Issues With Enforcement of Arbitral Awards in Singapore

Singapore is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Arbitration Awards (New York Convention), which has been enacted into Singaporean law. The laws relating to the recognition and enforcement of foreign arbitral awards substantially reflect the provisions of the New York Convention.

Foreign arbitral awards are presumed to be enforceable upon application to the High Court of Singapore unless one of the reasons for refusal can be made out by the respondent. A foreign arbitral award may then be enforced as if it was a decision of the High Court.

Domestic arbitral awards, like foreign arbitral awards, may be enforced as if it was a decision of the High Court.

International Arbitration

International arbitration in Singapore is governed by the International Arbitration Act (Cap 143A) (IA Act). Section 3 of the IA Act provides that the UNCITRAL Model Law on International Commercial Arbitration (Model Law) is to have force of law in Singapore (with the exception of Chapter VIII) subject to the IA Act.

Arbitration is considered international under Part II of the IA Act if it means the definition at section 5 of the IA Act.1 In addition to the definition, the IA Act may also apply to domestic arbitration if the parties have agreed in writing that Part II of the IA Act or the Model Law applies.2

Singapore is also a signatory to the New York Convention, which is enacted into Singaporean domestic law in the IA Act and is annexed to the IA Act as the Second Schedule. This allows the enforcement of arbitral awards from the other signatories to the New York Convention.

Application of Enforcement Provisions

Part III of the IA Act allows for a foreign award, being an arbitral award made in pursuance of an agreement in writing of the kind referred to in paragraph 1 of Article II of the New York Convention in the territory of a signatory to the New York Convention, to be recognised and enforced in Singapore.3

Section 29 of the IA Act states that a foreign award may be enforced in a court either by action or in the same manner as an award of an arbitrator made in Singapore is enforceable under section 19. Any foreign award that is enforceable is recognised as binding for all purposes upon the parties between whom it was made, and may accordingly be relied upon by any of those parties by way of defence, set-off or otherwise in any legal proceedings in Singapore.
**Formalities Required for Enforcement**

A party seeking enforcement of a foreign arbitral award in Singapore must fulfil the following requirements before it can be enforceable under the IA Act:

- Produce an original or certified copy of the award;
- Produce an original or certified copy of the arbitration agreement; and
- Translate any document that is not in English.

When these requirements are met, and an application for leave to enforce the award is made within six years of the making of the award, the High Court will usually grant leave to enforce the foreign arbitral award as if it was a Singapore Court Order or Judgment. This is because the court cannot review the case on the merits.

**Enforcement of Arbitral Awards**

Section 29 of the IA Act reflects the fact that Singapore is a signatory to the New York Convention, as a foreign award under the Act is presumed to be enforceable unless one of the reasons for refusal outlined in section 31 of the IA Act applies.

The reasons for refusal under section 31 of the IA Act correspond to the grounds for refusing to enforce arbitral awards outlined in Article V of the New York Convention – these are as follows:

- A party was under some incapacity at the time the relevant arbitration agreement was made.
- The arbitration agreement was invalid.
- A party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings.
- The award was made outside the jurisdiction of the arbitral tribunal.
- The composition of the tribunal or the arbitral procedure was not in accordance with the parties’ arbitration agreement or the laws where the arbitration was conducted.
- The award has not yet become binding on the parties or has been set aside or suspended by a competent authority in the jurisdiction where the arbitration was conducted.

Furthermore, the court asked to enforce the foreign arbitral award may refuse to enforce the award if it finds that:

- The dispute between the parties was not capable of settlement by arbitration under the laws of Singapore; or
- To enforce the award would be contrary to public policy.

**Remedies Available to Enforce Arbitral Awards**

Once the High Court grants leave to enforce the foreign arbitral award, the successful party can then take various steps to enforce the award in Singapore. Such steps include filing garnishee proceedings (an order made by the court to allow you to recover the judgment debt from the debtor’s, e.g. from their bank account) and obtaining a writ of seizure and sale in respect of the award debtor’s assets in Singapore.

**Foreign Awards Made in Countries or Territories That Are not Signatories to the New York Convention**

Singapore did not make a reciprocity reservation upon ratification of the New York Convention. Therefore, Singapore agrees to enforce all arbitral awards from other countries in the same manner regardless of whether the other country is a signatory to the New York Convention.
Foreign awards made in countries and territories that are not signatories to the New York Convention may also be enforced in Singapore in the same manner as a judgment or order to the same effect, with the leave of the High Court. If leave is granted, judgment will be entered in terms of the foreign award.

**Domestic Arbitration**

Domestic arbitration in Singapore is governed by the Arbitration Act (Cap 10) (Arbitration Act).

The Arbitration Act was enacted to align the laws applicable to domestic arbitration with the Model Law. Domestic arbitration is considered arbitration where the place of arbitration is Singapore and where Part II of the IA Act does not apply to that arbitration.\(^7\)

Section 46 of the Arbitration Act states a domestic arbitral award made by the arbitral tribunal pursuant to an arbitration agreement may, with leave of the High Court, be enforced in the same manner as a judgment or order of the Court to the same effect. The Arbitration Act echoes the grounds for refusal as outlined in Article V of the New York Convention which are listed above.

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**Take Away Points**

The key points to takeaway in relation to the enforcement of arbitral awards in Singapore are as follows:

- Singapore is a signatory to the New York Convention, meaning the procedures regarding recognition and enforcement of foreign arbitral awards in Singapore reflect the New York Convention.
- When the formal requirements are met, the foreign arbitral award is presumed to be enforceable, unless one of the grounds for refusing to enforce arbitral awards applies.
- Foreign awards made in countries and territories that are not signatories to the New York Convention will be enforced in the same way as if they were a signatory to the New York Convention.

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**Footnotes**

1. Arbitration is considered international under Part II of the IA Act if: 1) at least one of the parties to the arbitration agreement has its place of business in a state other than Singapore at the time when the agreement was concluded; 2) one of the following places is situated outside the state where the parties have their place of business: a) the place of arbitration; b) anywhere that a substantial part of the obligations of the commercial relationship is to be performed or the place to which the subject matter of the dispute is most closely connected; or the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country: International Arbitration Act (Cap 143A) s 5(2).
2. International Arbitration Act (Cap 143A) s 5(1).
3. International Arbitration Act (Cap 143A) s 29(1).
4. Arbitration Act (Cap 10) s 30(1).
6. Arbitration Act (Cap 10) s 19.
7. Arbitration Act (Cap 10) s 3.