Public Consultation on the International Arbitration Act 1994 of Singapore

Consultation Period:
20 March – 2 May 2025

Consultation Paper
The International Arbitration Regime and International Arbitration Act 1994 of Singapore

A. INTRODUCTION

1. The Ministry of Law ("**MinLaw**") is seeking feedback on Singapore's international arbitration regime and the International Arbitration Act 1994 ("**IAA**").

B. BACKGROUND

2. This year marks the 30th anniversary of the IAA coming into force on 1 January 1995, where Singapore adopted the UNCITRAL Model Law on International Commercial Arbitration (1985) ("**Model Law**") to provide a legal framework for international arbitration proceedings.

3. As part of our continual review to ensure that Singapore remains attractive as an arbitration forum,[1] MinLaw commissioned the Singapore International Dispute Resolution Academy ("**SIDRA**") to conduct a study on the international arbitration regime in Singapore and the IAA. This study considers to what extent the IAA remains effective in supporting Singapore as a preferred destination for arbitration and what

[1] Singapore regularly reviews the IAA, and where necessary introduces revisions to update the legislation, most recently in 2020.

changes may further strengthen the IAA. A report of the study published by SIDRA can be found at https://sidra.smu.edu.sg/research-program/review-of-the-singapore-international-arbitration-act-2024/agenda.

4. To assist in our assessment of SIDRA's study and feedback received from various stakeholders, MinLaw invites members of the public to provide views on SIDRA's report, with a focus on the following eight (8) issues:

    a. **Issue 1:** Whether to confer the power to make cost orders for arbitral proceedings following a successful setting aside of an award on the court;

    b. **Issue 2:** Whether separate cost principles should be applied in respect of unsuccessful setting aside applications;

    c. **Issue 3:** Whether to introduce a leave requirement for appeals to the Court of Appeal arising from a High Court decision in a setting aside application;

    d. **Issue 4:** Whether the time limit to file a setting aside application should be reduced;

    e. **Issue 5:** Whether a right of appeal on questions of law is desirable;

    f. **Issue 6:** How to ascertain the governing law of the arbitration agreement;

    g. **Issue 7:** Whether the review of the tribunal's jurisdiction should be conducted by way of an appeal or a rehearing; and

    h. **Issue 8:** Whether the summary disposal powers of arbitral tribunals should be set out in the IAA.

C. SUMMARY OF CURRENT FRAMEWORK AND PROPOSED AMENDMENTS

(1) Issue: Whether to confer the power to make cost orders for arbitral proceedings following a successful setting aside of an award on the court

5. Currently, the courts in Singapore have no power under the IAA to make an order in respect of the costs of the arbitral proceedings, or vary the costs award made by the tribunal, when a party is successful in its application to set aside a tribunal's award. Furthermore, the courts have no power to remit the issue of costs to the tribunal for reconsideration.[2] The current position, as set out by the Court of Appeal, is that parties are left to agree or decide individually on how to proceed.[3]

MinLaw seeks views on:

6. **Whether legislative amendments should be introduced to give Singapore courts the discretion to:**

    a. **make an order in respect of costs of the arbitration proceedings following a successful set-aside application; and / or**

[2] In England, while the English Arbitration Act ("**EAA**") does not statutorily provide for the recovery of costs incurred by arbitrating parties after a successful setting aside, the English courts have sought to overcome this by using statutory powers under the EAA to remit the issue of costs of the arbitral proceedings to the tribunal for further consideration: see for instance, sections 68(3) and 69(7) of the EAA.
[3] *CBX v CBZ* [2022] 1 SLR 47 at [84].

b. remit the issue of costs to the arbitral tribunal as an exceptional remedy when:

i. all of the parties to the award agree to the remission; and

ii. it is in the interest of justice to do so.

(2) <u>Issue: Whether separate cost principles should be applied in respect of unsuccessful setting aside applications</u>

7. In Singapore, the default position on costs in proceedings before the High Court and Court of Appeal is for party and party costs to be awarded to a successful litigant on a standard basis. Costs may be awarded on an indemnity basis only in exceptional circumstances, such as when an action is brought in bad faith or where it is speculative, hypothetical or clearly without basis.[4] In the SICC, the SICC Rules do not provide for costs to be award on a standard or indemnity basis. Instead, the quantum of any costs award will generally reflect the costs incurred by the party entitled to costs, subject to the principles of proportionality and reasonableness.[5]

8. Both the High Court and the Court of Appeal have held that there are no separate costs principles applicable to unsuccessful setting aside applications in Singapore.[6] This position is consistent with other jurisdictions such as the United Kingdom

[4] *Antitrust (Hong Kong) Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] 5 SLR 103 at [23].
[5] Order 22 rule 3(1) of the SICC Rules.
[6] While the Singapore courts have not imposed indemnity costs in unsuccessful setting aside applications to date, the courts have indicated that indemnity costs will be more readily granted where court proceedings are initiated in breach of an arbitration agreement: *BTN and another v BTP and another* [2021] SGHC 38; and *CDM and another v CDP* [2021] 2 SLR 235, *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732.

("**UK**"), Australia, Canada and Malaysia. In the SICC, costs for unsuccessful setting aside applications are subject to the principles of proportionality and reasonableness.[7]

9. MinLaw has received feedback that current cost principles in the High Court and Court of Appeal may not be sufficient to deter applicants from pursuing frivolous or unmeritorious applications, to delay proceedings and hinder a successful counterparty's attempts to enforce its rights under the arbitral award.

10. As seen in *A v R* [2010] 3 HKC 67, the courts in Hong Kong are of the view that to award costs on a standard basis would "only encourage the bringing of unmeritorious challenges to an award"[8]. Thus, the Hong Kong courts grant indemnity costs as a default when an arbitral award is unsuccessfully challenged, unless special circumstances can be shown.

MinLaw seeks views on:

11. **Whether there is anecdotal or empirical evidence of applicants using setting aside applications to drag out the resolution of a matter and / or the enforcement of an arbitral award.**

[7] *Reliance Infrastructure Limited v Shanghai Electric Group Co Ltd* [2024] SGHC(I) 8; *DFI v DFJ* [2024] SGHC(I) 11.
[8] *A v R* [2010] 3 HKC 67 at [71].

12. **Whether there is a need to adopt separate cost principles for unsuccessful setting aside applications to disincentivise frivolous and unmeritorious setting aside applications, and if so, whether this should be on an indemnity basis or a different framework.**

(3) <u>Issue: Whether to introduce a leave requirement for appeals to the Court of Appeal arising from a High Court decision in a setting aside application</u>

13. Currently, a High Court's decision on the setting aside of an arbitral award is appealable as of right.[9]

14. Singapore's position differs from the UK and Hong Kong, where permission from the court of first instance is required for any appeal from a decision of that court.[10]

15. Similar to the issue of separate cost principles above, there may be a concern that it may be too easy for an unsuccessful party in a setting aside application to appeal to the Court of Appeal. This may encourage some applicants to pursue frivolous or unmeritorious appeals with the intention of evading enforcement. Imposing a requirement to obtain permission from the appellate court may sieve out such unmeritorious and vexatious appeals and reduce time and costs overall.

[9] See sections 29 and 29A, read together with the Fourth and Fifth Schedule of the Singapore Court of Judicature Act.
[10] For Hong Kong, see sections 81(4) and 84(3) of the Hong Kong Arbitration Ordinance ("**HKAO**"); and for the UK, see sections 67–69 of the UK's EAA.

MinLaw seeks views on:

16. **How the time taken for setting aside applications to be disposed of by the Singapore courts, compares with the experience in other jurisdictions.**

17. **Whether the IAA should be amended:**

    a. **To require parties to obtain permission to appeal against a decision of the High Court on both setting aside and resisting enforcement applications (whether successful or otherwise) to prevent frivolous, unmeritorious, or vexatious appeals;**

    b. **That the application for permission should be heard by the High Court or the Court of Appeal; and**

    c. **For any such application to be decided without hearing as a default, unless the Court determines otherwise.**

(4) Issue: Whether the time limit to file a setting aside application should be reduced

18. Currently, setting aside applications must be filed within three months of receipt of the arbitral award (under Article 34(3) of the Model Law). The courts have held that

the three-month time limit is absolute and cannot be extended,[11] even in cases involving fraud or corruption or applications made under section 24 of the IAA.[12] This approach aligns with Singapore's policy of promoting speedy and final resolution of disputes in arbitration.

(a) Time limit

19. Other jurisdictions have adopted shorter time limits for setting aside applications to give effect to the principle of finality. The UK, for instance, imposes a 28-day limit for setting aside application,[13] while Switzerland has a 30-day limit.[14]

(b) Discretion to extend time

20. For these other jurisdictions that have adopted shorter time limits, they have generally provided some form of discretion for the courts to extend the time limit. English courts are more accepting of a longer delay if coupled with reasons such as fraud,[15] while the Swiss courts allow parties to review their awards within 90 days of becoming aware of the relevant grounds for review, if the award is tainted by criminal acts or fresh evidence that could impact the outcome of arbitral proceedings.[16]

[11] *ABC Co v XYZ Co Ltd* [2003] 3 SLR(R) 546.
[12] *Bloomberry Resorts and Hotels Inc v Global Gaming Philippines LLC* [2021] 1 SLR 1045.
[13] Section 70(3) of the EAA.
[14] Article 190(4) of the Private International Law Act ("**PILA**").
[15] *Federal Republic of Nigeria v Process & Industrial Developments Ltd* [2020] EWHC 2379 (Comm).
[16] Article 190a(2) of the PILA.

MinLaw seeks views on:

21. Whether the IAA should be amended to:

a. shorten the three-month time limit for the filing of setting aside applications; and / or

b. give the courts the discretion to extend the time limit to file an application under section 24(a) of the IAA, where the award may be tainted by fraud or corruption.

(5) Issue: Whether a right of appeal on questions of law is desirable

22. Currently, except for appeals on jurisdictional rulings[17] and setting aside applications[18], the IAA does not provide for the possibility of a judicial review of arbitration awards governed by the IAA, even if the tribunal had made a serious error of law in its final award.

23. Unlike Singapore, other jurisdictions have provided parties with a right of appeal from arbitral awards on points of law. Hong Kong for instance, provides for an optional right

[17] Section 10 of the IAA.
[18] Section 24 of the IAA.

of appeal from arbitral awards on questions of law, on an opt-in basis,[19] while the UK provides for the same, on an opt-out basis.[20]

24. In jurisdictions where appeals from arbitral awards on points of law are permitted, the threshold required for leave to appeal is generally high. In the UK, requirements that must be met before the English court will grant leave to appeal include the applicant having to demonstrate that the legal question is of general public importance, and that the tribunal's decision is clearly wrong or at least open to serious doubt.[21] Similarly, the Hong Kong courts have noted the policy of minimal curial intervention, and have stated that the threshold for leave to appeal is high.[22]

25. Providing an opt-in right of appeal on points of law in the IAA could potentially add to the suite of options available to commercial parties, and enhance party autonomy and flexibility.

MinLaw seeks views on:

26. Whether the IAA should be amended to introduce a right of appeal on points of law, on an opt-in basis.

[19] Section 99(e) read with Schedule 2, section 6 of the HKAO.
[20] Section 69 of the EAA.
[21] Section 69(3) of the EAA.
[22] *Employer v Contractor* [2023] HKCFI 2911.

27. If so, whether:

a. **appeal on "points of law" should be restricted to Singapore law, or whether it should include foreign or international law;**

b. **to clarify that the right of appeal is not waived merely by operation of institutional rules (such as the SIAC or ICC rules), which may include automatic waiver provisions;**

c. **to expressly require appeals to be decided on the basis of the findings of fact in the award;**

d. **to make provisions for the costs of the court and arbitral proceedings; and**

e. **to provide that applications for permission to further appeal from the High Court shall be determined by the appellate court.**

(6) <u>Issue: How to ascertain the governing law of the arbitration agreement</u>

28. The Singapore courts adopt a three-stage framework to determine the governing law of an arbitration agreement ("**Singapore Common Law Approach**"):[23]

    a. **Stage 1 – express choice of law:** where parties have expressly chosen a governing law of the arbitration agreement.

    b. **Stage 2 – implied choice of law:** generally, without an express choice, Singapore courts will adopt the governing law of the main contract as the choice of law of the arbitration agreement, unless there are indications to the contrary.

    c. **Stage 3 – law with the closest and most real connection with the arbitration agreement:** this is usually accepted to be the law of the seat of arbitration.

29. Prior to the amendments set out in the UK Arbitration Act 2025, the English position for determining the governing law of an arbitration agreement was broadly similar to the Singapore Common Law Approach.

[23] *BCY v BCZ* [2017] 3 SLR 357; *BNA v BNB and another* [2020] 1 SLR 456; and *Anupam Mittal v Westbridge Ventures II Investment Holdings* [2023] 1 SLR 349.

30. Under the UK Arbitration Act 2025, the law of the seat will govern the arbitration agreement, unless expressly agreed otherwise. The default choice of law of the seat was intended to introduce simplicity and encourage the application of the law of England and Wales.

MinLaw seeks views on:

31. Whether Singapore should:

a. **retain the Singapore Common Law Approach;**

b. **enact a statutory choice of law approach in the IAA; or**

c. **adopt the English position under the UK Arbitration Act 2025,**

in ascertaining the governing law of the arbitration agreement.

32. If you are of the view that (b) should be done, whether Singapore should enact a statutory choice of law approach in the IAA based on the following principles, to provide greater certainty and predictability for commercial parties who wish to arbitrate their disputes or enforce their awards in Singapore:

a. **The law which the parties have subjected their arbitration agreement to, shall be the law that parties expressly designate as applicable to the arbitration agreement;**

b. In the absence of an express designation, the law which the parties have subjected their arbitration agreement to, shall be the law that the parties expressly designate as applicable to any contract which contains that arbitration agreement; and

c. If no law has been expressly designated by the parties as applicable to any contract which contains that arbitration agreement, the law applicable to the arbitration agreement shall be the law of the seat of arbitration.

(7) <u>Issue: Whether the review of the tribunal's jurisdiction should be conducted by way of an appeal or rehearing</u>

33. Presently, a tribunal's ruling on jurisdiction is subject to *de novo* review by the Singapore courts, following a challenge under section 10(3) of the IAA by any party to the arbitration,[24] or in a setting-aside application.[25]

34. This means that Singapore courts can review the matter anew, without any deference granted to the tribunal's fundings on its jurisdiction. This position is consistent with other jurisdictions such as Hong Kong, Australia, Canada, France, Germany and the United States.

[24] *BCY v BCZ* [2017] 3 SLR 357 at [36].
[25] *COT v COU* and other and other appeals [2023] SGCA 31 at [29].

35. Under the UK Arbitration Act 2025, the English position has been changed from permitting a *de novo* review, to only allowing a limited review. Where an objection has been made to the tribunal that it lacks jurisdiction and the tribunal has already ruled on its jurisdiction, in any subsequent challenge by a party who had participated in the arbitration proceedings, the court will not hear any new grounds of objection or any new evidence, unless it could not with reasonable diligence have been put before the tribunal, and evidence will not be reheard, save in the interests of justice.

36. The amendment as set out in the UK Arbitration Act 2025 was motivated by the considerations that a full rehearing could be wasteful in terms of time and costs, and unfair in that it essentially allows a losing party who raises a jurisdiction challenge before the tribunal to strategically refine its case for another hearing before the court.

MinLaw seeks views on:

37. **Whether the court's review of a tribunal's jurisdiction should continue to be conducted by way of a *de novo* review.**

(8) <u>Issue: Whether the summary disposal powers of arbitral tribunals should be set out in the IAA</u>

38. Currently, the IAA does not expressly set out the summary disposal powers of arbitral tribunals, notwithstanding that the arbitration rules of the major institutions provide for it in some form.[26]

39. In the UK, the UK Arbitration Act 2025 has included a provision to expressly confer a power on arbitrators to make an award on a summary basis, on an application by a party, if the tribunal considers that the party has no real prospect of succeeding on that issue or in the defence of the issue. This power will not be mandatory, and parties can agree to opt-out.

<u>MinLaw seeks views on:</u>

40. Whether the IAA should be amended to expressly provide that unless otherwise agreed by parties, the arbitral tribunal has the power to summarily dispose of any issue, claim or defence (or part thereof) in dispute by way of an award.

[26] See for example Rule 47 of the Singapore International Arbitration Centre ("**SIAC**") Rules 2025; Article 22.1(viii) of the London Court of International Arbitration ("**LCIA**") Arbitration Rules 2020; Article 43.1 of the 2024 Administered Arbitration Rules of the Hong Kong International Arbitration Centre ("**HKIAC**"); Article 39 of the SCC Arbitration Rules; and Article 23 of the International Centre for Dispute Resolution ("**ICDR**") Rules.

D. INVITATION FOR VIEWS AND FEEDBACK

41. The Ministry welcomes those interested to provide their views on the issues above, and any other feedback on how to improve Singapore's international arbitration framework to support the needs of commercial users.

42. When providing views and feedback, please let us know whether you are willing to be contacted by the Ministry for follow-up discussions. Respondents are requested to observe these guidelines:

    a. Indicate your name and the organisation you represent (if applicable), and your contact details (email address and/or telephone number), so we may follow up on your feedback and seek clarification, if necessary; and

    b. State clearly which specific issue you are giving feedback on.

43. The consultation period is from 20 March to 2 May 2025. All views and feedback may be submitted at the following link: https://go.gov.sg/singapore-international-arbitration-regime.