

A Guide to Arbitration in Singapore

Legislative and Administrative Framework

1. What legislation governs arbitration in Singapore?

The Arbitration Act (Cap 10) provides the legislative framework for domestic arbitrations proceeding in Singapore. The International Arbitration Act (Cap 143A) provides the legislative framework for international arbitrations. An international, as distinguished from a domestic, arbitration is an arbitration in which:

- (a) at least one of the parties to the arbitration agreement, at the time of the conclusion of the agreement, has its place of business outside Singapore;
- (b) the place of arbitration *or* where a substantial part of the commercial obligations are to be performed *or* where the subject matter of the dispute is closely connected, is different from the place where the parties have their business; *or*
- (c) the parties expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

The International Arbitration Act (Cap 143A) incorporates the Model Law adopted by United Nations Commission on International Trade Law (“**UNCITRAL Model Law**”). The UNCITRAL Model Law provides a legislative framework adopted by many jurisdictions around the world for international arbitrations proceeding in that jurisdiction.

2. Which institutions in Singapore administer arbitrations?

The Singapore International Arbitration Centre (the “**SIAC**”) administers international arbitrations seated in Singapore. The International Court of Arbitration of the International Chamber of Commerce (the “**ICC**”) has a case management team in Singapore to administer ICC arbitrations in Singapore and around the region. The Singapore Chamber of Maritime Arbitration (the “**SCMA**”) provides a framework for maritime arbitration, as well as administrative support to SCMA arbitration users.

These are not to be confused with the Singapore Institute of Arbitrators, which is a professional body dedicated to the education of arbitration practitioners and the development of the arbitrator profession.

Arbitration Agreement

3. What are the requirements of an enforceable arbitration agreement?

An “arbitration agreement” is an agreement to submit certain disputes arising in respect of a defined legal relationship (whether contractual or not) to arbitration. Parties may provide for the “arbitration agreement” in the contract or in a separate agreement.

The “arbitration agreement” should be in writing or otherwise recorded or memorialised. For example, a document including, or referring to another document including, the “arbitration agreement”; or exchanged letters, facsimiles or other communications (including electronic communications) that record the “arbitration agreement”; or exchanged pleadings such as statements of claim and defence in which the existence of an “arbitration agreement” is alleged by one party and not denied by another.

4. What model arbitration clause is used in Singapore?

The arbitration agreement should specify that all disputes be referred to arbitration: (a) to be administered by a named arbitral institution; (b) to be resolved in accordance with named arbitration rules; (c) seated in a particular location; (d) before an odd number of arbitrators; and (e) conducted in a specific language. Parties intending to resolve their disputes by arbitration may consider adopting the following model arbitration clause:

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the [Singapore International Arbitration Centre (“SIAC”)] in accordance with the [Arbitration Rules of the Singapore International Arbitration Centre (“SIAC Rules”)] for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be [Singapore]. The Tribunal shall consist of [odd number] arbitrator(s). The language of the arbitration shall be English.

Commencing an Arbitration

5. How is an arbitration commenced?

An arbitration is commenced by serving a Notice or Request for Arbitration on the Respondent or with the arbitral institution identified in the arbitration agreement that will then serve the Notice or Request on the Respondent. The Notice or Request should include the basic information specified by the arbitration rules identified in the arbitration agreement or, absent such agreement, the UNCITRAL Arbitration Rules.

6. When is an arbitration commenced?

For arbitrations administered by the SIAC, an arbitration is commenced on the date when the Registrar of the SIAC receives the Claimant's Notice of Arbitration.

For domestic arbitrations not administered by the SIAC, unless otherwise agreed by the parties, an arbitration is commenced on the date when the request for that dispute to be referred to arbitration is received by the Respondent.

For international arbitrations not administered by the SIAC, the commencement date shall be determined by the arbitration rules governing the arbitration proceedings as agreed by the parties, alternatively by the legislation governing the arbitration.

7. Can litigation proceedings be stayed in favour of arbitration?

Yes.

If a party to an arbitration agreement institutes litigation proceedings in respect of any matter which is the subject of that agreement, then any other party to the agreement may (at any time after appearance and before taking any step in the proceedings) apply to stay the litigation proceedings insofar as the proceedings relate to that matter.

For domestic arbitrations, the court will stay the litigation proceedings if the court is satisfied that: (a) there is no reason not to proceed in accordance with the arbitration agreement; and (b) the party applying for stay remains ready and willing to do all things necessary for the proper conduct of the arbitration.

For international arbitrations, the court will stay the litigation proceedings unless the arbitration agreement is null and void, inoperative or incapable of being performed.

Arbitral Tribunal

8. How is the arbitral tribunal appointed?

Parties may agree a procedure for appointing the arbitral tribunal. Absent agreement and insofar as the arbitration is administered by the SIAC then:

- (a) the Chairman of the SIAC shall appoint the sole arbitrator, if the parties are unable to agree on the arbitrator; and
- (b) in an arbitration with three arbitrators, each party shall appoint one arbitrator and the parties plus their appointed arbitrators shall appoint the third arbitrator. If a party fails

to appoint his arbitrator or both parties fail to agree on the third arbitrator, then the Chairman of the SIAC shall make the appointment.

If the arbitration is not administered by the SIAC then either party may apply to the High Court to appoint the sole arbitrator or the presiding arbitrator in a panel of three.

9. Can arbitral appointments be challenged?

Yes.

Parties may agree the procedure for challenging the appointment of an arbitrator. If there is no agreement, then a party wishing to challenge the appointment of an arbitrator shall: (a) within 15 days after becoming aware of the constitution of the arbitral tribunal; or (b) after becoming aware of circumstances constituting grounds for challenging an arbitrator, submit to the Tribunal a written statement of the reasons for challenging the arbitrator. Unless the challenged arbitrator withdraws from office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

If the challenge is unsuccessful, then the challenging party may, within 30 days after receiving the Tribunal's decision, apply to the Singapore High Court to decide on the challenge. There shall be no appeal against the decision of the High Court. Whilst the application is pending with the Singapore High Court, the arbitral tribunal (including the challenged arbitrator) may continue the arbitration proceedings and may make an award.

10. What are the powers of the arbitral tribunal?

Subject to the procedural rules agreed between the parties, the arbitral tribunal is empowered to conduct the arbitration as it considers fair and equitable to the parties.

During the course of the arbitration, the arbitral tribunal shall have the powers to make orders or give directions to any party for: (a) security for costs; (b) discovery of documents and interrogatories; (c) giving of evidence by affidavit; (d) the preservation, interim custody or preservation of any property which is or forms part of the subject-matter of the dispute; (e) samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject-matter of the dispute; (f) the preservation and interim custody of any evidence for the purposes of the proceedings; (g) examining a party or witness on oath or affirmation; (h) securing the amount in dispute; (i) ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and (j) an interim injunction or any other interim measure.

Having exercised its power in making an order or giving a direction, such orders or directions shall (by leave of the Singapore High Court) be enforceable in the same manner

as if they were orders made by the Singapore High Court and, where leave is so given, judgment may be entered in terms of such order or direction.

Arbitration Procedure

11. What procedural rules govern the arbitration?

Parties may agree the procedure to be followed by the arbitral tribunal in conducting the arbitration. Parties may adopt procedural rules of arbitral institutions (i.e., the SIAC Rules) or the UNCITRAL Arbitration Rules that are adopted in the absence of institutional rules. Frequently, the Tribunal will adopt the IBA Rules and Guidelines on International Arbitration to supplement the procedural rules agreed or determined for the arbitration.

12. What evidential rules govern the arbitration?

The Evidence Act (Cap 97) does not apply to arbitration proceedings. Parties, in conjunction with the arbitral tribunal, may agree the evidential rules to be used. They may agree to adopt the International Bar Association's Rules on the Taking of Evidence.

Arbitral Award

13. What are the grounds for appealing against, or setting aside, an arbitral award?

A party may appeal a domestic arbitral award with leave of the Singapore High Court. The appeal must relate to a question of law arising out of an arbitral award. On appeal of the arbitral award, the Singapore High Court may confirm the arbitral award, vary the arbitral award, remit the arbitral award (in whole or in part) to the arbitral tribunal for reconsideration, or set aside the arbitral award (in whole or in part).

A party may set aside a domestic or international arbitral award on the following grounds:

- (a) a party to the arbitration agreement was under some incapacity;
- (b) the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any express governing law, under Singapore law;
- (c) the party making the application was not given proper notice of the appointment of an arbitrator or the arbitral proceedings or was otherwise unable to present its case;
- (d) the arbitral 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 that submission, provided that, if the matters submitted to arbitration can

be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside;

- (e) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of Singapore law from which the parties cannot derogate or, failing such agreement, was not in accordance with Singapore law;
- (f) the subject of the dispute is arbitrable under Singapore law;
- (g) the arbitral award is in conflict with the public policy of Singapore;
- (h) the making of the award was induced or affected by fraud or corruption; or
- (i) a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced.

14. How are arbitral awards enforced?

Arbitral awards made in or outside of Singapore may be enforced in the same manner as a judgment or order of the Singapore High Court.

15. What are the grounds for objecting to the enforcement of arbitral awards?

Arbitral awards made in Singapore may be set aside or appealed on a case-by-case basis. Arbitral awards made outside Singapore (i.e., foreign arbitral awards) may be refused enforcement on these grounds: (a) the grounds set out at responses 13(a) to 13(e) above; (b) the arbitral award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the arbitral award was made; (c) the subject-matter of the dispute is arbitrable under Singapore law; and (d) the recognition or enforcement of the award would be contrary to the public policy of Singapore.

Cost of Arbitration

16. What are the costs of arbitration?

The costs of arbitration include: (a) the fees for filing the arbitration claim; (b) the fees of the arbitral tribunal; (c) the fees of any expert appointed by the Tribunal; (d) the fees of the institution administering the arbitration; and (e) reasonable disbursements. In addition, parties will incur counsel's fees and the fees of party appointed experts.

17. What are the fees of the arbitral tribunal?

For arbitrations conducted under the SIAC Rules, and subject to any application to SIAC, the maximum fee payable to each arbitrator is set out in the table below:

Sum in Dispute	Arbitrator's Fees
Up to 50,000	6,250
50,001 to 100,000	6,250 + 13.800% excess over 50,000
100,001 to 500,000	13,150 + 6.500% excess over 100,000
500,001 to 1,000,000	39,150 + 4.850% excess over 500,000
1,000,001 to 2,000,000	63,400 + 2.750% excess over 1,000,000
2,000,001 to 5,000,000	90,900 + 1.200% excess over 2,000,000
5,000,001 to 10,000,000	126,900 + 0.700% excess over 5,000,000
10,000,001 to 50,000,000	161,900 + 0.300% excess over 10,000,000
50,000,001 to 80,000,000	281,900 + 0.160% excess over 50,000,000
80,000,001 to 100,000,000	329,900 + 0.075% excess over 80,000,000
100,000,001 to 500,000,000	344,900 + 0.065% excess over 100,000,000
Above 500,000,000	605,000 + 0.040% excess over 500,000,000 up to a maximum of 2,000,000

For arbitrations not conducted under the SIAC Rules, arbitrators may be subject to the fee guidelines of other arbitral institutions. In the absence of such guidelines, arbitrators will usually agree their hourly or fixed rates before accepting the appointments.

18. What are the administration fees for arbitrations administered by the SIAC?

The SIAC charges an administration fees for all (domestic and international) arbitrations administered by the SIAC. This is provided in the table below:

Sum in Dispute (S\$)	Administration Fees (S\$)
Up to 50,000	3,800
50,001 to 100,000	3,800 + 2.200% excess over 50,000
100,001 to 500,000	4,900 + 1.200% excess over 100,000
500,001 to 1,000,000	9,700 + 1.000% excess over 500,000
1,000,001 to 2,000,000	14,700 + 0.650% excess over 1,000,000
2,000,001 to 5,000,000	21,200 + 0.320% excess over 2,000,000

5,000,001 to 10,000,000	30,800 + 0.160% excess over 5,000,000
10,000,001 to 50,000,000	38,800 + 0.095% excess over 10,000,000
50,000,001 to 80,000,000	76,800 + 0.040% excess over 50,000,000
80,000,001 to 100,000,000	88,800 + 0.031% excess over 80,000,000
Above 100,000,000	95,000

The administration fees do not include fees and expenses of the arbitral tribunal, cost of facilities and support services in connection with any hearing, and expenses incurred by the SIAC in the administration of the arbitration or the appointment of arbitrators.

19. What are the legal fees for representation by legal counsel?

Sharpe & Jagger LLC always provides clients with a budget that identifies staged payments throughout the arbitration and which budget is reasonable to the amount in dispute. For more information, please see our Fees & Rates published on our website.

20. Who pays the cost of the arbitration?

The parties can agree that each party bears its own costs and that the costs of the arbitration are shared equally. Absent any agreement, the arbitral tribunal has the power to determine the liability for, and the amount of, the costs incurred by both parties.

The arbitral tribunal would usually order the unsuccessful party to pay the cost of the arbitration (including the legal costs of the successful party). The amount of costs payable is determined by reference to the reasonableness of the costs incurred and the conduct of the parties during the arbitration. The Tribunal will also take note of any Calderbank Offer served in the arbitration that can reverse the costs burden if the offer is not beaten.