on the debtor by delivering a copy of the order to the debtor personally, by sending a copy to the debtor's usual or last known place of residence or business, or in such other manner as the court may direct (Rules of Court 2021, Order 48, Rule 6(3) (for proceedings under the IAA); Rules of Court 2021, Order 34, Rule 14(2) (for proceedings under the AA)).

Within 14 days of service of the order or, if the order is to be served out of the jurisdiction, within the period the court fixes, the debtor may apply to set aside the order, and the award shall not be enforced until after the expiry of that period or, if the debtor applies within that period to set aside the order, until after the application is finally disposed of (Rules of Court 2021, Order 48, Rule 6(5) (for proceedings under the IAA); Rules of Court 2021, Order 34, Rule 14(4) (for proceedings under the AA)).

The copy of the order granting leave to enforce must state the effect of the foregoing paragraph (Rules of Court 2021, Order 48, Rule 6(6) (for proceedings under the IAA); Rules of Court 2021, Order 34, Rule 14(5) (for proceedings under the AA)).

Service out of your jurisdiction

36 What is the procedure for service of extrajudicial and judicial documents to a defendant outside your jurisdiction? Is it necessary to serve these documents together with a translation in the language of this jurisdiction? Is your jurisdiction a party to the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Service Convention)? Is your jurisdiction a party to other treaties on the same subject matter? When is a document considered to be served to the opposite party?

In the context of the service of *ex parte* orders granting leave to enforce an award, the applicable rules for service out of the jurisdiction are set out in Order 48, Rule 6(4) of the Rules of Court 2021, read with Order 8, Rules 2, 3, 7 and 8 (for proceedings under the IAA) and Order 34, Rule 14(3) of the Rules of Court 2021 read with Order 8, Rules 2, 3, 7 and 8 (for proceedings under the AA). Service out of the jurisdiction of *ex parte* orders is permissible without leave of court.

The order granting leave to enforce the award must be in English as it is the language of the courts of Singapore. Every originating process or court document that is to be served outside Singapore must be accompanied by a translation into the official language of the foreign country or, if there is more than one official language, in any of the languages in which it is appropriate for the party to be served, except where the official language or one of the official languages is English (Rules of Court 2021, Order 8, Rule 2(4)).

In relation to any originating application in relation to the AA or any order made on such an originating application, service out of jurisdiction is permissible with the permission of the court provided that the arbitration to which the originating application or order relates is to be, is being or has been held within Singapore (Rules of Court 2021, Order 34, Rule 10(1)). The application for the grant of permission under this Rule must be supported by an affidavit stating the ground on which the application is made and showing in what place or country the person to be served is or may be found. Permission will not be granted unless it is made sufficiently clear to the court that the case is a

proper one for service out of Singapore under this Rule (Rules of Court 2021, Order 34, Rule 10(2)). Order 8, Rules 2, 3, 7 and 8 apply to such originating applications or orders (Rules of Court 2021, Order 34, Rule 10(3)).

In relation to any originating application in relation to the IAA or any order made on such an originating application, service out of jurisdiction is permissible with the permission of the court, regardless of whether the arbitration was held or the award was made within Singapore (Rules of Court 2021, Order 48, Rule 4(1)). The application for the grant of permission under this Rule must be supported by an affidavit stating the ground on which the application is made and showing in what place or country the person to be served is or may be found. Permission will not be granted unless it is made sufficiently clear to the court that the case is a proper one for service out of Singapore under this Rule (Rules of Court 2021, Order 48, Rule 4(2)). Order 8, Rules 2, 3, 7 and 8 apply to such originating applications or orders (Rules of Court 2021, Order 48, Rule 4(3)).

The copy of the order granting leave to enforce that is served on the debtor must contain a statement of the debtor's right to apply to set aside the order within the period provided by the court, and a statement that the award will not be enforced until that period has expired or an application made by the debtor within the time limit has been finally disposed of (Rules of Court 2021, Order 34, Rule 14(5) for the AA and Order 48, Rule 6(6) for the IAA).

Singapore is not a contracting party to the Hague Service Convention; therefore, the simplified procedure therein to effect service is unavailable in Singapore. However, it has entered into the following civil procedure conventions:

- Convention between the United Kingdom and Austria regarding legal proceedings in civil and commercial matters;
- Convention between the United Kingdom and Italy regarding legal proceedings in civil and commercial matters;
- Convention between the United Kingdom and Germany regarding legal proceedings in civil and commercial matters; and
- Treaty on Judicial Assistance in civil and commercial matters between the Republic of Singapore and the People's Republic of China.

Identification of assets

Asset databases

37 Are there any databases or publicly available registers allowing the identification of an award debtor's assets within your jurisdiction? Are there any databases or publicly available registers providing information on award debtors' interests in other companies?

There is no database that comprehensively lists a debtor's assets. Certain information (e.g., bank accounts) is not available because of Singapore's banking secrecy laws.

Notwithstanding the above, there are certain databases that are publicly available and can be used to identify assets. These include land records with information about property assets that are maintained by the Singapore Land Authority and are publicly searchable.

The Accounting and Corporate Regulatory Authority (ACRA) also allows searches in the ACRA register to ascertain the particulars of business entities that currently exist and are operating (including a business entity's registered address) and those of their shareholders, directors or partners. Depending on the status of a business entity and filings made with ACRA, it may also be possible to obtain recent financial statements.

Searches can also be conducted through ACRA for the profiles of individuals to ascertain any registered addresses and business dealings in Singapore.

Asset investigation services are also provided by a number of companies.

Information available through judicial proceedings

38 Are there any proceedings allowing for the disclosure of information about an award debtor within your jurisdiction?

Once an *ex parte* order for enforcement has been obtained and served on an award debtor, Order 22, Rule 11(1) of the Rules of Court 2021 provides that the award creditor may make an application for an order requiring that the award debtor attend court or to make an affidavit to provide information on the properties owned by him. The court may also order him or her to produce such documents as appropriate. If the award debtor is an entity, an officer of the company shall be called upon. The order made must state the appointment of the officer or officers of the entity who are to be examined.

Enforcement proceedings

Attachable property

39 What kinds of assets can be attached within your jurisdiction?

The property of the judgment debtor that may be attached includes money in a bank account, movable goods, ownership of or interest in land or securities, and a fund or income payable under a trust.

There are certain exceptions to the property that can be seized (SCJA, Section 13), including wages, salaries, pensions, gratuities and allowances.

Availability of interim measures

40 Are interim measures against assets available in your jurisdiction? Is it possible to apply for interim measures under an arbitral award before requesting recognition? Under what conditions?

Interim measures against assets are available in Singapore in support of the enforcement of arbitration awards. Section 31 of the AA and Section 12A of the IAA empower the High Court to order interim measures in aid of arbitral proceedings. This power is exercised scrupulously, and only if it will assist in the just and proper conduct of arbitration, or in the preservation of property that is the subject of the arbitration.

The High Court may make orders or give directions for, among other things, the preservation of any property that forms the subject of the dispute; the prevention of dissipation of assets; and any interim injunction or any other interim measure. This includes the grant of interim anti-suit injunctions, *Anton Piller* orders, *Mareva* injunctions and

mandatory interim injunctions (only granted in exceptional circumstances) (see *NCC International AB v. Alliance Concrete Singapore Pte Ltd* [2008] 2 SLR(R) 565 at [75]), but is not limited as such (see *Maldives Airports Co Ltd v. GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449 at [34]).

In *Strandore Invest A/S v. Soh Kim Wat* [2010] SGHC 151, the Singapore High Court exercised its power to grant a worldwide *Mareva* injunction in aid of enforcement of a foreign arbitration award. Further, in *AYK v. AYM* [2015] SGHC 329, the Singapore High Court made an injunction order preventing the award debtor from dissipating its assets on the basis that there was a real risk that it might do so, or that it might move the assets around to frustrate attempts to satisfy the final award.

Singapore law does not allow for injunctive relief against a foreign state (State Immunity Act 1979 (SIA), Section 15(2)) unless the state consents under Section 15(3) of the SIA.

Procedure for interim measures

41 What is the procedure to apply interim measures against assets in your jurisdiction?

Interim measures for urgent or interim protection pending the final resolution of the case may require the protection and preservation of the assets that are the subject of the dispute, or to secure and protect relevant evidence.

Section 28(2) of the AA and Section 12(1) of the IAA allow a tribunal to order the preservation, interim custody or sale of any property that is, or form parts of, the subject of the dispute. Section 31 of the AA and Section 12A of the IAA recognise the power of the Singapore courts to make similar orders.

To apply for interim measures against assets in Singapore, pursuant to Order 13, Rule 1 of the Rules of Court 2021, an application without notice may be made by way of either originating application or summons without notice, supported by an affidavit stating the urgency and explaining why the defendant should not be informed about the application and the merits of the application. This must be served at least two hours before the hearing (Supreme Court Practice Directions 2021, Paragraph 71).

If a case is urgent, a party may apply for an injunction or a search order before the originating process is issued. There are specific forms for a local injunction prohibiting the disposal of assets in Singapore (Supreme Court Practice Directions 2021, Form 24), a worldwide injunction prohibiting the disposal of assets worldwide (Supreme Court Practice Directions, Form 25) and a search order (Supreme Court Practice Directions, Form 26). There is an obligation to make full and frank disclosure of all material facts (Rules of Court 2021, Order 13, Rule 1(5); *The Vasiliy Golovnin* [2008] 4 SLR 994). The respondent to an *ex parte* application should be notified of the application and invited to attend the application (Supreme Court Practice Directions 2021, Paragraph 71).

Interim measures against immovable property

42 What is the procedure for interim measures against immovable property within your jurisdiction?

Interim measures for urgent or interim protection pending the final resolution of the case may require the protection and preservation of the assets that are the subject of the dispute, or to secure and protect relevant evidence.

Section 28(2) of the AA and Section 12(1) of the IAA allow a tribunal to order the preservation, interim custody or sale of any property that is, or form parts of, the subject of the dispute. Section 31 of the AA and Section 12A of the IAA recognise the power of the Singapore courts to make similar orders.

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Interim measures against movable property

43 What is the procedure for interim measures against movable property within your jurisdiction?

Interim measures for urgent or interim protection pending the final resolution of the case may require the protection and preservation of the assets that are the subject of the dispute, or to secure and protect relevant evidence.

Section 28(2) of the AA and Section 12(1) of the IAA allow a tribunal to order the preservation, interim custody or sale of any property that is, or form parts of, the subject of the dispute. Section 31 of the AA and Section 12A of the IAA recognise the power of the Singapore courts to make similar orders.

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Interim measures against intangible property

44 What is the procedure for interim measures against intangible property within your jurisdiction?

Interim measures for urgent or interim protection pending the final resolution of the case may require the protection and preservation of the assets that are the subject of the dispute, or to secure and protect relevant evidence.

Section 28(2) of the AA and Section 12(1) of the IAA allow a tribunal to order the preservation, interim custody or sale of any property that is, or form parts of, the subject of the dispute. Section 31 of the AA and Section 12A of the IAA recognise the power of the Singapore courts to make similar orders.

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Attachment proceedings

45 What is the procedure to attach assets in your jurisdiction? Who are the stakeholders in the process?

The procedure to attach assets in Singapore is to apply to the court for such orders.

An award creditor may, after obtaining the court order granting permission to enforce the award, apply for an enforcement order for the seizure and sale of property or the delivery or possession of property (Rules of Court 2021, Order 22, Rule 2, Paragraphs (a)

and (b); Supreme Court Practice Directions 2021, Form 38). This enables the sheriff to seize and sell the property, or to seize and deliver or give possession of property, to satisfy the judgment or order. 'Property' includes both movable and immovable property. The definition of 'movable property' includes cryptocurrency and other digital currency.

An award creditor may also apply for an enforcement order authorising the sheriff to attach a debt that is due to the enforcement respondent from any non-party, whether immediately or at some future date or at certain intervals in the future, including where the debt that is due to the enforcement respondent is represented by a deposit of money by the enforcement respondent in a non-party that is a financial institution, regardless of whether the deposit has matured and despite any restriction regarding the mode of withdrawal (a garnishee order) (Rules of Court 2021, Order 22, Rule 2(c); Supreme Court Practice Directions 2021, Form 38).

Attachment against immovable property

46 What is the procedure for enforcement measures against immovable property within your jurisdiction?

After obtaining the court order granting permission to enforce the award, an award creditor may apply for an enforcement order for the seizure and sale of immovable property or the delivery or possession of immovable property (Rules of Court 2021, Order 22, Rule 2, Paragraphs (a) and (b); Supreme Court Practice Directions 2021, Form 38). This enables the court sheriff to seize and sell the property, or to seize and deliver or give possession of the property, to satisfy the judgment or order.

In respect of an enforcement order for the possession of immovable property, the sheriff will post a notice of seizure on some conspicuous part of the immovable property, entering and taking possession of the immovable property, and, where applicable, by serving a notice of seizure on the persons who are present and in actual possession or control of the immovable property (Rules of Court 2021, Order 22, Rule 6(4)(c)).

In respect of an enforcement order for seizure and sale of immovable property, the sheriff will serve a notice of seizure on the Singapore Land Authority in respect of title to the immovable property. The award creditor (here referred to as an 'enforcing applicant') must separately register the enforcement order within 14 days of service of the notice of seizure and give notice in writing to the sheriff that the enforcement order has been duly registered (Rules of Court 2021, Order 22, Rule 6(4)(d)).

The notice of seizure must be in Form 40 and may be prepared by the sheriff (Rules of Court 2021, Order 22, Rule 6(5)).

An objector must object within 14 days of service of the notice of seizure (Rules of Court 2021, Order 22, Rule 10(1)). The notice of objection must identify the objector, specify the property or debt in dispute, state the grounds of objection and include any evidence supporting the grounds of objection (Rules of Court 2021, Order 22, Rule 10(2)). The correct form is Form B36 of the Supreme Court Practice Directions 2021 (Supreme Court Practice Directions 2021, Paragraph 142).

The enforcement applicant may accept or dispute the objection by filing the appropriate form (Supreme Court Practice Directions 2021, Form B37 or Form B38). In cases of dispute, the sheriff may direct that the enforcing applicant file Supreme Court Practice Directions 2021, Form B39, supported by an affidavit for an order to determine the dispute.

Where the enforcement applicant does not file an objection or dispute within 14 days, the sheriff may direct the objector to apply to the court for an order to release the specified property or debt (Rules of Court 2021, Order 22, Rule 10(4)).

If the award creditor or enforcement applicant wishes to effect a sale of immovable property seized under an enforcement order, he or she must file the requisite request for sale electronic form to the sheriff through the electronic filing service and comply with the requirements under Paragraph 143 of the Supreme Court Practice Directions 2021.

Attachment against movable property

47 What is the procedure for enforcement measures against movable property within your jurisdiction?

An award creditor may, after obtaining the court order granting permission to enforce the award, apply for an enforcement order for the seizure and sale of immovable property or the delivery or possession of immovable property (Rules of Court 2021, Order 22, Rule 2, Paragraphs (a) and (b); Supreme Court Practice Directions 2021, Form 38). This enables the court sheriff to seize and sell the property, or to seize and deliver or give possession of the property, to satisfy the judgment or order.

In respect of an enforcement order for delivery or possession of movable property, the sheriff may take physical possession of the movable property or affix the sheriff's seal on the movable property (Rules of Court 2021, Order 22, Rule 6(4)(a)).

In respect of an enforcement order for seizure and sale of movable property, the sheriff may affix the sheriff's seal on the movable property and serve a notice of seizure on the person or entity having possession or control of the movable property or leave a notice of seizure at the place where the movable property was seized (Rules of Court 2021, Order 22, Rule 6(4)(b)).

The notice of seizure must be in Form 40 and may be prepared by the sheriff (Rules of Court 2021, Order 22, Rule 6(5)).

An objector must object within 14 days of service of the notice of seizure (Rules of Court 2021, Order 22, Rule 10(1)). The notice of objection must identify the objector, specify the property or debt in dispute, state the grounds of objection and include any evidence supporting the grounds of objection (Rules of Court 2021, Order 22, Rule 10(2)). The correct form is Form B36 of the Supreme Court Practice Directions 2021 (Supreme Court Practice Directions 2021, Paragraph 142).

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Where the enforcement applicant does not file an objection or dispute within 14 days, the sheriff may direct the objector to apply to the court for an order to release the specified property or debt (Rules of Court 2021, Order 22, Rule 10(4)).

Attachment against intangible property

48 What is the procedure for enforcement measures against intangible property within your jurisdiction?

The definition of 'movable property' includes intangible property such as debt, deposits of money, bonds, shares or other securities, membership in clubs or societies, and cryptocurrency and other digital currency. In principle, the procedure for enforcement measures against movable property should apply to the extent possible, although it is not clear how the process might apply to intangibles such as cryptocurrency.

There are also some specific rules in relation to attachments of debt or the seizure and sale of bonds, shares or other securities or membership in a club or society.

In respect of an enforcement order for attachment of a debt due to the award debtor respondent from a non-party that is a financial institution (e.g., a bank) as represented by a deposit of money, regardless of whether the deposit has matured and despite any restriction regarding the mode of withdrawal, the sheriff will serve a notice of attachment on the financial institution in respect of the deposit in the institution (Rules of Court 2021, Order 22, Rule 6(4)(e)).

In respect of an enforcement order for attachment of a debt due to the award debtor from any other non-party, the sheriff will serve a notice of attachment on the non-party from which money is due to the enforcement respondent, regardless of whether the money is due immediately or at some future date or at certain intervals in the future (Rules of Court 2021, Order 22, Rule 6(4)(f)).

A non-party who is served with a notice of attachment is entitled to claim costs of S$100 from the sheriff but only if the claim is made within 14 days of service. The non-party may deduct that amount from the debt owing from the non-party to the award debtor, which is attached under the notice of attachment (Rules of Court 2021, Order 22, Rule 6(8)). A non-party who is served with a notice of attachment must, within 14 days of service of the notice of attachment, inform the sheriff of the amount owing by the non-party to the enforcement respondent that is available to be attached. The non-party must not deal with the attached amount until after any notice of objection has been determined, or in any other case until after 21 days have passed after the date of service of the notice of attachment (Rules of Court 2021, Order 22, Rule 6(9)).

In respect of an enforcement order for seizure and sale of bonds, shares or other securities or membership in a club or society, the sheriff will serve a notice of seizure on the person or entity that registers the ownership in respect of the bonds, shares or other securities, or that registers the membership in the club or society (Rules of Court 2021, Order 22, Rule 6(4)(g)). The notice of seizure must be in Form 40 and may be prepared by the sheriff (Rules of Court 2021, Order 22, Rule 6(5)).

An objector must object within 14 days of service of the notice of seizure (Rules of Court 2021, Order 22, Rule 10(1)). The notice of objection must identify the objector, specify the property or debt in dispute, state the grounds of objection and include any

evidence supporting the grounds of objection (Rules of Court 2021, Order 22, Rule 10(2)). The correct form is Form B36 of the Supreme Court Practice Directions 2021 (Supreme Court Practice Directions 2021, Paragraph 142).

The enforcement applicant may accept or dispute the objection by filing the appropriate form (Supreme Court Practice Directions 2021, Form B37 or Form B38). In cases of dispute, the sheriff may direct that the enforcing applicant file Supreme Court Practice Directions 2021, Form B39, supported by an affidavit for an order to determine the dispute.

Where the enforcement applicant does not file an objection or dispute within 14 days, the sheriff may direct the objector to apply to the court for an order to release the specified property or debt (Rules of Court 2021, Order 22, Rule 10(4)).

Attachments against sums deposited in bank accounts or other assets held by banks

49 Are there specific rules applicable to the attachment of assets held by banks? Is it possible to attach in your jurisdiction sums deposited in bank accounts opened in a branch or subsidiary of a foreign bank located in your jurisdiction or abroad? Is it possible to attach in your jurisdiction the bank accounts opened in a branch or subsidiary of a domestic bank located abroad?

In respect of an enforcement order for attachment of a debt due to the award debtor respondent from a non-party that is a financial institution (e.g., a bank) as represented by a deposit of money, regardless of whether the deposit has matured and despite any restriction regarding the mode of withdrawal, the sheriff will serve a notice of attachment on the financial institution in respect of the deposit in the institution (Rules of Court 2021, Order 22, Rule 6(4)(e)).

It is possible to attach sums deposited in bank accounts opened in a local subsidiary or branch of a foreign bank. Whether it is possible to attach sums in bank accounts opened in a subsidiary or branch of a domestic bank located abroad is likely to depend on the enforcement regime in those foreign jurisdictions.

Piercing the corporate veil and alter ego

50 May a creditor of an award rendered against a private debtor attach assets held by another person on the grounds of piercing the corporate veil or alter ego? What are the criteria, and how may a party demonstrate that they are met?

The 'group of companies' argument has been rejected in Singapore (*Goh Chan Peng and others v. Beyonics Technology Ltd and another and another appeal* [2017] 2 SLR 592 at [70] to [75], where the Singapore Court of Appeal rejected an argument based on 'the single economic entity concept' as contrary to principle and authority).

Generally, lifting the corporate veil will only be justified by abuse of the corporate form or if it is necessary for the veil to be lifted to give effect to a legislative provision (*Goh Chan Peng* at [75]). In situations where the parties have sought to hold controlling shareholders liable for costs incurred by a downstream entity, the Court of Appeal has found

that 'the corporate veil is usually only lifted where there is fraud or highly unconscionable conduct' (see the Court of Appeal's observations in *SIC College of Business and Technology Pte Ltd v. Yeo Poh Siah and others* [2016] 2 SLR 118 at Paragraph 91(b)).

Recognition and enforcement against foreign states

Applicable law

51 Are there any rules in your jurisdiction that specifically govern recognition and enforcement of arbitral awards against foreign states?

The SIA governs state immunity. States are generally immune to the jurisdiction of the courts of Singapore, subject to the exceptions under the SIA.

In relation to arbitration proceedings, if a state has agreed in writing to submit a dispute that is subject, or may become subject, to arbitration, the state is not immune to proceedings in the Singapore courts that relate to the arbitration (SIA, Section 11(1)); however, this does not apply where there is a contrary provision in the arbitration agreement (SIA, Section 11(2)).

State immunity does not arise in proceedings relating to commercial transactions and contracts performed by a sovereign state in Singapore (SIA, Section 5).

Service of documents to a foreign state

52 What is the procedure for service of extrajudicial and judicial documents to a foreign state? Should they be served through diplomatic channels? Is it necessary to serve extrajudicial and judicial documents together with a translation in the language of the foreign state? When is a document considered to be served to a foreign state?

Section 14(1) of the SIA stipulates that a writ or other document required to be served when instituting proceedings against a state should be transmitted through the Ministry of Foreign Affairs of Singapore to the ministry of foreign affairs of that state. Service is deemed to have been effected when the writ or document is received at the ministry. Section 14(2) of the SIA provides that the time for a state to file and serve a notice of intention to contest or not contest shall begin to run two months after the date on which the writ or document is received. These provisions do not apply if the state has agreed to the service of a writ or other document in another manner (SIA, Section 14(6)).

If a state does not file and serve a notice of intention to contest or not contest in proceedings, judgment in default may be given if it can be proved that Section 14(1) of the SIA has been complied with (i.e., effective service through the Ministry of Foreign Affairs on that state's ministry of foreign affairs) and that two months have expired (SIA, Section 14(4)). A copy of any judgment given against a state in default of a notice of intention to contest or not contest must be transmitted through the Singapore Ministry of Foreign Affairs to the ministry of foreign affairs of that state. The state will have two months to apply to set aside the default judgment after the date on which the copy of the judgment is received (SIA, Section 14(5)).

Further procedures for service of extrajudicial and judicial documents to a foreign state are governed by Order 8, Rule 6 of the Rules of Court 2021. In particular, a person who wishes to serve on a foreign state must file in the registry (1) a request for the Ministry of Foreign Affairs to arrange service, (2) a sealed copy of the originating process and (3) except when the official language of the state is, or the official languages of that state include, English, a translation of the originating process in the official language or any of the official languages that is appropriate for the state to be served (Rules of Court 2021, Order 8, Rule 6(1)).

Immunity from jurisdiction

53 May a foreign state invoke sovereign immunity (immunity from jurisdiction) to object to the recognition or enforcement of arbitral awards?

If there is a written agreement from the foreign state agreeing to submit the dispute to arbitration, the foreign state no longer has immunity from proceedings in the Singapore courts that relate to the arbitration. This includes recognition and enforcement of arbitral awards (SIA, Section 11(1)). This does not apply where there is a contrary provision in the arbitration agreement (SIA, Section 11(2)). Further, if the state disputes the validity of the arbitration agreement, it may conceivably argue that it did not waive sovereign immunity (since the arbitration agreement was itself defective).

Availability of interim measures

54 May award creditors apply interim measures against assets owned by a sovereign state?

While the default position is that states are not subject to injunctive relief (SIA, Section 15(2)(a)) or enforcement actions (SIA, Section 15(2)(b)), these procedural privileges do not apply where the state has given written consent that may be contained in a prior agreement (as with most commercial contracts involving states) (SIA, Section 15(3); *Maldives Airports Co Ltd v. GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449). The procedural privilege preventing enforcement of a judgment or arbitral award also does not apply if the state-owned assets are used, or intended to be used, for commercial purposes (SIA, Section 15(4)).

Further, applications for interlocutory relief, such as security for costs, do not fall within the scope of these procedural privileges (*The Ministry of Rural Development, Fishery, Craft, Industry and Environment of the Union of Comoros v. Chan Leng Leng 'The Ministry'* [2013] 3 SLR 214).

Immunity from enforcement

55 Are assets belonging to a foreign state immune from enforcement in your jurisdiction? Which classes of assets belonging to states are immune from enforcement as a matter of principle? Are there exceptions to immunity? How can it be proven whether an asset is immune from enforcement? Provide practical examples of assets belonging to states that were successfully attached in your jurisdiction.

Pursuant to Section 15(2) of the SIA, relief may 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 is not subject to any process involving the enforcement of a judgment or arbitral award or, in an action *in rem* for its arrest, detention or sale.

There are two exceptions to this rule. The first is when, on the basis of Section 15(3) of the SIA, the state expressly agrees in writing to waive its immunity from execution or injunctive relief. The second is set out in Section 15(4) of the SIA, under which enforcement proceedings (but not injunctive relief) are permitted in respect of property belonging to the state where the relevant property is in use, or is intended for use, for commercial purposes.

Waiver of immunity from enforcement

56 Is it possible for a foreign state to waive immunity from enforcement in your jurisdiction? What are the requirements of waiver?

Pursuant to Section 15(3) of the SIA, courts are not prevented from giving relief or commencing procedures with the written consent of the state concerned, and any such consent (which may be contained in a prior agreement) may be expressed to have limited or general application; however, a provision merely submitting to the jurisdiction of the courts is not regarded as consent for the purposes of this section.

Piercing the corporate veil and alter ego

57 Is it possible for a creditor of an award rendered against a foreign state to attach the assets held by an alter ego of the foreign state within your jurisdiction? What are the criteria, and how may a party demonstrate that they are met? Provide practical examples of assets held by alter egos that were successfully attached by a state's creditor in your jurisdictions.

As the doctrine of sovereign immunity also extends to proceedings involving property that is in the possession or control of a third party who is an agent or trustee of that state (*Republic of the Philippines v. Maler Foundation and others* [2008] 2 SLR(R) 857 at [46]), it may not be possible for a creditor to bring enforcement proceedings against assets held by an alter ego of the foreign state if it is able to prove its ownership of the assets.

Sanctions

58 May property belonging to persons subject to national or international sanctions be attached? Under what conditions? Is there a specific procedure?

The Monetary Authority of Singapore implements financial sanctions imposed by United Nations Security Council Resolutions through subsidiary legislation under the Monetary Authority of Singapore Act 1970. These generally have an exception for the satisfaction of judicial or arbitral judgments provided that these were made before the cut-off date specified in the individual subsidiary legislation.

For example, under the Monetary Authority of Singapore (Sanctions and Freezing of Assets of Persons — Iran) Regulations 2016, financial institutions must freeze funds, financial assets or economic resources owned or controlled, directly or indirectly, by sanctioned persons or entities; however, these may be used to satisfy arbitral or judicial judgments if the judgment arose or was entered into prior to 23 December 2006 and is not for the direct or indirect benefit of a designated person (Section 5(3)(e)).

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