Enforcement Series

2026

The SCMA Enforcement Series 2026 provides a clear and practical guide to the recognition and enforcement of SCMA arbitral awards in key Asia Pacific maritime and trading jurisdictions. The chapters give an overview of the procedural steps, timelines and issues that users may consider in enforcement proceedings.

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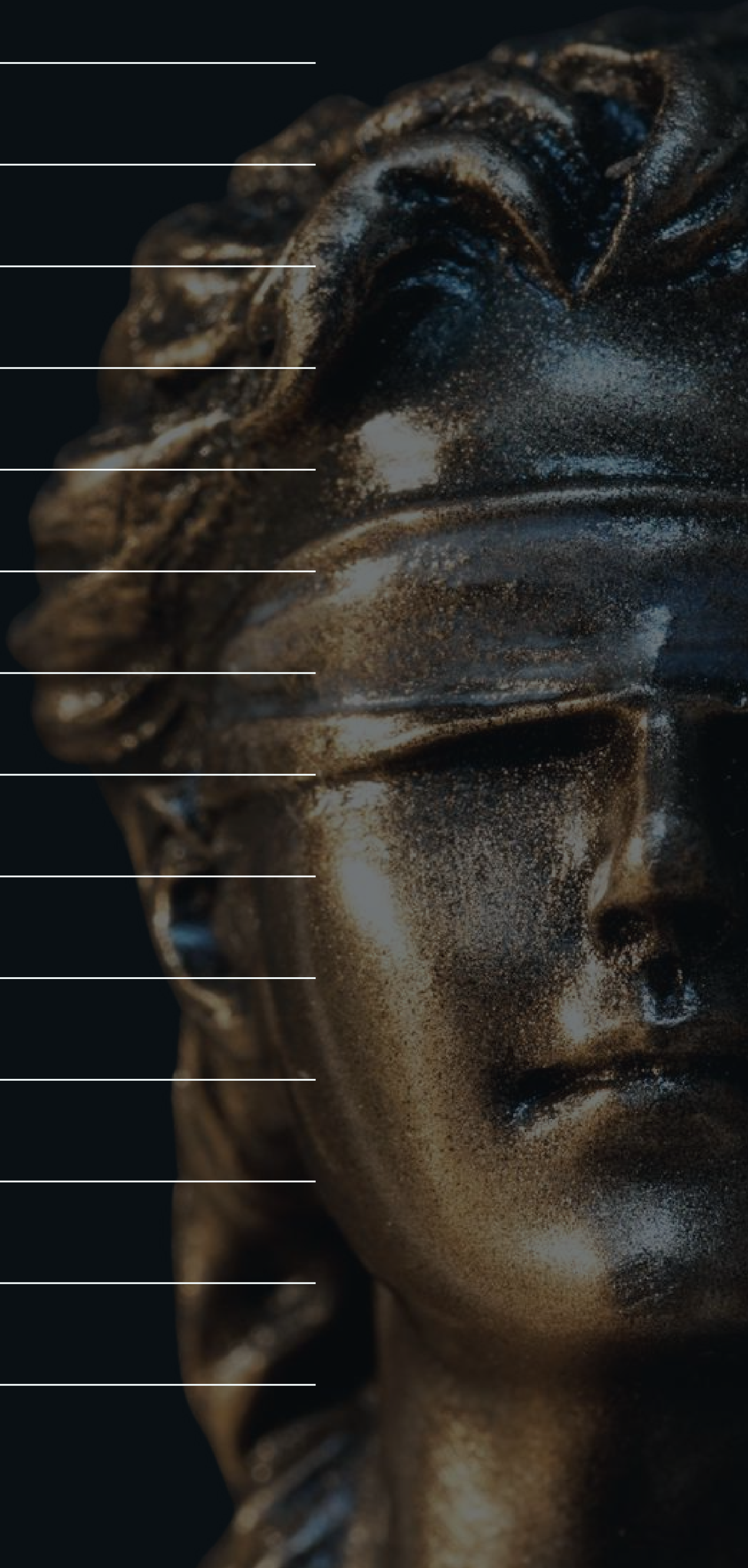

AUSTRALIA

Arbitration and Maritime Law in Australia

Introduction

According to the 2020 survey conducted by the Australian Centre for International Commercial Arbitration ("**ACICA**"), arbitration in Australia is 'thriving'.[1] Indeed, ACICA received 13 new administered arbitration cases in 2024with a cumulative value of almost AUD$74.45 million, bringing the total number of administered cases to 54, with a total value exceedingAUD$3.315 billion.[2] 46% of these cases were international involving at least one non-Australian party.[3]

The 2010 arbitration law reforms modernised Australia's legal arbitration framework and brought it in line with international standards.[4] Judgments of Australian Courts demonstrate an approach supportive of arbitral proceedings, as well as a pro-enforcement attitude towards foreign arbitral awards.

Australia has well-developed maritime and admiralty laws with the *Admiralty Act 1988* (Cth) ("**Admiralty Act**") and the *Carriage of Goods by Sea Act 1991* (Cth) ("**COGSA**") at the pinnacle. These statutory laws complement the arbitration framework.

Both institutional and ad hoc arbitrations are gaining popularity due in part to the favourable approach of Australian Courts exercising supervisory jurisdiction.[5]

There is a longstanding practice in Australia of recognition and enforcement of arbitral awards rendered by Singaporean arbitral tribunals, of which SCMA is considered to be one of the most important for maritime claims.

Overview of Australian Law on Arbitration

Overview

Arbitration is a significant mode of dispute resolution within the Asia-Pacific region and Australia. ACICA reported that between 2016 to 2019, a total of 223 arbitrations involving an Australian connection were recorded, with over A$35 billion in dispute.[6]

International arbitration in Australia is governed by the *International Arbitration Act 1974* (Cth) ("**IAA**"). In 2010, the international arbitration regime in Australia underwent a series of reforms aimed at supporting arbitration which resulted in the implementation of amendments to the IAA. The IAA gives effect to the UNCITRAL Model Law[7] and implements the New York Convention,[8] which in turn governs the recognition and enforcement of foreign arbitration awards (discussed in greater detail below).

Domestic arbitration is governed by state and territory laws which have all adopted relatively uniform legislation based on the UNCITRAL Model Law in the form of a Commercial Arbitration Act.[9] Where the UNCITRAL Model Law applies, the arbitration law of an Australian State or Territory will not apply under section 21 of the IAA.[10]

Provisions of the IAA

Section 16(1) of the IAA gives force to the UNCITRAL Model Law.[11] Subject to limited exceptions, the provisions of the UNCITRAL Model Law govern international arbitration in Australia. For

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example, unlike in jurisdictions such as Singapore and Hong Kong, Article 17B of the UNCITRAL Model Law does not form part of Australian law and so in Australia,[12] parties are required to apply to a Court (not the arbitral tribunal) for *ex parte* interim measures, such as freezing or search orders. All other interim measures are permitted.

The IAA contains several provisions in aid of arbitration proceedings that supplement the UNCITRAL Model Law. For example, Division 3 of Part III of the IAA confers powers on the Australian Courts to make orders assisting parties with gathering evidence in arbitral proceedings, such as issuing subpoenas.[13] Section 23K of the IAA confers power on arbitral tribunals to order security for costs.[14] Sections 25 and 26 of the IAA allow for an award of pre and post judgment interest in arbitral proceedings.[15]

Pro-arbitration Spirit

Australia's integrated statutory framework for domestic and international arbitration is supported by a pro-arbitration approach taken by the Australian Courts. For example, the High Court of Australia has recognised that the UNCITRAL Model Law limits the power of Australian Courts to intervene in matters governed by the UNCITRAL Model Law except where curial intervention is provided for by the UNICTRAL Model Law,[16] such as the setting aside of arbitral decisions made by a tribunal that was *functus officio.*[17]

Several pieces of legislation in Australia provide for the stay of competing court proceedings in favour of arbitration. Section 7(2) of the IAA provides that on an application by a party to a relevant arbitration agreement, proceedings shall be stayed and referred to arbitration, provided that certain conditions are met.[18] The Federal Court of Australia has recently exercised this power to refer a dispute in relation to a slot charterparty to arbitration.[19] Further, the Federal Court of Australia may stay proceedings in favour of arbitration pursuant to section 29 of the Admiralty Act on a condition that a ship or property under arrest in the proceedings be retained by the Court as security for the satisfaction of any award or judgment that may be made in an arbitration or in a proceeding in the Court of a foreign country.[20] The Federal Court of Australia may also refer proceedings to arbitration with or without the consent of the parties pursuant to section 53A of the *Federal Court of Australia Act 1976* (Cth).[21]

Australian Courts generally uphold arbitration agreements by giving a broad and liberal interpretation to arbitration clauses. As an example, the High Court upheld arbitration agreements contained in three separate deeds which directed parties to resolve disputes '*under this deed'* or '*all disputes hereunder'* by means of arbitration.[22] The exchange of signed letters is also sufficient evidence of a written agreement to arbitrate as provided under Article 7(2) of the UNCITRAL Model Law.[23] A clause providing for arbitration to occur in London has also recently been upheld by the High Court, with an undertaking given by the carrier that the Australian Amended Hague Rules apply to the relevant Bill of Lading.[24]

However, parties considering including, or relying upon, arbitration clauses in contracts with small businesses or consumers should be mindful of the unfair contract term regime provided by the *Australian Consumer Law*. The recent decision of the Federal Court of Australia in *AghaeiRad v Plus500AU Pty Ltd* found that an arbitration clause that was properly incorporated into the contract, and written broadly enough to cover the subject dispute, was unenforceable.[25] The Court held that the subject clause effectively prevented customers from taking disputes to court, made arbitration impractical due to its cost, and blocked access to class actions. Each of these factors created an unfair imbalance between the company and its customers, which

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resulted in a finding that the arbitration clause was an unfair contract term, and that by seeking to rely on it, Plus500 was engaging in unconscionable conduct.[26] To avoid such a finding, parties should ensure that arbitration clauses are clearly explained, and that the arbitration process is accessible, affordable and does not restrict small businesses and consumers' practical ability to resolve disputes.

Overview of Maritime Law in Australia

Admiralty Act

At the foundation of maritime law in Australia is the Admiralty Act. The Admiralty Act confers jurisdiction on the Federal Court of Australia and the Supreme Courts of Australian States and Territories to hear maritime claims. The Admiralty Act allows proceedings to be commenced *in rem* against a ship or other property[27] or *in personam* against a person or an organisation.[28]

Part III of the Admiralty Act provides exclusive bases upon which an action *in rem* may be brought, being maritime liens,[29] proprietary maritime claims,[30] owner's liabilities[31] and demise charterer's liabilities.[32]

A maritime lien is a charge attaching to a ship, cargo or freight that secures certain types of maritime claims by giving a right to enforce a claim in a Court exercising Admiralty jurisdiction.[33] In Australia, maritime liens can be supported by claims in relation to ship damage, salvage reward and crew's wages.[34] Claims for towage services and supply of necessities cannot be supported. [35] A maritime lien attaches to the property from the moment the claim arises and so enjoys priority over all other charges.[36] Australian Courts will only enforce a foreign maritime lien if it corresponds to a maritime lien found within the Admiralty Act.[37] For example, this means that maritime liens for the supply of necessaries which are recognised in the United States will not be regarded as maritime liens in Australia.

'Proprietary maritime claims' in respect of which *in rem* proceedings can be brought (broadly) include claims involving rights of possession and ownership of a ship. 'General maritime claims' include claims in respect of damage to ships and personal injury or personal liability as a result of a defect in a ship,[38] as well as claims for the enforcement of or arising out of an arbitral award made in respect of a claim referred to in the Admiralty Act.[39] Additionally, 'general maritime claims' may be brought against surrogate ships, if the owner of the surrogate ship was the relevant person which owned or chartered, or was in possession or control of, the first ship when the cause of action arose.[40] Holders of maritime liens do not have a right of surrogate ship arrest as maritime liens attach only to the ship in respect of which the claim arises.[41]

The procedure for matters under the Admiralty Act is prescribed by the *Admiralty Rules 1988* (Cth) and is supported by the *Federal Court Rules 2011* (Cth).[42] Broadly speaking, proceedings *in rem* are commenced by the filing of a writ with the Federal Court of Australia which is required to be served on the Defendant. The Plaintiff may then apply for the arrest warrant to be issued in respect of a ship or property. Given the remoteness of some ports in Australia, the Admiralty Marshal in Australia works closely with local customs or police officers or other suitable persons to assist with arrests.

Limitation periods for *in rem* proceedings are governed by the limitations acts of the respective Australian States and Territories, or in default, are set at three years.[43] For example, in New South Wales the limitation period for actions *in rem* for the recovery of crew's wages is six years and an

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action for damage as a result of a collision or for salvage services is two years.[44] This is in line with limitation periods set out in the *International Convention on Salvage 1989*[45] and the *International Convention Relating to the Arrest of Sea-Going Ships 1952*, respectively.[46]

COGSA

Another important piece of legislation governing maritime law in Australia is the COGSA. The COGSA gives effect to a modified version of the Hague-Visby Rules.

The Australian version of the Hague-Visby Rules, or the Amended Hague Rules,[47] governs sea carriage documents for outward-bound international carriage from Australia in addition to domestic carriage.[48] The unmodified version of the Hague-Visby Rules continues to apply to inward-bound international carriage to Australia from the Hague-Visby Contracting States,[49] save for:

(a) inward-bound international carriage to Australia under non-negotiable sea-carriage documents (unless different Rules apply by virtue of the law of the country of shipment),[50] and
(b) inward-bound international carriage to Australia from non-Contracting States (unless sea-carriage document incorporates other Rules).[51]

It should be noted that the definition of '*sea carriage documents*' has been broadened in Australia to include sea waybills and delivery orders, in addition to bills of lading.[52]

Section 11(1)(a) of the COGSA deems the choice of law of sea-carriage documents relating to the carriage of goods by sea out of Australia to be Australian law. Section 11(2)(a) of the COGSA prescribes the compulsory choice of forum for disputes in respect of sea-carriage documents for the carriage of goods by sea into or out of Australia to be Australian Courts.

Any agreement which purports to modify or limit the compulsory choice of law and forum is void[53] and this has led to a number of cases where Australian Courts have struck down clauses providing for arbitration in London.[54] This was clarified by the Full Federal Court of Australia in *Norden*[55] which held that an arbitration clause in a voyage charterparty in favour of foreign arbitration did not fall foul of section 11 of the *COGSA* because a voyage charterparty was an agreement for the hire of a ship and not a '*sea-carriage document'* for the purposes of section 11 of the COGSA.[56]

Section 11(3) of the *COGSA* allows parties to agree on the choice of law applicable in any arbitration proceedings, provided that those arbitration proceedings take place in Australia.

The limitation of liability provisions in Australia are largely consistent with the unmodified Hague-Visby Rules in that the liability of the shipper or the carrier for loss or damage to the goods is limited to an amount not exceeding 666.67 units of account per package or unit or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.[57]

The Australian modification to Article 4, rule 5(a) of the Hague-Visby Rules which deals with the limitation of liability, is to replace the term '*bill of lading'* with '*sea carriage document'*.[58] This expands the ambit of documents in which shippers may declare the true value and nature of goods (in which case the declared value of goods is taken to be their *prima facie* value).[59] The enumeration of items packed in a container on the face of the sea carriage document is used for

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the purposes of limitation of liability, even if the document indicates that the carrier does not know the number of items packed.[60]

At present, the Australian position on the burden of proof under the Hague-Visby Rules differs from the position in the UK in *Volcafe*.[61] In Australia, a plaintiff bringing a cargo claim is required to establish negligence on the part of the defendant carrier, which constitutes a breach of Article 3, rule 2, before any question of defences arises; proof of damaged goods on arrival alone is insufficient.[62] While the Australian position was considered by the UK Supreme Court in *Volcafe* and rejected, until the High Court of Australia has an opportunity to reconsider this issue, the position in *Great China Metal*[63] remains authoritative in Australia.[64]

Another notable amendment in Australia is the extension of the period of the carrier's responsibility under the Amended Hague Rules beyond tackle to tackle to the period commencing when goods are delivered to the carrier within a port and ending when goods are delivered to the consignee. In *Seafood Imports*,[65] the Federal Court of Australia, in recognising the extension to the carrier's responsibility afforded by the Amended Hague Rules, found the carrier to be in breach of its obligations to '*properly and carefully'* discharge the goods by failing to ensure that the container in which goods had been contained did not defrost upon arrival at the terminal.[66] In that case, a carrier of fish from Japan to Australia was found liable for the loss of fish which deteriorated as a result of the container defrosting.[67]

Enforceability of Foreign Awards in Australia

Australia adheres to the obligation contained in Article III of the New York Convention to recognise arbitral awards as binding and to enforce them by virtue of the provisions contained in section 8 of the IAA, which was proclaimed as constitutionally valid by the High Court of Australia.[68] Subject to the exclusive grounds upon which enforcement of arbitral awards may be denied (mirrored from the New York Convention),[69] foreign awards may be enforced in a Court of an Australian State or Territory as if the award was a judgment or order of that Court.[70]

Australian Courts have a pro-enforcement approach to foreign arbitral awards.[71] For example, the Federal Court of Australia recently allowed enforcement of arbitral awards that were challenged on the basis of procedural irregularities invoking grounds under section 8(5)(e) of the IAA,[72] and on the basis that an award arguably lacked authenticity.[73]

Section 8(5) of the IAA contains an exhaustive list of grounds upon which a party may seek the refusal of the Court to enforce a foreign arbitral award. Only two grounds exist upon which an Australian Court may refuse to recognise an arbitral award in the absence of an application from a party against whom an award is sought to be enforced. These grounds occur when: (a) the subject matter of the dispute is not capable of arbitration; or (b) the enforcement of an arbitral award would be contrary to public policy.[74] An award may be unenforceable on *'public policy'* grounds where *'(a) the making of the interim measure or award was induced or affected by fraud or corruption; or (b) a breach of the rules of natural justice occurred in connection with the making of the interim measure or award*.'[75]

Resisting the enforcement of an arbitral award on the ground of breach of public policy has proven difficult in Australia. The public policy ground for resisting enforcement has been held to be '*limited to the fundamental principles of justice and morality conformable with the international nature of the subject matter, namely international commercial arbitration'*[76] and therefore requires a breach of '*morality*',[77] '*fundamental principles of law and justice*'[78] or '*real*

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unfairness or real practical injustice'.[79] Errors of law or fact made by an arbitral tribunal are not considered to be in contravention of public policy in the relevant sense.[80]

Although proof of a *'reasonable apprehension of bias'* is sufficient to establish a breach of natural justice,[81] Australian Courts adopt a case-by-case approach to the assessment of bias, and denial of natural justice arguments rarely succeed to resist the enforcement of arbitral awards.[82] Whilst serious illegality is likely to be considered a breach of public policy in Australia (following English authorities) it is less clear whether the illegality of a less serious nature, such as an underlying contract that is illegal at the place of the seat but not at the place of enforcement, constitutes a breach of public policy. [83]

The procedure for enforcing foreign arbitral awards in Australia is adopted from the New York Convention, which requires that a party seeking enforcement supply to the Court the following documents:[84]

a) an authenticated original or certified copy of the award;
b) an original or certified copy of the arbitration agreement; and
c) a translation of any parts not in English.

An example of these procedural provisions in action is the case of *Sanum Investments*[85] where the Applicant sought leave to serve an application to the Respondent debtors, who resided abroad, in the purported enforcement proceedings in relation to a US$200 million award handed down by the Singapore International Arbitration Centre. One of the requirements for granting leave to serve an application abroad is for the Applicant to demonstrate a *prima facie* case for enforcement of the award. Having found that certified copies of the arbitral award and arbitration agreements had been tendered[86] and that an award had been made in a New York Convention country,[87] the Court was satisfied that the Applicant established a *prima facie* case for the enforcement of the award.[88] The Court left the investigation of challenges to the recognition and enforcement of the arbitral award raised by the Respondents to be considered at the final hearing. Ultimately, the Singapore Court of Appeal in *ST Group*[89] refused to recognise and enforce the arbitral award because it found that the arbitration was not seated in accordance with the agreement of the parties.

Overall, there is a pro-enforcement attitude towards arbitral awards in Australia embedded in the provisions of the IAA, and in the approach of Australian Courts. This is consistent with the support provided in Australia for arbitral proceedings in a form of limited judicial intervention and effective supervisory jurisdiction. The enforceability of foreign arbitration awards in Australia would thus be of interest to those who have obtained arbitral awards outside of Australia and wish to enforce them against award debtors who hold assets in Australia.[90] Australian practice in relation to the enforcement of foreign arbitral awards provides greater certainty to existing and prospective parties to commercial dealings conducted in Australia.

Additionally, awards enforced in Australia may, by way of enforcing judgment, be expressed in Australian currency.[91]

Institutional vs ad hoc Arbitration – Australian perspectives

Australia's leading arbitral institution is ACICA. Each institution has its own set of arbitration rules which parties may select to be the rules governing their arbitral proceedings. The key

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advantage of institutional arbitration is the certainty provided to the parties by the established rules and procedures.

In contrast, in an ad hoc arbitration, instead of an arbitral institution prescribing arbitration rules and procedures, parties agree on the conduct of arbitral proceedings. The advantages of ad hoc arbitrations are lower costs,[92] lesser formalities[93] and greater flexibility. Ad hoc arbitrations are, therefore, suited to smaller claims. However, without the guidance of an institutional body, the success of ad hoc arbitrations is significantly dependent on the parties' cooperation and interest in maintaining a relationship in the future. It is also common for parties to ad hoc arbitrations to place greater reliance on the supervisory jurisdiction of the national courts[94] and Australian Courts offer a reliable, impartial and rigorous system in support of ad hoc arbitrations.

The rules governing ad hoc arbitrations in Australia are embedded in the UNCITRAL Model Law which is adopted by virtue of section 16(1) of the IAA. Thus, parties have the discretion to choose arbitrators in ad hoc arbitrations and in the event that an agreement cannot be reached, assistance from the national Courts may be sought.

Section 3 of the IAA gives the term '*arbitral award'* the same meaning as that in the New York Convention, which includes '*awards made by arbitrators appointed for each case*'.[95] Accordingly, arbitral awards rendered by ad hoc arbitral tribunals have equal enforcement status in Australia to that of institutional awards.

Pursuant to ACICA's Australian Arbitration Report 2020, most international arbitrations in Australia (including maritime) are commenced pursuant to Singapore International Arbitration Centre (SIAC) or International Chamber of Commerce (ICC) Rules and are seated in Singapore. The most favoured rules for domestic arbitrations are the ACICA Rules. Between 2016 and 2019, disputes involving the total value of just over $2 billion were resolved by means of ad hoc arbitrations in Australia, which is the fourth largest total value after ICC, UNCITRAL and SIAC arbitrations. Australian parties prefer UNCITRAL Rules for ad hoc arbitrations.[96]

Status of SCMA Awards in Australia

The SCMA has been an increasingly popular choice in the Asia-Pacific.[97] SCMA's arbitral awards will be recognised and enforced in any New York Convention country.[98] Australia, being one of them, is no exception. Singapore is a popular arbitral seat among Australian parties, and Singaporean arbitral awards have long been granted recognition and enforcement by Australian Courts.[99]

The SCMA Rules prescribe Singapore as the default seat and apply UNCITRAL Model Law,[100] which resembles Australian and global practice. Although there have not been any reported SCMA awards enforced in Australia recently,[101] little reason exists for not awarding the SCMA awards the same status as arbitral awards of other Singaporean institutions which have long been recognised in Australia.

Conclusion

Overall, Australia is a stable and reliable jurisdiction to arbitrate disputes and seek enforcement of arbitral awards. Its modern pro-arbitration approach provides certainty in commercial dealings and preserves party autonomy in choosing a preferred method of dispute resolution.

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Australia's maritime and admiralty laws provide further support for the arbitration of maritime disputes.

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[1] Australian Centre for International Commercial Arbitration, *Australian Arbitration Report* (2020) 6, 4 <https://acica.org.au/wp-content/uploads/2021/03/ACICA-FTI-Consulting-2020-Australian-Arbitration-Report-9-March-2021.pdf > ('*ACICA Report 2020*').
[2] Australian Centre for International Commercial Arbitration, *ACICA Releases Statistics for 2024* (24 June2025) 1 <Media Release ACICA Releases Statistics for 2024>.
[3] Ibid.
[4] Australian Law Reform Commission, *International Arbitration,* <https://www.alrc.gov.au/publication/legal-risk-in-international-transactions-alrc-report-80/11-international-arbitration/>.
[5] According to the *ACICA Report 2020*, 10, the total amount in dispute resolved by means of *ad hoc* arbitration closely follows that of arbitration using rules of major arbitration institutions.
[6] *ACICA Report 2020*, 6.
[7] *UNCITRAL Model Law on International Commercial Arbitration*, UN GAOR, 40th sess, Supp No 17, UN Doc A/40/17 (21 June 1985) annex 1, as amended by UN GAOR, 61st sess, Supp No 17, UN Doc A/61/17 (7 July 2006) annex 1; *International Arbitration Act 1974* (Cth), section 16(1).
[8] *Convention on the Recognition and Enforcement of Arbitral Awards 1958*, opened for signature 10 June 1958, 330 UNTS 38 (entered into force 7 June 1959).
[9] New South Wales: *Commercial Arbitration Act 2010* (NSW); Victoria: *Commercial Arbitration Act 2011* (VIC); Queensland: *Commercial Arbitration Act 2013* (Qld); South Australia: *Commercial Arbitration Act 2013* (SA); Western Australia: *Commercial Arbitration Act 2012* (WA); Northern Territory: *Commercial Arbitration (National Uniform Legislation) Act 2011* (NT); Tasmania: *Commercial Arbitration Act 2011* (TAS).
[10] *International Arbitration Act 1974* (Cth), section 21(1).
[11] *International Arbitration Act 1974* (Cth), section 16(1); cf *ACD Tridon Inc v Tridon Australia Pty Ltd* [2002] NSWSC 896.
[12] *International Arbitration Act 1974* (Cth), section 18B.
[13] *International Arbitration Act 1974* (Cth), section 23J; cf AZB & Partners & Others, *The Asia-Pacific Arbitration Review 2022: A Global Arbitration Review Special Report*, 43, <https://www.claytonutz.com/articledocuments/178/Clayton-Utz-Asia-Pacific-Arbitration-Review-2022.pdf.aspx?Embed=Y>.
[14] *International Arbitration Act 1974* (Cth), section 23K.
[15] *International Arbitration Act 1974* (Cth), section 25 and 26.
[16] *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia* (2013) 251 CLR 533, 53 (Hayne, Crennan, Kiefel and Bell JJ). Cf *International Arbitration Act 1974* (Cth), Sch 2, Article 5.
[17] *CBI Constructors Pty Ltd and Another v Chevron Australia Pty Ltd* [2024] HCA 28.
[18] *International Arbitration Act 1974* (Cth), section 7(2).
[19] *Comandate Marine Corp v Pan Australia Shipping Pty Ltd* (2006) 157 FCR 45, 243 (Allsop J). Cf *Degroma Trading Inc v Viva Energy Australia Pty Ltd* [2019] FCA 649.
[20] *Admiralty Act 1988* (Cth), section 29.
[21] *Federal Court of Australia Act 1976* (Cth), section 53A.
[22] *Rinehart v Rinehart* (2019) 267 CLR 514, 10, 33, 55 (Kiefel CJ, Gageler, Nettle and Gordon JJ).
[23] *Comandate Marine Corp v Pan Australia Shipping* (2006) FCAFC 192, 149 (Allsop J) and 4 (Finn J).
[24] *Carmichael Rail Network Pty Ltd v BBC Chartering Carriers GmbH & Co KG* [2024] HCA 4.
[25] [2025] FCA 1602.
[26] Ibid [183], [232].
[27] *Admiralty Act 1988* (Cth), sections 14-20.
[28] *Admiralty Act 1988* (Cth), sections 9(1)-(2).
[29] *Admiralty Act 1988* (Cth), section 15.
[30] *Admiralty Act 1988* (Cth), section 16.
[31] *Admiralty Act 1988* (Cth), section 17.
[32] *Admiralty Act 1988* (Cth), section 18.
[33] Martin Davies and Anthony Dickey, *Shipping Law*, (Thomson Reuters, 4th ed, 2016), 134 – 135, 8.10 ('**Davies and Dickey**').
[34] Davies and Dickey, 134, 8.10.
[35] Davies and Dickey, 152, 8.310.
[36] Davies and Dickey, 137, 8.60.
[37] *The Ship "Sam Hawk" v Reiter Petroleum Inc* (2016) 246 FCR 337, 9 (Allsop CJ and Edelman J).
[38] *Admiralty Act 1988* (Cth) section 4.
[39] *Admiralty Act 1988* (Cth) section 4(u).
[40] *Admiralty Act 1988* (Cth) section 19.
[41] Davies and Dickey, 140, 8.120.

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[42] Federal Court of Australia, *Admiralty Jurisdiction of the Federal Court*, <https://www.fedcourt.gov.au/law-and-practice/national-practice-areas/admiralty/jurisdiction>.
[43] *Admiralty Act 1988* (Cth) section 37(1).
[44] Davies and Dickey, 161, 8.500.
[45] IMO Leg/Conf.7/27, 2 May 1989.
[46] *International Convention Relating to the Arrest of Sea-Going Ships* (Brussels, May 10, 1952).
[47] *Carriage of Goods by Sea Act 1991* (Cth), section 7.
[48] *Carriage of Goods by Sea Act 1991* (Cth), Sch 1A, Article 10, rule 1.
[49] Hague-Visby Rules (unmodified), Article 10(1).
[50] *Carriage of Goods by Sea Act 1991* (Cth), Sch 1A, Article 10, rules 2, 3.
[51] *Carriage of Goods by Sea Act 1991* (Cth), Sch 1A, Article 10, rules 2, 3.
[52] *Sea-Carriage Documents Act 1997* (NSW), section 5; *Sea-Carriage Documents Act 1997* (WA), section 5; *Sea-Carriage Documents Act 1998* (SA), section 5; *Sea-Carriage Documents Act 1996* (QLD), section 3; *Sea-Carriage Documents Act 1998* (NT), section 5; *Sea-Carriage Documents Act 1997* (TAS), section 4; *Sea-Carriage Documents Act 1996* (VIC), section 5.
[53] *Carriage of Goods by Sea Act 1991* (Cth), section 11(2)(b).
[54] See for example, *Kim Meller Imports Pty Ltd v Eurolevant Spa* (1986) 7 NSWLR 269; *Hi-Fert Pty Ltd v Kiukiang Maritime Carriers Inc (No 5)* (1998) 90 FCR 1.
[55] *Dampskibsselskabet Nordon A/S v Gladstone Civil Pty Ltd* [2013] FCAFC 107 (‘***Norden***’).
[56] *Norden,* 67, 68, 71.
[57] *Carriage of Goods by Sea Act 1991* (Cth), Sch 1A, Article 4, rules 5(a).
[58] *Carriage of Goods by Sea Act 1991* (Cth), Sch 1A, Article 4, rules 5(a).
[59] *Carriage of Goods by Sea Act 1991* (Cth), Sch 1A, Article 4, rules 5(a).
[60] *El Greco (Australia) Pty Ltd v Mediterranean Shipping Co SA* (2004) 140 FCR 296, 280.
[61] *Volcafe Ltd v Compania Sud Americana de Vapores SA (T/as CSAV)* [2018] UKSC 61.
[62] *Shipping Corporation of India Ltd v Gamlen Chemical Co (A/asia) Pty Ltd* (1980) 147 CLR 142; *Great China Metal Industries Co Ltd v Malaysian International Shipping Corp Berhad* (1998) 196 CLR 161, 43 (Gaudron, Gummow and Hayne JJ) and 98 (McHugh J); *CV Sheepvaartondernemning Ankergracht v Stemcor (A/sia) Pty Ltd* (2007) 160 FCR 342.
[63] *Great China Metal Industries Co ltd v Malaysian International Shipping Corp Berhad* (1998) 196 CLR 161, 43 (Gaudron, Gummow and Hayne JJ) and 98 (McHugh J).
[64] The position has been applied for example in *C/V Scheepvaartonderneming Ankergracht v Stemcor (A/Asia) Pty Ltd* (2007) 160 FCR 342; *Hildtich Pty ltd v Dorval Kaium KK (No 2)* (2007) 245 ALR 125; *Seafood Imports Pty Ltd v ANL Singapore Pte Ltd* (2010) 272 ALR 149.
[65] *Seafood Imports Pty Ltd v ANL Singapore Pte Ltd* (2010) 272 ALR 149 (‘***Seafood Imports***’).
[66] *Seafood Imports*, 63.
[67] *Seafood Imports*, 77.
[68] *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia* (2013) 251 CLR 533, 111 (Hayne, Crennan, Kiefel and Bell JJ).
[69] *International Arbitration Act 1974* (Cth) s 8(5); cf *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia* (2013) 251 CLR 533, 111 (Hayne, Crennan, Kiefel and Bell JJ).
[70] *International Arbitration Act 1974* (Cth), section 8(2).
[71] See for example, *Traxys Europe SA v Balaji Coke Industry Pty Ltd (No 2)* [2012] FCA 276, 90 where the 2010 amendments to the IAA were said to bring about a ‘*pro-enforcement bias*’ to the enforcement of arbitral awards.
[72] *Energy City Qatar Holding Company v Hub Street Equipment Pty Ltd (No 2)* [2020] FCA 1116.
[73] *Tianjin Jishengtai Investment Consulting Partnership Enterprise v Huang* [2020] FCA 767.
[74] *International Arbitration Act 1974* (Cth), section 8(7).
[75] *International Arbitration Act 1974* (Cth), section 19.
[76] *Guoao Holding Group Co Ltd v Xue* (No 2) [2022] FCA 1584, [32].
[77] *Traxys Europe SA v Balaji Coke Industry Pty Ltd (No 2)* [2012] FCA 276, 105.
[78] *Castel Electronics Pty Ltd v TCL Air Conditioner (Zhongshan) Co Ltd (No 2)* [2012] FCA 1214, 19.
[79] *TCL Air Conditioner (Zhongshan) Co Ltd v Castel Electronics Pty Ltd* [2014] FCAFC 83, 55 (Allsop CJ, Middleton and Foster JJ).
[80] *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia* [2013] HCA 5.
[81] Stephen R Tully, ‘Challenging Awards Before National Courts For A Denial Of Natural Justice: Lessons From Australia’ (2016) 32(4) *Arbitration International,* 674.
[82] Stephen R Tully, ‘Challenging Awards Before National Courts For A Denial Of Natural Justice: Lessons From Australia’ (2016) 32(4) *Arbitration International,* 667-668.
[83] Chester Brown and Luke Nottage, ‘Interpretation and Application of The New York Convention in Australia’ in *Recognition and Enforcement of Foreign Arbitral Awards* (Springer International Publishing, 1st ed, 2017), 123. Cf *Soleimany v Soleimany* (1993) 3 All ER 847.
[84] *International Arbitration Act 1974* (Cth), Sch 1, Article 4, section 9.
[85] *Sanum Investments Ltd v St Group Co. Ltd* [2017] FCA 75 (‘***Sanum Investments***’).
[86] *Sanum Investments*, 8 (Foster J).
[87] *Sanum Investments*, 9 (Foster J).

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[88] *Sanum Investments,* 18 confirmed in *Sanum Investments Ltd v ST Group Co Ltd (No 2)* [2019] FCA 1047, 124.
[89] *St Group Co. Ltd v Sanum Investments Ltd* [2019] SGCA 65.
[90] Gregory Nell SC, ‘Recent Developments in the Enforcement of Foreign Arbitral Awards in Australia’ (2012) 26 *Australian and New Zealand Maritime Law Journal* 24, 25.
[91] *Tianjin Jishengtai Investment Consulting Partnership Enterprise v Huang* [2020] FCA, [22]-[23]; *HongKong Henson Industrial Limited v Victorian Ferries Pty Ltd* [2021] FCA 1450 [16].
[92] Harry L Arkin, ‘International Ad Hoc Arbitration: A Practical Alternative’ (1987) 53 *Arbitration* 260, 261.
[93] Harry L Arkin, ‘International Ad Hoc Arbitration: A Practical Alternative’ (1987) 53 *Arbitration* 260, 262.
[94] Toby Boys and Lucy Munt, *Australia: Drafting an effective international arbitration agreement – tricks and traps* <https://www.mondaq.com/australia/arbitration-dispute-resolution/514940/drafting-an-effective-international-arbitration-agreement-tricks-and-traps>.
[95] *International Arbitration Act 1974* (Cth), section 3. Cf *New York Convention*, Article III.
[96] Gitanjali Bajaj and Erin Gourlay, *Commercial Arbitration: Australia* <https://globalarbitrationreview.com/insight/know-how/commercial-arbitration/report/australia>.
[97] The number of cases has been growing in the past several years, particularly in the Asia-Pacific, according to SCMA’s Year in Review 2021, 2022 and 2023 <SCMA2021YearInReview> <SCMA 2022 YIR (Draft 3)> <Year In Review 2023 | PDF to Flipbook (heyzine.com)>.
[98] *International Arbitration Act 1974* (Cth) section 8.
[99] See for example *Hyundai Engineering Steel Industries Co Ltd v Two Ways Constructions Pty Ltd (No 2)* [2018] FCA 1551.
[100] *Singapore International Arbitration Act (Chapter 143A)*, section 3.
[101] The authors have reviewed the published SCMA reports on Lloyd’s Maritime Newsletters and note that there have been no reported SCMA awards involving Australia since 2021 as at 27 May 2024.

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HWLE Lawyers' Shipping and Trade practice has been recognised for over 100 years as the leading practice in the maritime industry, both domestically and internationally. We specialise in all aspects of wet and dry shipping and practice in all areas of corporate, commercial, maritime, insurance and trade law. Our specialist team has significant industry expertise and experience dealing with Australian national laws and the range of international conventions that apply to maritime activity. The team consists of various national and international appointments, bringing great depth of expertise and knowledge to the group.

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BANGLADESH

Arbitration and Maritime Law in Bangladesh: Contemporary Perspectives

Overview of Bangladeshi Arbitration Law

Arbitration Law

The primary source of Bangladesh's arbitration law is the Arbitration Act 2001 ("**the Act**"), which governs both domestic and international commercial arbitration. The legislature based the Act on the UNCITRAL Model Law on International Commercial Arbitration ("**Model Law**") to modernize the previous law from 1940. As per Section 3(1) of the Act, its provisions apply whenever the place (or "**seat**") of arbitration is in Bangladesh.

Following the enactment of the Act, arbitration clauses have become standard in commercial contracts in Bangladesh. Even if a contract does not contain an arbitration clause, the parties may still choose to resolve their dispute through arbitration under the Act, provided they both agree to it after the dispute has arisen, and the arbitration is held in Bangladesh.

The Act mirrors the Model Law in several areas. For instance, the definition of an "arbitral tribunal" in section 2(o) of the Act as "a sole arbitrator or a panel of arbitrators" is adopted from Article 2(b) of the Model Law. Similarly, the principle of party autonomy in determining the number of arbitrators is upheld. The Model Law (Article 10) allows parties complete freedom to choose any number of arbitrators, with the default being three if they fail to agree.

However, Section 11 of the Act introduces notable departures from the Model Law regarding the composition of the tribunal. The Act defaults to an odd number of arbitrators. Under the Act, the default number of arbitrators is three if the parties do not specify otherwise. While the parties may agree on an even number of arbitrators (such as two or four), those arbitrators are required to appoint an additional arbitrator who will act as the Chairperson of the tribunal.

Therefore, while parties have the freedom to determine the number of arbitrators and there is no prescribed maximum, the mechanisms within the Act ensure that the final composition of an arbitral tribunal in Bangladesh will always be an odd number.

New York Convention

Bangladesh ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**") on 6 May 1992 and the Convention entered into force on 4 August 1992. The Act provides for enforcement of foreign arbitral awards in accordance with the New York Convention.

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Arbitral Institutions

Bangladesh International Arbitration Centre ("**BIAC**") is the first international arbitration institution of the country. It is registered as a not-for-profit organization and commenced operations in April 2011 under a license from the Government. BIAC provides a neutral, efficient, and reliable dispute resolution service in this emerging hub of South Asia's industrial and commercial activity. BIAC introduced its Arbitration Rules in April 2012 and Mediation Rules in 2014, both of which were updated in 2019.

Substantive Law

Under the Arbitration Act, the parties are allowed to choose any substantive law. For example, any party may select Bangladeshi law as the substantive law and the rules of International Chamber of Commerce ("**ICC**") for the arbitral proceedings. However, the Act allows an arbitral tribunal, in the absence of the parties' choice of substantive law, the freedom to apply any rule of law as suitable in the circumstances of a dispute.

Appointment of Arbitrators

Unless otherwise agreed by the parties, a person of any nationality may be an arbitrator. In the event of default, courts can appoint an arbitrator under section 12 of the Act, but they must give due regard to any agreement of the parties as to the qualifications required of the arbitrator, and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator (Section 12(9)).

The most noteworthy deviation from the Model Law is that section 12 uses the words "District Judge and Chief Justice" instead of the word "court" used in article 11. In other words, the Model Law permits court intervention in the matter of appointment of arbitrators, while this section avoids court intervention and vests the default power to appoint arbitrators specifically in the Learned District Judge (for domestic arbitration) and in the Honourable Chief Justice or a designated Judge of the Supreme Court for international commercial arbitration".[1]

The Act also allows the appointment of an arbitrator to be challenged on the grounds of impartiality, independence and the arbitrator's qualifications as agreed by the parties (Section 13).

Interim measures

Under section 7A of the Act, the judiciary in Bangladesh has previously held conflicting views regarding the applicability of the Act by dint of Section 3 in cases where the seat of arbitration has been agreed by the parties to be outside of Bangladesh.

[1] Government of Bangladesh & Others vs. Samir and Co 28 DLR (AD) 21.

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In *HRC Shipping Ltd v. MV X-Press Manaslu* ("**HRC case**"), the High Court, following *Bhatia International v. Bulk Trading SA*, was of the view that the court can order interim measures where the seat of arbitration is outside Bangladesh. On the other hand, in *STX Corporation Ltd v. Meghna Group of Industries Limited* ("**STX case**"), the High Court adopted a completely different approach and held that the provision of the Act is not applicable to a foreign arbitration except as provided in Section 3(2) of the Act itself, meaning that interim measures would not be available in foreign-seated arbitrations.

Thereafter, the High Court Division revisited the *ratio* of both the HRC and STX cases in *Project Builders Ltd (PBL) v. China National Technical Import and Export Corporation and others* and confirmed that there is no scope to deviate from the provisions of section 3 of the Act. However, in *Southern Solar Power Ltd. and Ors v. Bangladesh Power Development Board and Ors*, the High Court Division held that the "...Court is well competent to entertain an application under Section 7A of the Arbitration Act regarding an arbitration which would take place or is taking place in a foreign country."

However, this jurisdictional issue is not yet entirely settled at the High Court level, and different courts continue to give different interpretations. Some benches are applying the restrictive observations of the High Court decision in *Accom Travels and Tours Limited Vs. Oman Air S.A.O.C.* ("**Accom Case**"). In the Accom case, it was observed that Section 7A might only be invoked at the post-award enforcement stage.

Subsequently, on 30 May 2024, in *Italian Thai Development Public Company Ltd. v. The Export-Import Bank of China and others* ("**Italian-Thai case**"), the Appellate Division resolved the share transfer dispute. Such relief was granted under section 7A of the Act regarding an international arbitration not seated in Bangladesh, thereby reversing the position taken earlier. This decision confirms that Bangladeshi courts have the power to order interim measures in support of both local and foreign-seated Arbitrations.

In light of this, several High Court benches are now applying the recent Appellate Division precedent in the Italian-Thai Case to exercise jurisdiction and grant interim relief before or during foreign arbitral proceedings. There is an expectation that the High Court will grant interim relief as the Appellate Division has recognized the power to order interim measures for foreign-seated arbitrations. Consequently, while the principle is recognized at the apex level, obtaining such relief cannot always be guaranteed.

Awards

An arbitral award is enforceable on the same footing as a court decree. However, there is a time limit for initiating proceedings for setting aside an award. Proceedings for setting aside an arbitral award will have to be initiated under section 42 within 60 days of receipt of an award. Section 43 along with section 42 of the Act provide the grounds for setting aside an arbitral award. Fraud, corruption, or conflict with the public policy of Bangladesh, a violation of the principles of natural justice, acting beyond the terms of the submission and deciding on matters that are legally not arbitrable are the grounds on which an award can be set aside.

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Virtual Hearings

The Arbitration Act contains no provision that prohibits the conduct of virtual hearings. On the contrary, Sections 25 and 26 of the Act confer broad procedural autonomy upon the tribunal and the parties, allowing them to determine the procedure and designate the place of hearing. This flexibility encompasses the use of digital platforms such as Zoom, Microsoft Teams, or other platforms.

The legal foundation for virtual hearings in Bangladesh was further reinforced during the COVID-19 pandemic, when Parliament enacted the Adalat Kartrik Tottho Projukti Bebohar Ordinance 2020 (Use of Information Communication Technology by Courts Ordinance 2020). This measure was subsequently formalized as the Virtual Court Act 2020, which expressly empowers the judiciary to employ information technology in the conduct of trials, inquiries, hearings, appeals, and related proceedings, including the taking of evidence, submissions of arguments, and the delivery of judgments.

In addition, significant reforms were introduced through the Evidence (Amendment) Act 2022, which modernized the evidentiary framework in Bangladesh to align with the realities of a digital legal environment. The amendment expanded the statutory definition of “document” to include digital records such as audio and video files, emails, digital signatures, CCTV footage, and data stored or transmitted by electronic means. As a result, electronic documents and digital communications are now legally recognized as admissible evidence, subject to authentication requirements.

The amendment further acknowledges the validity of electronic service of documents and summons, thereby establishing a comprehensive legal basis for the integration of digital processes into judicial proceedings in Bangladesh.

Evidence (Amendment) Act 2022 is now fully integrated into maritime litigation, making digital logs and electronic communications standard admissible evidence in the Admiralty Court.

Overview of Maritime Law in Bangladesh

Bangladesh is a common law country with a legal system based on English common law. The law on admiralty and maritime affairs in Bangladesh can be traced back to the laws of England, particularly the Admiralty Court Act 1861. Today, the Admiralty Court Act 2000 deals with all substantive issues related to the Admiralty jurisdiction of Bangladesh, while the procedural aspects of such suits are primarily governed by the Code of Civil Procedure 1908, as mandated by the Act itself.

Any person or company can initiate a suit in the Bangladesh Admiralty Court involving a vessel. The most common causes for admiralty suits in Bangladesh are vessel collisions, cargo short landing, cargo damages, non-payment of crew wages and suppliers' dues, charterparty claims involving freight and hire, salvage, and ship finance.

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The Admiralty court may exercise its authority over all ship or aircraft, whether Bangladeshi or not, and whether registered or not and wherever the residence or domicile of their owners may be, in relation to such claims as provided under the Admiralty Court Act 2000. However, The Territorial Waters and Maritime Zones (Amendment) Act 2021 formally updates Bangladesh's maritime legislation to conform to the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Notable provisions of this enactment include the formal integration of UNCLOS principles, the precise delineation of maritime zones (including the expansion of the contiguous zone to 24 nautical miles), the establishment of sovereign rights over resources, the introduction of definitions for contemporary technologies such as Remotely Operated Vehicles (ROVs) and Autonomous Underwater Vehicles (AUVs), the augmentation of penalties for violations, the provision for the establishment of Maritime Tribunals, and the admissibility of electronic evidence.

Arrest of ships

In Bangladesh, the High Court Division of the Supreme Court holds exclusive admiralty jurisdiction. While the country is not a party to any international arrest conventions, local law provides a robust mechanism for arresting vessels through an *in rem* suit.

The process begins when a claimant initiates a suit and files an application for arrest. If the court is satisfied that there is a *prima facie* case, it will issue an order to arrest the vessel to stand as security. With regards to releasing the arrested vessel the Admiralty Court requires security that is immediately and unconditionally enforceable within its jurisdiction.

For the release of a vessel, the court's standard and almost non-negotiable requirement is a bank guarantee issued by a first-class bank operating in Bangladesh. International Letters of Undertaking (LOUs) from P&I Clubs are not accepted as security. This firm stance ensures that the claimant's potential award is secured locally.

Limitation of Liability & Collision

Bangladesh is not a signatory to the major international conventions on shipowner's limitation of liability (e.g., LLMC 1976/96) or the 1910 Collision Convention. These matters are governed entirely by domestic law, primarily the Bangladesh Merchant Shipping Ordinance 1983. However, compliance with the Convention on the International Regulations for Preventing Collisions at Sea 1972 (COLREGs) is largely observed.

The shipowner’s right to limit liability is codified in the Merchant Shipping Ordinance 1983, which reflects the principles of the 1957 Brussels Convention on Limitation of Liability for Maritime Claims, rather than the subsequently adopted LLMC Conventions of 1976 and 1996 that form the modern international regime.

Although a new "Merchant Shipping Act" has been in drafting stages (2023 version), as of early 2026, the **Merchant Shipping Ordinance 1983** remains the primary governing law for vessel registration and liability.

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Maritime liens

Sections 477 to 479 of the Bangladesh Merchant Shipping Ordinance 1983 recognize maritime liens on seaman's wages and the master's wages. No other statute recognises maritime liens. However, the Court follows the English law of maritime liens. If the plaintiff's claim is a maritime lien, the claim survives even in case of a change in ownership of a ship, and the ship can still be subjected to arrest. If the claim is a maritime claim and not a maritime lien, the ship cannot be arrested if, before filing of the suit, ownership of the ship has changed.

Carriage of goods by sea

The regulatory framework governing carriage in Bangladesh is primarily constituted by the Carriers Act 1865, the Carriage by Air (International Convention) Act 1966, the Carriage of Goods by Sea Act 1925, and the Railway Act 1890. In the absence of sector-specific legislation, the Carriers Act 1865 serves as a general statute, uniformly applicable to all modes of carriage, including inland water and land transport.

Under the current legal regime, the definition of "carrier" in the Carriage of Goods by Sea Act 1925 is confined to the shipowner or charterer; however, this limitation does not render the operations of Multimodal Transport Operators (MTOs), including Non-Vessel Operating Common Carriers (NVOCCs), unlawful in Bangladesh. The liability of such operators is generally governed by the contractual terms set out in their transport documents, such as house bills of lading, and by the general principles of contract law under the Contract Act 1872.

It is, however, critical to note that a house bill covering a non-sea segment of the journey does not extend its applicability to the sea leg, which remains subject to the relevant provisions of the Carriage of Goods by Sea Act 1925.

Charterparties

A charter party agreement is governed by the Bills of Lading Act 1856, the Carriage of Goods by Sea Act 1925, and the Contract Act 1872. After the contract of affreightment ends, the carrier incurs a new liability as a bailee, and the limitation period for bringing a suit in such a case is three years under Article 115 of the Limitation Act.

Disputes involving charterparty claims, such as freight, sub-freight, or liens on cargo, are generally referred to arbitration. However, an admiralty suit may also be brought before the Admiralty Court of Bangladesh against the res to obtain security for the pending arbitration. While the arrest of cargo is typically sought in conjunction with the arrest of the vessel, the sole arrest of cargo is prohibited.

Salvage

The legal framework governing maritime claims, including salvage, in Bangladesh is primarily anchored in the Admiralty Court Act 2000. This statute empowered the High Court Division of the

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Supreme Court to exercise admiralty jurisdiction, enabling it to adjudicate various maritime disputes including salvage operations. Complementing this framework, the Merchant Shipping Ordinance 1983, addresses broader maritime matters, including ship safety and casualty liability, which intersect with salvage and other maritime claims.

Although Bangladesh has not ratified the Collision and Brussels Salvage Conventions of 1910, the Maritime Conventions Act 1911, enacted by the British Parliament to implement these conventions, has been consistently applied by Bangladeshi courts. For instance, the High Court Division of the Supreme Court of Bangladesh in *Owners M.L. Madina vs. Owner Jalamoni (1978)*[2] applied the principle of the Maritime Conventions Act 1911 giving recognition to the applicability of such Act in admiralty jurisdiction. In addition, the Appellate Division of the Supreme Court in *Bangladesh Inland Water Transport Corporation vs. M/s. Seres Shipping Corporated World Trade Centre (1984)*[3] concurred with the finding of the High Court Division as to the applicability of Maritime Conventions Act 1911.

Since then, no dispute has been raised as to the applicability of Maritime Conventions Act 1911 in Bangladesh. At present, reference is made to the Maritime Conventions Act 1911 whenever required by our judiciary to address the issue of salvage in admiralty suits.

Marine Insurance & General Average

In Bangladesh, in the absence of any legislation relating to Marine Insurance, the courts have followed the principles of good faith, etc. of English Law and English decisions as well as the provisions of UK Marine Insurance Act 1906.

The Supreme Court of Bangladesh in *Eagle Star Insurance Company Limited vs. Rahmania Trading Co.*[4] stated "… *[t]here is no such law in our country, Marine Insurance contract is therefore governed by the general principles of contract and the English principles. The principles in English Marine Insurance Act 1906 are also applicable.*" The Appellate Division in *Sadharan Bima Corporation vs. Bengal Liners Ltd.*[5] also held "…*in respect of marine insurance in general the Court of Bangladesh follows the general principles of contract and English law and practice*."

Judicial Sale of Vessels

In Bangladesh, the judicial sale of a vessel serves as a critical enforcement mechanism for maritime claims. When a vessel remains under arrest and the owner fails to provide satisfactory security, the claimant may petition the Court for an order of judicial sale. Upon consideration, the Court may direct the Marshal of the Admiralty Court to conduct a public auction.

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[2] 30 DLR 149.
[3] 36 DLR (AD) 82.
[4] (1976) 28 DLR (AD) 111.
[5] 16 BLD (AD) 186.

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Proceeds from the sale are held by the Marshal pending the final adjudication of competing claims. Upon the adjudication of the claims by the court funds are distributed to the successful claimant(s). In cases involving multiple claims, the Court applies principles of English maritime law concerning priorities and liens to determine the sequence of payments, thereby ensuring equitable treatment of creditors.

Recognition & Enforcement of Foreign Judicial Sale

The legal system of Bangladesh, founded on principles of comity, procedural fairness, and finality, affords robust recognition to foreign judicial sales of vessels, provided that such sales are properly conducted and do not contravene Bangladeshi law or public policy.

This position was affirmed by the Honourable Appellate Division of the Supreme Court of Bangladesh in *Rich Step Shipping Ltd. & Ors v. MV Ocean Dawning & Ors*.[6] In that decision, the Court adopted a definitive stance on the treatment of foreign judicial sales, making it clear that Bangladeshi courts are not the proper forum to re-examine the procedural validity of judicial proceedings conducted abroad. This reasoning reflects a strong principle of judicial deference to foreign jurisdictions and establishes that, as a general rule, the finality of foreign judicial sales will be recognized and respected in Bangladesh.

The ruling carries significant implications for stakeholders in the maritime sector. For former owners, it serves as a cautionary reminder that challenges to judicial sales must be pursued in the jurisdiction where the sale took place. Re-litigation of such matters in Bangladesh is unlikely to succeed, save for situations falling within the exceptions set out in Section 13 of the Code of Civil Procedure, 1908, which provides that a foreign judgment will not be deemed conclusive, and therefore not enforceable, in specific circumstances.

Enforceability of Foreign Arbitral Awards

Application

Foreign arbitral awards are enforceable under section 45 of the Arbitration Act. The Act clearly sets out provisions dealing with recognition and enforcement of foreign arbitral awards. Section 45 of the Act states that, notwithstanding anything contained in any other law for the time being in force, subject to section 46, a foreign arbitral award shall be treated as binding for all purposes on the persons between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in Bangladesh.

However, there are grounds for refusing recognition or execution of foreign arbitral awards. Section 46 of the Arbitration Act 2001 identifies the grounds on which Bangladeshi courts may refuse recognition or enforcement of a foreign arbitral award. These include the incapacity of a party, invalidity of the arbitration agreement, inadequate notice to the respondent, and disputes

[6] 2015 (23) BLT (AD) 302.

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that are not capable of settlement by arbitration. Importantly, recognition may also be refused if the award is in conflict with the public policy of Bangladesh.

While public policy was not explicitly defined in the Act, this ground is generally interpreted by courts to prevent enforcement of awards that violate the fundamental principles of law, justice, and morality in Bangladesh rather than for ordinary legal or factual errors in the arbitral award.

Competent Court

Section 45 of the Arbitration Act provides that any foreign award shall be executed upon an application made by a party to the Court of the District Judge. Barring any grounds for refusal under Section 46, the court will enforce the award in accordance with the provisions of the Code of Civil Procedure, 1908, as if it were a decree of the Court.

Timeframe

The Act does not specify a limitation period for the enforcement of a foreign arbitral award. However, as Section 45 provides that foreign awards are executed as if they were a decree of the Court, the Limitation Act 1908 applies. Specifically, under Article 182 of the First Schedule to the Limitation Act 1908, the limitation period for the execution of a decree or order of any Civil Court is generally three years. Accordingly, an application for the execution of a foreign arbitral award must typically be made within three years from the date the right to apply accrues (typically when the award becomes final). Reading Section 45 of the Act in conjunction with Article 182 of the Limitation Act 1908 this period is extended to six years in cases where a certified copy of the decree or order has been registered. Because Section 45 of the Act legally equates a foreign award to a court decree, this extended six-year limitation period applies if a certified copy of the award is registered.

Enforceability of Foreign Awards (New York Convention)

Section 45 of the Act embodies Article III of the New York Convention, in that it makes a foreign arbitral award binding for all purposes on parties to the arbitration agreement and such an award can be executed by the local court as if it was a decree of the local court. This principle has been upheld in the case of *Canada Shipping and Trading SA v TT Katikaayu and another (Admiralty Jurisdiction),*[7] where it was held that "[o]*nce an arbitration proceeding in a foreign country is completed, the Arbitral Award, on an application by any party, will be enforced by a court of this country under the Civil Procedure Code in the same manner as if it were a decree of the court.*" Thus, there is no requirement to obtain separate permission from the local court for enforcement.

[7] 49 DLR (AD) (1997) 187 at 196.

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Institutional and ad hoc Arbitration

Institutional and ad hoc arbitration are types of arbitration for administering the dispute resolution process based on the terms of the agreement and the applicable law. There is no difference in terms of their status, enforcement, or recognition of the award in Bangladesh.

As with the leading international arbitration practice and institutions, Bangladesh International Arbitration Centre (BIAC) has also developed to assist parties to arbitrations comprehensively from beginning to end. It is now becoming common practice in Bangladesh to incorporate an arbitration institution's arbitration rules into a contract.

Ad hoc arbitration under the Arbitration Act was once more commonly preferred in domestic practice. However, its popularity has gradually declined, largely because the process of appointing arbitrators is often time consuming. In contrast, established arbitral institutions such as the International Chamber of Commerce (ICC), The International Centre for Settlement of Investment Disputes (ICSID), Singapore International Arbitration Centre (SIAC), London Maritime Arbitrators Association (LMAA), SAARC Arbitration Council (SARCO), and Singapore Chamber of Maritime Arbitration (SCMA) maintain strong regional influence and may provide a more efficient and cost-effective alternative.

Status of SCMA Awards in Bangladesh

Singapore is a party to the New York Convention and a SCMA award will be treated as a New York Convention award under the Act. An SCMA award will therefore be enforced in Bangladesh in accordance with Section 45 of the Act.

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BRUNEI

Enforcement of SCMA Awards in Brunei Darussalam[1]

I. Introduction

In Brunei Darussalam, there is a growing trend amongst parties to international agreements to settle their disputes either through arbitration or mediation given that such alternative dispute resolution mechanisms offer affordability, speed, confidentiality and the benefit of settling disputes in a neutral location[2]. Brunei enterprises are accustomed to providing for international arbitration to govern disputes occurring in their commercial contracts. While international dispute resolution is still developing in Brunei, the government of Brunei Darussalam has supported the usage of arbitration as an alternative dispute resolution, as evidenced by the establishment of the Brunei Darussalam Arbitration Centre (the "**BDAC**") in 2014 and the adoption of dispute resolution clauses designating the BDAC in commercial contracts[3] amongst the State's enterprises.

II. Overview of Brunei Law on Arbitration

International arbitration in Brunei Darussalam is governed by the International Arbitration Act (Chapter 279) (the "**IAA**") which was previously known as the International Arbitration Order, 2009 prior to it being renamed in 2024. The IAA adopts and implements the UNCITRAL Model Law on International Commercial Arbitration[4]as well as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "**New York Convention**")[5]. In essence, the IAA establishes a comprehensive regime for both international arbitrations seated in Brunei Darussalam, as well as the recognition and enforcement of foreign arbitral awards in Brunei.

The IAA provides that any dispute which the parties have agreed to submit to arbitration is arbitrable unless it is contrary to public policy[6]. An "*international arbitration*" is defined broadly to include arbitrations where (i) either of the parties to the arbitration agreement has its place of business in any state other than Brunei Darussalam, or (ii) where the place of arbitration or place where a substantial part of the obligations of any commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected is situated outside Brunei Darussalam, or (iii) where parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country or territory[7].

Separately, domestic arbitration in Brunei Darussalam is governed by the Arbitration Act (Chapter 173) (the "**AA**"), which was previously known as the Arbitration Order 2009, prior to being renamed in 2024.

<u>Salient Provisions of the IAA</u>

Section 3 of the IAA gives the Model Law the force of law in Brunei Darussalam, save for several modifications such as the exception of Chapter VIII of the UNCITRAL Model Law concerning the

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[1] The authors would like to express their appreciation to Mr. Fabian Chiang, Senior Associate at Rajah & Tann Singapore LLP, for his substantive contribution to this article.
[2] "*Strengthening ADR Mechanisms for ASEAN Integration*" (2015), Ahmad Nizam Ismail
[3] "*Developing Brunei Darussalam as an ASEAN Hub for International Islamic Finance Dispute Resolution: Opportunity or Over-Ambition?*" (2022) Nobumichi Teramura; "*Developments in Arbitration and Mediation as Alternative Dispute Mechanisms in Brunei Darussalam*" (2012), Ahmad Jefri Rahman
[4] See Schedule 1 of the IAA.
[5] See Schedule 2 of the IAA.
[6] See Section 13(1) of the IAA.
[7] See Section 5(2) of the IAA.

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recognition and enforcement of arbitral awards[8]. Additionally, the key differences between the IAA and the Model Law include:

a. Section 10 of the IAA provides that a single arbitrator shall be appointed in the event the parties have not determined the number of arbitrators to be appointed. This contrasts with Article 10(2) of the Model Law which provides that three arbitrators shall be appointed in such a situation.

b. Section 11 of the IAA provides that in arbitrations involving three arbitrators, each party shall appoint one arbitrator before the parties themselves agree upon appointment of the third arbitrator. Under Article 11(3) of the Model Law, the two arbitrators appointed by the parties shall appoint the third arbitrator.

c. Pertinently, Section 36 of the IAA sets out additional grounds that a party may rely upon to set aside an arbitral award (in addition to the grounds set out in Article 34(1) of the Model Law). These two grounds cover situations where (a) the making of the award was induced or affected by fraud or corruption and (b) where there was a breach of natural justice in connection with the making of the award by which a party's rights have been prejudiced.

Further, the IAA contains several provisions in aid of arbitration proceedings which supplement the Model Law. For instance, the IAA confers wide powers on arbitral tribunals, including empowering them to grant orders for preservation of assets and evidence, security for costs, interim injunctions, measures to prevent dissipation of assets, and orders to secure the amount in dispute[9]. Separately, the IAA also grants powers to the Bruneian Courts to aid arbitration proceedings, including the power to order a subpoena to testify or to produce documents[10].

The IAA provides for a mandatory stay of any court proceedings, where brought in breach of an arbitration agreement, unless the court is satisfied that the arbitration agreement is void, inoperative or incapable of being performed[11]. The High Court of Brunei Darussalam has recently confirmed[12] that a stay pursuant to Section 6(2) of the IAA would be granted if the applicant can establish a *prima facie* case that, (i) there is a valid arbitration agreement, (ii) the dispute falls within its scope and (iii) the agreement is not null, void, inoperative or incapable of being performed.

Additionally, Section 7 of the IAA provides that where a court has ordered a stay under Section 6, it may if in those proceedings a ship or property has been arrested or bail or other security has been given to prevent or obtain release from arrest, order that the arrested property be retained as security for the satisfaction of any award made on the arbitration, or that the stay be conditional on the provision of equivalent security for the satisfaction of any such award.

Notably, the mandatory stay of court proceedings provided for under the IAA contrasts with the regime under the AA which affords the court discretion[13] to grant a stay of court proceedings in favour of arbitration if the court is satisfied that there is no sufficient reason why the matter should not be referred to arbitration and that the applicant remained ready and willing to do all things necessary to the proper conduct of the arbitration. This was demonstrated in a 2019 Court

[8] See Section 3(1) of the IAA.
[9] See Section 15 of the IAA.
[10] See Section 23 of the IAA.
[11] See Section 6 of the IAA
[12] See Sutera Energy Sdn v Appsmiths Sutera Sdn Bhd & AppsSmiths Sdn Bhd (Companies Winding up No.4 of 2025)
[13] See Section 6 of the AA; Mashhor General Contractor Sdn Bhd & Mashhor Offshore Painting Services v Seawise Sdn Bhd (Civil Appeal No.4 of 2019).)

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of Appeal of Brunei Darussalam case where the Court of Appeal, affirming the High Court, set aside a stay of court proceedings which had been granted by a Registrar in favour of potential Singapore arbitration proceedings. The apex court held that the parties in fact had agreed Brunei arbitration, so that Singapore law was not the curial law. In that case, the Court of Appeal (which adopted the reasoning by the lower court) held that a mere claim of a dispute is insufficient and it was incumbent on the courts to consider the contemporaneous documents, or lack of them, to determine not only if a *prima facie* dispute existed but also a *bona fide prima facie* dispute. The disputes in question must be real disputes with a defence that can be shown to have some substance. The Court of Appeal refused to grant the stay as it determined that the defendants' alleged disputes were little more than bald assertions. Potentially, the Court of Appeal's reasoning may apply in the context of a stay under the IAA, which remains to be clarified.

A further key difference between the IAA and the AA is that the latter allows appeals against arbitral awards (in limited circumstances), whilst there is no right to appeal under the IAA. Section 49 of the AA allows a party to arbitration proceedings to appeal to the Bruneian Courts on a question of law arising out of an award made in the proceedings.

III. Overview of Maritime Arrest Laws in Brunei Darussalam

In Brunei, the primary legislation on admiralty law and jurisdiction is the Admiralty Jurisdiction Act (Chapter 179). The Admiralty Jurisdiction Act confers jurisdiction on the High Court of Brunei Darussalam to hear claims of a maritime nature, encompassing claims for *inter-alia*, possession or ownership of a ship, enforcement of a ship mortgage, damage received or done by a ship, loss or damage to goods carried in a ship, breach of agreement for the hire of a vessel, salvage claims, claims by crew members for unpaid wages, ship building and repair claims, and claims in respect of goods or materials supplied to a ship for her operation and maintenance.

The Admiralty Jurisdiction Act also allows *in rem*[14] proceedings to be commenced against a ship or other property, or *in personam*[15] against a person or an organisation. Pursuant to Order 70 Rule 2 of the Rules of the Supreme Court (Chapter 5), an action *in rem* must be begun by writ. The admiralty jurisdiction of the Court is invoked by the service of an *in rem* writ on or arrest of the ship.

Given that Section 3 of the Admiralty Jurisdiction Act is similar to Section 20 of the United Kingdom's Senior Courts Act 1981, it is submitted that the principles in *The "Rena K"* [1979] QB 377, will be highly persuasive to a Bruneian Court. Under *The "Rena K"* approach , where a claimant establishes that an arbitration award in its favour is unlikely to be satisfied by a defendant, the security available in the action in rem may be ordered to stand, or alternative security could be ordered in substitution. However, there must be evidence which establishes that the defendant will be unable to satisfy an award in respect of the full amount of the claim in order for the principle to apply.

IV. Enforcement of Foreign Arbitration Awards in Brunei

Brunei Darussalam is a party to the New York Convention having acceded to the convention on 25 July 1996[16], although this is subject to the reciprocity reservation. Accordingly, Brunei Darussalam will only apply the New York Convention to the recognition and enforcement of

[14] See Section 4 of the Admiralty Jurisdiction Act.
[15] See Section 5 of the Admiralty Jurisdiction Act.
[16] New York Convention, 'Contracting States' (*New York Convention*) <https://www.newyorkconvention.org/contracting-states> accessed 12 December 2025.

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foreign awards made in the territory of another New York Convention territory which recognises and will enforce awards made in Brunei Darussalam[17].

Subject to the above, the IAA provides that any foreign award which is enforceable shall be recognised as binding for all purposes upon the persons 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 Brunei Darussalam[18].

The applicant who seeks recognition and enforcement of a foreign arbitration award must produce to the Bruneian Courts (i) the duly authenticated original award or a duly certified copy, (ii) the original arbitration agreement under which the award purports to have been made or a duly certified copy and (iii) if the award or agreement is in a foreign language, an English translation certified as correct by a sworn translator or by an official or by a diplomatic or consular agent of the country in which the foreign award was made[19].

Additionally, Order 69 Rule 7 of the Rules of the Supreme Court provides that an application for leave to enforce an arbitration award may be made *ex parte*, although the Court hearing such an application may direct that a summons to be issued. An application for leave must be supported by an affidavit[20] which exhibits the arbitration agreement and the original award (or in either case a copy), state the name and the usual or last known place of abode or business of the applicant and the person against whom enforcement is sought, and must state either that the award has not been complied with or the extent to which it has not been complied with as of the date of the application.

Contrastingly, a party resisting the enforcement of the foreign award may request that the enforcement be refused on the following grounds:

a. One of the parties to the arbitration agreement was, under the law applicable to him, under some incapacity at the time the agreement was made[21].
b. The arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication in that respect, under the law of the country where the award was made[22].
c. The party resisting enforcement of the award was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case in the arbitration proceedings[23].
d. The award deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains a decision on the matter beyond the scope of the submission to arbitration[24].
e. The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place[25].

[17] See Section 42(1) of the IAA.
[18] See Section 42(2) of the IAA.
[19] See Section 43(1) of the IAA.
[20] See Order 69 Rule 7(3) of the Rules of the Supreme Court.
[21] See Section 44(2)(a) of the IAA.
[22] See Section 44(2)(b) of the IAA.
[23] See Section 44(2)(c) of the IAA.
[24] See Section 44(2)(d) of the IAA.
[25] See Section 44(2)(e) of the IAA.

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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[26].

Further, the Bruneian Courts may also refuse to enforce the foreign award if it finds that:

a. The subject matter of the difference between the parties to the award is not capable of settlement by arbitration under the law of Brunei Darussalam[27].
b. The enforcement of the award would be contrary to the public policy of Brunei Darussalam[28].

V. Enforcement via Reciprocal Enforcement of Foreign Judgments

Aside from enforcement of foreign arbitration awards under the IAA, foreign arbitration awards can be registered and enforced under the Reciprocal Enforcement of Foreign Judgment Act (Chapter 177) (the "**REFJA**"). The REFJA provides for enforcement in Brunei Darussalam of judgments given in foreign countries which afford reciprocal treatment to judgments given in Brunei Darussalam. Under Section 2 of the REFJA, such judgments include "*awards in proceedings on an arbitration*". At present, this applies as well to arbitral awards issued in Singapore seated arbitrations.

Under the REFJA, a party who is a judgment creditor under a foreign arbitration award to which the REFJA applies, may apply[29] to have the judgment registered in the High Court of Brunei Darussalam. Such an application must be made within six years after the date of the judgment or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings. However, no judgment will be registered if at the date of the application, it has already been wholly satisfied, or it cannot be enforced by execution in the country of the original court. Once registered, the foreign arbitration award will for the purposes of execution, be of the same force and effect as a judgment given in Brunei Darussalam.

VI. Institutional vs. Ad Hoc Arbitration in Brunei

The sole arbitration institution in Brunei Darussalam is the BDAC which was established in 2014. As the sole arbitral institution, it has been given a mandate by the Bruneian government to administer arbitration and mediation proceedings. For instance, the Chairman of the BDAC is specified as the authority competent to perform the functions under Article 11(3) and (4) of the Model Law, i.e., appointment of arbitrators should parties fail to agree on an appointment procedure or if issues arise under the appointment procedure agreed upon by the parties.

Apart from institutional arbitration, parties in Brunei Darussalam have the option to decide their own rules for an *ad hoc* arbitration, which is also governed by the IAA. Section 25 of the IAA expressly provides that the rules of arbitration agreed to or adopted by the parties may apply and be given effect to the extent that such provisions are not inconsistent with any provision of the Model Law or Part 2 of the IAA. Further, Section 25(7) of the IAA expressly provides that "rules of arbitration" as referred to in the IAA means the rules of arbitration agreed to or adopted by the parties, including the rules of arbitration of an institution or organisation.

[26] See Section 44(2)(f) of the IAA.
[27] See Section 44(4)(a) of the IAA.
[28] See Section 44(4)(b) of the IAA.
[29] See Section 4 of the REFJA.

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VII. Singapore Chamber of Maritime Arbitration (SCMA) Awards in Brunei

Although there have not been any reported cases as yet of SCMA awards being enforced in Brunei Darussalam recently, there is little reason to expect that SCMA awards will not be recognised and enforced in Brunei Darussalam in the same fashion as arbitral awards issued by other arbitral institutions. Further, as Singapore is also a party to the New York Convention, a SCMA award will likely be treated as a New York Convention award and accordingly enforced under the IAA.

Additionally, SCMA awards will likely be enforced in Brunei Darussalam via reciprocal enforcement of Singapore judgments in Brunei Darussalam.

VIII. Conclusion

Brunei Darussalam is an increasingly pro-arbitration jurisdiction which is aiming to expand its international reach and presence. Recognition and enforcement of arbitral awards in Brunei is also a relatively straightforward process which is similar to the processes in neighbouring countries such as Singapore and Malaysia and will therefore be familiar to international parties.

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AIP Law (formerly known as Ahmad Isa & Partners) is one of the larger law firms in Brunei Darussalam and since its inception in 1992, it has developed a broad-based commercial law practice serving the growing needs of its local and international clients.

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CHINA

ENFORCEMENT OF SCMA AWARDS IN MAINLAND CHINA

Introduction

In the Maritime Arbitration Enforcement Series launched by the Singapore Chamber of Maritime Arbitration ("SCMA") in 2021, we examined the subject of arbitration from a Chinese law perspective and provided an overview of Chinese arbitration law and maritime law (which is particularly relevant as cross-border trade frequently involves maritime transportation) so that parties can have a better understanding of the relevant issues under Chinese law and make an informed choice based on their actual circumstances. The article in 2021 also provided an overview of the Chinese law on recognition and enforcement of foreign arbitral awards (where the parties choose foreign arbitration), and of the foreign arbitration institutions (such as SCMA) which are often chosen by the parties, particularly when one of the parties is a Chinese company.

This article aims to provide an update on the above topics over the past four years, in particular, where China has issued various amendments to the existing laws and there are more cases where a foreign arbitral award (such as SCMA award) has been successfully recognised / enforced in China.

Overview of Chinese Law on Arbitration

In China, arbitration law is mainly comprised of (1) the Arbitration Law and the arbitration-related legal content in the Civil Procedure Law and the Civil Code; (2) the Comprehensive and Special Judicial Interpretation of the Supreme People's Court; and (3) International Treaties, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention").

It is worth mentioning that China recently revised the Arbitration Law on 12 September 2025, coming into effect on 1 March 2026. The most significant change is the introduction of the "Seat of Arbitration" concept, which provides a clearer legal foundation for the recognition and enforcement of foreign arbitral awards in China. The new law, for the first time, allows for *ad hoc* arbitration under certain limited circumstances (such as when it involves disputes between enterprises registered in free trade zones and foreign-related maritime disputes) and shortened the time limit for applying to set aside an award from 6

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months to 3 months. These key revisions are designed to align China's framework with international best practices, substantially improving the efficiency and finality of arbitration awards.

In general, parties can agree to settle disputes through arbitration by including an arbitration clause in the contract or by entering a separate written arbitration agreement either before or after the dispute has arisen - except in the case of disputes arising from marriage, adoption, guardianship, child maintenance, inheritance, and of administrative disputes which fall within the jurisdiction of the relevant administrative organs, according to the law.

Under Chinese law, four conditions need to be satisfied to ensure the enforceability of the arbitration agreement. The requirements are as follows:

1) the expression of the parties' intentions to submit disputes to arbitration must be set out in the arbitration agreement;
2) the scope of the matters to be arbitrated must be defined;
3) the specific arbitration commission selected by the parties must be specified; and
4) the arbitration agreement must be in writing and validly executed and entered into by individuals with full legal capacity or by legal persons.

Overview of Maritime Law in China

In China, maritime law is mainly comprised of (1) Laws, such as the Chinese Maritime Code ("CMC") and the Special Maritime Procedure Law of the People's Republic of China; (2) the Judicial Interpretation of the Supreme People's Court; and (3) International Treaties.

In general, the CMC aims to regulate the interactions between parties engaged in maritime transportation and to promote the development of maritime transportation and international trade. If any international treaty concluded or acceded to by China contains provisions different from those contained in the CMC, the provisions of the relevant international treaty shall apply, unless they are provisions on which China has expressed reservations. International practice may also be applied to matters where neither the

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relevant laws of China nor those of any international treaty concluded or acceded to by China, contain any relevant provisions.

Enforceability of Foreign Awards in China

In China, recognition and enforcement of foreign arbitral awards is usually a two-step process, i.e. recognition followed by enforcement. Where a foreign arbitral award requires enforcement by a court in China, the party seeking enforcement must apply to the relevant Chinese Court for both the recognition and the enforcement of the arbitral award. Once the Court recognises the award, then the enforcement is carried out in accordance with the enforcement procedures of the Chinese Civil Procedure Law. Where the party seeking enforcement only applies for recognition without applying for enforcement at the same time, the Chinese court will only examine whether the arbitral award can be recognised and makes a ruling accordingly.

Recognition of foreign arbitral awards means that Chinese courts have confirmed that foreign arbitral awards are enforceable by law in China. Since technically speaking, the foreign arbitral award is only effective in the territory of the country where the place of the arbitration is located (in the sense that it usually does not become automatically effective in other countries before it is recognised by the relevant judicial authority in that country), and for the award to become effective in China, the parties will need to seek confirmation on the effectiveness of the award from the Chinese courts. Recognition of a foreign arbitral award is a process in which a party applies to the court to review and make a ruling on the effectiveness of the award, i.e. a judicial act to confirm whether a foreign arbitral award is effective in accordance with the procedures prescribed by Chinese law.

Although these are two independent processes, some parties may in practice apply to the court for recognition and enforcement of foreign arbitral awards through a single application. In that case, the court will still usually address the recognition issue first and, if successful, then the enforcement procedure.

The framework of Chinese recognition and enforcement of foreign arbitral awards has been taking shape over the last few decades and is based on international law and domestic law.

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The basis of international law includes (1) the New York Convention; (2) bilateral or multilateral agreements; and (3) the principle of reciprocity.

New York Convention

Since China acceded to the New York Convention in 1987, Chinese courts have gained extensive experience in the recognition and enforcement of foreign arbitral awards. The Convention is widely applied globally and endows foreign arbitral awards with enforceability in the contracting states, thereby promoting arbitration as a valuable dispute-resolution mechanism for international trade. The New York Convention has become one of the major legal bases for Chinese courts to recognise and enforce foreign arbitral awards.

Bilateral agreements

A bilateral agreement refers to a treaty concluded between two countries only. Increased globalization and the consequential risk of trade frictions and conflicts have led countries to seek arrangements promoting improved trading relations and judicial cooperation. To date, China has entered into bilateral treaties for civil and commercial judicial assistance with 39 countries. Bilateral treaties, therefore, form an important legal basis for Chinese courts to recognise and enforce foreign arbitral awards, although the scope of application is relatively narrow given that it is only limited to those countries which have a treaty arrangement with China.

The principle of reciprocity

The principle of reciprocity, which refers to the mutual benefit agreed between countries through the mutual transfer of privileges and interests, can also play an important role in the judicial cooperation between states. However, it should be noted that since most countries have acceded to the New York Convention, it is relatively rare for current Chinese judicial practice to publish a case of recognition and enforcement of foreign arbitral awards based on the principle of reciprocity.

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Institutional vs *ad hoc* Arbitration – Chinese Perspective

In China, the principal domestic law for recognizing and enforcing foreign arbitral awards is Article 304 of Civil Procedure Law of the People's Republic of China (Revised in 2023) ("Civil Procedure Law"), which stipulates that "Arbitral awards with legal effect made outside the territory of the People's Republic of China that require recognition and enforcement by the people's courts.... shall be handled in accordance with international treaties concluded or acceded to by the People's Republic of China, or in accordance with the principle of reciprocity" (our emphases).

By way of further explanation, Article 543 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (Revised in 2022) ("Interpretation") stipulates that where a party applies to a people's court for recognition and enforcement of an arbitral award rendered by an ad-hoc arbitration tribunal outside the territory of the People's Republic of China, such application shall be dealt with by the People's Court in accordance with the provisions of Article 304 of the Civil Procedure Law, the full provision of which is set out above. It indicates that *ad hoc* arbitration awards are in principle, recognizable in China, as long as they can meet the requirements under the applicable international treaties (mainly the New York Convention) and/or the principle of reciprocity.

Regarding international treaties, there are both multilateral treaties and bilateral treaties applicable in China. For multilateral treaties, it is usually the New York Convention that will apply. For bilateral treaties, as mentioned above, China has entered into bilateral treaties for civil and commercial judicial assistance with 39 countries. Except for the treaty with Turkey, the content of the recognition and enforcement of arbitral awards in the remaining treaties all points to the application of the New York Convention.

In the circumstances, the Chinese courts will essentially apply the provisions of the New York Convention to recognise and enforce foreign arbitral awards issued in member states of the New York Convention, subject to reciprocity reservation statements[1] and commercial reservation statements.[2] According to Article I paragraph 2 of the New York Convention, the term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the

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parties have submitted. Accordingly, both foreign ad-hoc arbitral awards and institutional arbitral awards can, in principle, be recognised and enforced in the Chinese courts in accordance with this provision.

Regarding the principle of reciprocity mentioned in Article 304 of Civil Procedure Law and Article 543 of the Interpretation, given the wide application of the New York Convention, in practice, Chinese courts rarely recognise and enforce foreign arbitral awards based on this principle. However, in theory, foreign arbitral awards issued in non-signatory states of the New York Convention could be recognised and enforced in China under the principle of reciprocity. It is worth noting that the Chinese courts' understanding of the principle of reciprocity has been shifting from "factual reciprocity" [3] to "presumed reciprocity"[4] which is a more flexible standard for the recognition and enforcement of foreign judgments.

Status of SCMA Awards in China

The SCMA is a specialist arbitration institution which provides a neutral, cost-effective and flexible framework for maritime and international trade arbitrations that is responsive to the needs of industry users. Its global and regional members hail from all sectors of maritime, trade and arbitration communities. SCMA attracts disputants in the region by providing tailored solutions to suit the region's interests.[5]

Parties can refer any dispute to arbitration under the SCMA Arbitration Rules. While the SCMA Arbitration Rules were designed to address the needs of the maritime community, many other sectors can benefit from choosing SCMA. SCMA's model means that disputants are given all the tools they need to self-administer their arbitration with one distinct advantage — the option of services provided by SCMA's dedicated Secretariat. This translates into maximum flexibility over the arbitration process while ensuring peace of mind that the institution can provide a range of services, where requested. Unless disputants choose to use any of SCMA's services, no costs are levied by the SCMA. The self- administered model means that a party can commence and run the arbitration entirely at its own cost. The SCMA neither imposes any mandatory deposits nor enforces a scale of fees for arbitrator remuneration. Any fees paid to the arbitrator are mutually agreed between disputants and the arbitrator. It has strict admission criteria for inclusion

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in its panel of arbitrators (for instance, putative arbitrators must have at least 10 years in the shipping industry to be qualified as arbitrators of the SCMA), although parties are not restricted to choosing an arbitrator from the SCMA's panel of arbitrators only.[6]

According to "2024 Year in Review" issued by SCMA, in 2024, they dealt with a total of 95 cases involving parties from Singapore, other countries in Asia (including China), the United Arab Emirates, and other parts of the world. The total claim amount was USD 97.97 million with an average claim amount of USD 1.18 million.

Singapore and China are both parties to the New York Convention. Therefore, once parties obtain an arbitral award issued in Singapore, the basis for applying for recognition and enforcement in China will be the New York Convention. An SCMA award is considered an institutional arbitration award in China,[7] which, in principle, can be recognised and enforced in Chinese courts. It is worth noting that a recent case, (2023) Jin 72 Xie Wai Ren No. 1, confirmed the enforceability of an SCMA award in China. In this case, the applicant applied to the Tianjin Maritime Court for recognition and enforcement of an arbitral award made by SCMA concerning a bareboat charter contract dispute. The court confirmed that the award did not violate China's public policy, noting specifically that the arbitral award did not directly deal with the deregistration procedures of the vessel's bareboat charter registration, which must follow Chinese law. The court, therefore, decided to recognise and enforce the SCMA award, demonstrating the Chinese court's supportive stance towards the recognition and enforcement of foreign arbitral awards.

Comment

Arbitration as an alternative dispute resolution method to litigation is becoming increasingly popular. Bearing in mind the issue of recognition and enforcement of awards where international parties are involved, choosing the right place for the arbitration proceedings is critical as it directly impacts whether the parties can successfully enforce the award.

For further information on this topic, you are welcome to contact the authors of this update or your usual contact at Clyde & Co.

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[1] Article 1 of the Circular of Supreme People's Court on Implementing Convention on the Recognition and Enforcement of Foreign Arbitral Awards Entered by China stipulates that this Convention shall apply to the recognition and enforcement of an arbitral award made in the territory of another contracting State.
[2] Article 1 of the Circular of Supreme People's Court on Implementing Convention on the Recognition and Enforcement of Foreign Arbitral Awards Entered by China stipulates that this Convention shall only apply to the disputes arising from any contractual or non-contractual commercial legal relationship.
[3] It generally refers to the premise that the judgment of a foreign court being recognised and enforced in the Chinese court is the country where the foreign court is located has a precedent of recognizing and enforcing the judgment of the Chinese court, otherwise the Chinese court will refuse to recognise and enforce it.
[4] Article 7 of the Nanning Declaration (第二届中国-东盟大法官论坛南宁声明) dated 8 June 2017 stated that "...states that have not yet concluded the recognition and enforcement of international treaties related to foreign civil and commercial judgments, in the judicial procedures for the recognition and enforcement of the other states' civil and commercial judgments, if there are no precedents in the courts of the opposing states that refuse to recognise and enforce the civil and commercial judgments on the grounds of reciprocity, within the scope permitted by the domestic laws of the state it can be presumed that there is a reciprocal relationship with the opposing state. (尚未缔结有关外国民商事判决承认和执行国际条约的国家,在承认与执行对方国家民商事判决的司法程序中,如对方国家的法院不存在以互惠为理由拒绝承认和执行本国民商事判决的先例,在本国国内法允许的范围内,即可推定与对方国家之间存在互惠关系。)
[5] Singapore Chamber of Maritime Arbitration website https://www.scma.org.sg/Default.aspx?sname=scma&sid= 126&pageid=2969&catid=4175&catname=About-Us (accessed 31 May 2021).
[6] Singapore Chamber of Maritime Arbitration website https://www.scma.org.sg/Default.aspx?sname=scma&sid=126&pageid=2969&catid=4206&catname=Resources#FA Q (accessed 31 May 2021).
[7] (2017) J04MT No.25 (China Light TRI-UNION International Co., Ltd. vs. Tata International Metal (Asia) Co., Ltd.).

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Clyde & Co is a leading international law firm with 500 partners and 3,200 legal staff, operating from over 70 offices and associated offices across six continents. In China, Clyde & Co established a joint law venture with Chinese local law firm Westlink Partnership in 2013 - Clyde & Co Westlink JLV. The joint law venture is able to provide clients with seamless onshore and offshore legal services.

Clyde & Co Westlink JLV draws together Clyde & Co's international expertise with the full domestic Chinese law capability of Westlink Partnership for clients with an interest in China.

The firm's China qualified attorneys have rights of audience before the Chinese Courts / arbitration institutions and can advise on all facets of domestic litigation, arbitration, commercial disputes and insolvency work in China. The team has acted as lead counsel in applications, trials and appellate proceedings, before various levels of courts in China. They also have impressive track records in recognising and enforcing foreign arbitral awards in China.

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HONG KONG

Enforceability of SCMA Awards in Hong Kong

Overview

Hong Kong and Singapore are alike in many respects, including in their positions as leading alternative dispute resolution and maritime law centres in the Asia Pacific region. Both being world class arbitration and maritime law hubs, Hong Kong and Singapore are collaborative in their arbitration regimes in the sense that they both readily allow enforcement of arbitration awards from the other jurisdiction.

According to the 2025 International Arbitration Survey conducted by Queen Mary University of London, Hong Kong is the second most preferred seats for arbitration worldwide and ranks joint first with Singapore in the Asia-Pacific region.[1] According to the 2024 annual case statistics released by the HKIAC, 503 new arbitration cases were submitted to the HKIAC in 2024, which is its highest on record.[2] In fact, excluding Hong Kong and mainland Chinese users, Singaporean parties were in the top five users of Hong Kong arbitration.[3]

The SCMA is a Singaporean arbitral body specifically established to facilitate resolution of maritime claims. Its counterpart in Hong Kong is the Hong Kong Maritime Arbitration Group ("**HKMAG**"). HKMAG was originally formed as a division of the Hong Kong International Arbitration Centre ("**HKIAC**"), itself formed in 1985, but has been independent since March 2019. In the eyes of the Hong Kong Court, an SCMA award has equivalent status as an HKMAG award; both can be enforced in the same manner as a Hong Kong Judgment.

Overview of Hong Kong Arbitration Law

The main legislation that regulates arbitration in Hong Kong is the Arbitration Ordinance (Cap. 609). The Ordinance is mainly based on the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (1985) ("**Model Law**"). It superseded the "old" Arbitration Ordinance (Cap. 341) and unified the legal frameworks of domestic arbitration and international arbitration in Hong Kong.[4]

The Hong Kong Courts are renowned for their pro-arbitration stance. In *Shagang South Asia (Hong Kong) Trading co. Ltd. v Daewoo Logistics (The Nikolaos A)* [2015] EWHC 194 (Comm), Lord Justice Hamblen described Hong Kong as "*a well-known and respected arbitration forum with a reputation for neutrality, not least because of its supervising courts*."

In *KB v S and Others* [2015] HKCFI 1787. Madam Justice Mimmie Chan listed 10 key principles behind the Hong Kong courts' approach to arbitral proceedings:

1. The primary aim of the court is to facilitate the arbitral process and to assist with enforcement of arbitral awards.

2. Under the Arbitration Ordinance, the court should only interfere in the arbitration of the dispute as expressly provided for in the Ordinance.

3. Subject to the observance of safeguards that are necessary in the public interest, the parties to a dispute should be free to agree how their dispute should be resolved.

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4. Enforcement of arbitral awards should be "almost a matter of administrative procedure" and the courts should be "as mechanistic as possible" (*Re PetroChina International (Hong Kong) Corp Ltd [2011] 4 HKLRD 604*).

5. The courts are prepared to enforce awards except where complaints of substance can be made good. The party opposing enforcement has to show a real risk of prejudice and that its rights are shown to have been violated in a material way (*Grand Pacific Holdings v China Holdings Ltd [2012] 4 HKLRD 1 (CA)*).

6. In dealing with applications to set aside an arbitral award, or to refuse enforcement of an award, whether on the ground of not having been given notice of the arbitral proceedings, inability to present one's case, or that the composition of the tribunal or the arbitral procedure was not in accordance with the parties' agreement, the court is concerned with the structural integrity of the arbitration proceedings. In this regard, the conduct complained of "must be serious, even egregious", before the court would find that there was an error sufficiently serious so as to have undermined due process (*Grand Pacific Holdings v China Holdings Ltd [2012] 4 HKLRD 1 (CA)*).

7. In considering whether or not to refuse the enforcement of the award, the court does not look into the merits or at the underlying transaction (*Xiamen Xingjingdi Group Ltd v Eton Properties Limited [2009] 4 HKLRD 353 (CA)*).

8. Failure to make prompt objection to the Tribunal or the supervisory court may constitute estoppel or want of *bona fides* (*Hebei Import & Export Corp v Polytek Engineering Co Ltd (1999) 2 HKCFAR 111*).

9. Even if sufficient grounds are made out either to refuse enforcement or to set aside an arbitral award, the court has a residual discretion and may nevertheless enforce the award despite the proven existence of a valid ground (*Hebei Import & Export Corp v Polytek Engineering Co Ltd (1999) 2 HKCFAR 111*).

10. The Hong Kong Court of Final Appeal clearly recognised in *Hebei Import & Export Corp v Polytek Engineering Co Ltd* that parties to an arbitration have a duty of good faith, or to act *bona fide* (p 120I and p 137B of the judgment).

The pro-arbitration stance of the Hong Kong Courts is further fortified by the recent decision in *Borrower v Lender [2025] HKCFI 3197*, which affirmed the High Court’s jurisdiction to order security for costs in arbitration-related court proceedings.

*HKIAC’s 2024 Administered Arbitration Rules (“**HKIAC Rules 2024**”)*

The HKIAC updated its Administered Arbitration Rules in 2024, and they now include several enhancements to promote the integrity of proceedings and timely, cost-effective resolution of disputes.[5]

Key updates include improved provisions for determination of preliminary issues, bifurcation and sequential stages (Article 13.6), multi-party and multi-contract provisions (Article 27.13 and Article 29.2), expedited procedures (Article 42.2(e))), review and determination of tribunal fees (paragraph 5.1, Schedule 2), and new provisions on diversity (Article 9A), environmental impact (Articles 13.1 and 34.4(f)) and information security (Article 45A).

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These updates further strengthen Hong Kong's arbitration framework and align it with global best practices.

HKIAC's Recent Practice Note; Multi Party/Multi-Contract Arbitrations

On 20 January 2025, the HKIAC issued a new Practice Note providing guidance on managing multiple arbitrations and multi-contract arbitrations under Articles 28 and 29 of the HKIAC Rules 2024. [6]

The HKIAC clarified that arbitration agreements across related contracts need not be identical to be deemed "compatible" for the purposes of consolidation but must have "surmountable" differences, and that the HKIAC will appoint the arbitrator(s) designated by the parties unless concerns arise regarding impartiality, independence or availability of the designated arbitrator(s).

The Practice Note does not however provide guidance as to concurrency of arbitrations, often a vexed issue in disputes arising out of a chain of charterparties. An application by a party to a charterparty arbitration for it to be dealt with concurrently with another reference will therefore continue to be dealt with by tribunals pursuant to their existing case management powers, applicable rules, and subject always to confidentiality concerns. As to the latter, confidentiality concerns should not be an issue in concurrent arbitrations if the respective arbitration panels are identical.

Overview of Maritime Law in Hong Kong

The Admiralty Court has long been the specialist Court to deal with maritime disputes and the claims listed out in section 12A of the High Court Ordinance (Cap 4) ("**HCO**"). Section 12B of the HCO together with Order 75 of the Rules of High Court (Cap 4A) provide a code for the procedures whereby the Hong Kong Admiralty Court exercises its Admiralty jurisdiction, including to facilitate the arrest of vessels by the Admiralty Bailiff in order to secure maritime claims.

Following China's resumption of sovereignty over Hong Kong on 1 July 1997, Hong Kong continues to adopt the English Common Law system under the principle of "One country, Two systems". Therefore, maritime law in Hong Kong is based upon pre-1997 English common law as the substantive law, which aligns Hong Kong with the practices of most other Commonwealth jurisdictions. Maritime jurisprudence emanating from Hong Kong is highly regarded[7]

In conjunction with the general body of common law, the following two pieces of legislation form a maritime law system familiar to most global practitioners:

1. By virtue of the Carriage of Goods by Sea Ordinance (Cap 462), the Hague-Visby Rules have the force of law in Hong Kong. The applicability of the Hague-Visby Rules provides certainty to entities globally as to the rights and liabilities of carriers and other interested parties, such as cargo owners and international traders.

2. By virtue of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap 434), the Convention on Limitation of Liability for Maritime Claims (the 1976 Limitation Convention) and the Protocol of 1996 to amend the 1976 Limitation Convention (the 1996 Protocol) have the force of law.

In addition, Hong Kong incorporated the United Nations Convention on Contracts for the International Sale of Goods ("**CISG**") [Define] into law through the Sale of Goods (United Nations

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Convention) Ordinance (Cap. 641) in December 2022. [8] Parties now have the option to apply the CISG through opting for Hong Kong law as the governing law of their contracts.

Enforceability of Foreign Awards in Hong Kong

According to section 84 of the Arbitration Ordinance, with the leave of the Court, an arbitral award made either in or outside Hong Kong is enforceable in the same manner as a judgement of the Court.

There are three main categories of foreign awards for the purposes of enforcement:

Convention awards

According to section 2 of the Arbitration Ordinance, a convention award is defined as *"an arbitral award made in a State or the territory of a State, other than China or any part of China, which is a party to the New York Convention."* The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**") is an international convention ratified by more than 170 states worldwide. Arbitral awards issued by one of the signatories of the New York Convention are enforceable in other contracting states.

Hong Kong, as a Special Administrative Region of the People's Republic of China, is not itself a separate contracting state party to the New York Convention. However, after the handover of Hong Kong to the PRC on 1 July 1997, the PRC, which is a contracting party to the Convention, extended application of the Convention to Hong Kong. As Hong Kong is included as one of the contracting states to the New York Convention, foreign awards issued in other signatory states are enforceable in Hong Kong. The enforcement of Convention awards is governed by Division 2 of Part 10 of the Arbitration Ordinance.

Mainland awards

Section 2 of the Arbitration Ordinance defines Mainland awards as awards issued in any part of China other than Hong Kong, Macao and Taiwan. On 21 June 1999, based on Article 95 of the Basic Law, the Department of Justice in Hong Kong and the Supreme People's Court in China reached the "Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and Hong Kong Special Administrative Region" ("**1999 Arrangement**"), which allows mutual recognition of arbitral awards between Hong Kong and Mainland China. The 1999 Arrangement came into effect on 1 February 2000. Since then, arbitral awards made in accordance with the Arbitration Law of the PRC became recognised and enforceable in Hong Kong via the reciprocal arrangement. Such enforcement is governed by Division 3 of Part 10 of the Arbitration Ordinance.

A Supplemental Arrangement was signed on 27 November 2020 to supplement and modify four main aspects of the 1999 Arrangement:

1. Simultaneous enforcement of awards in both jurisdictions was prohibited under the 1999 Arrangement. However, the Supplemental Arrangement now permits the parties to apply for the enforcement of arbitral awards before the courts of China and Hong Kong at the same time, as long as the total amount to be recovered does not exceed the amount determined in the award.
2. The Supplemental Arrangement clarifies that the enforcement of arbitral awards under the 1999 Arrangement includes both "recognition" and "enforcement" of awards.

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3. An express provision has been added whereby the courts of the Mainland China and Hong Kong may order preservation or mandatory measures before or after the acceptance of an enforcement application.
4. The Supplemental Arrangement expands the scope of arbitral awards covered by the 1999 Arrangement. All arbitral awards made in the Mainland are now enforceable in Hong Kong under the Arrangement. Previously, only awards made by certain recognized Mainland arbitral authorities were enforceable.

These modifications brought the enforcement of Mainland awards more in line with the provisions of the New York Convention.

It should also be noted that the time limitation periods for enforcing arbitration awards are different in China and Hong Kong. The limitation period in Hong Kong is 6 years from the date on which the cause of action accrued (i.e. when the award is published), while the limitation period in China is 2 years.

Macao awards

A similar reciprocal enforcement arrangement between Hong Kong and China was also made between Hong Kong and Macao in 2013. The "Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards Between the Hong Kong Special Administrative Region and the Macau Special Administrative Region" provides for the mutual recognition and enforcement of arbitral awards between Hong Kong and Macao, which are the two Special Administrative Regions of the PRC. The enforcement is governed by Division 4 of Part 10 of the Arbitration Ordinance.

As mentioned above, the pro-arbitration Hong Kong Courts take a "mechanistic" and quasi-administrative approach to the enforcement of any qualified foreign award. The Arbitration Ordinance lists out three main documents required as evidence for enforcement of arbitral awards (section 85), Convention awards (section 88), Mainland awards, (section 94) and Macao awards (section 98C). These are:

(1) the duly authenticated original award or a duly certified copy of it;
(2) the original arbitration agreement or a duly certified copy of it; and
(3) a certified translation of the award or the agreement if it is written in a language other than English or Chinese.

Institutional vs Ad Hoc Arbitration – Hong Kong perspectives

There are two different types of arbitration recognised in Hong Kong, namely, institutional arbitration and ad hoc arbitration.

Institutional arbitration

Arbitral institutions in Hong Kong include the HKIAC, HKMAG, China Maritime Arbitration Commission Hong Kong Arbitration Centre, China International Economic and Trade Arbitration Commission Hong Kong Arbitration Centre ("CIETAC") and the International Chamber of Commerce ("ICC").

The Hong Kong Courts also readily recognise and enforce awards issued by other international arbitration bodies, such as the Singapore International Arbitration Centre and the SCMA.

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Ad hoc arbitration

Ad hoc arbitrations are arranged between the parties and the arbitrators. They are not administered by arbitral institutions; instead, they are administered by arbitrators appointed by the parties. The parties have full discretion to decide the arbitrators selected, the number of arbitrators and the applicable rules that shall govern the arbitration. They may also agree to adopt a set of pre-existing rules, such as the UNCITRAL Rules of Arbitration, the LMAA Rules or the SCMA Rules.

Status of SCMA Awards in Hong Kong

The SCMA Rules provide that the default seat of the arbitration is Singapore. As already mentioned, under the New York Convention, arbitral awards emanating from an actual or juridical seat that is a signatory to the New York Convention are enforceable in other contracting states.

As Singapore is a signatory to the New York Convention, awards issued by a Singapore seated Tribunal applying the SCMA Rules are enforceable in Hong Kong.

The SCMA Rules also allow parties to agree that the actual (in the sense of physical) seat of the arbitration may be elsewhere than Singapore. In such circumstances a Singapore Award can still be published and Singapore will be the juridical seat. Such awards are enforceable in Hong Kong as if the relevant Award were published by a tribunal physically sitting in Singapore. Ordinance.

Recognition and Enforcement of SCMA Awards in Hong Kong

Awards are enforced using a two-stage process. Hong Kong courts generally recognize the awards unless one of the grounds provided under the Arbitration Ordinance applies. The recognition and enforcement proceedings are adversarial in nature.

Recognition stage

The court first has to determine whether to grant permission to enforce the award. The application for leave to enforce the award is made *ex parte*, to the High Court supported by an affidavit. The applicant must make full and frank disclosure of all relevant information.

A recognition Order Nisi is then made allowing the award debtor not less than 14 days to object to recognition and enforcement.

Execution stage

Once an award becomes enforceable, assuming no challenge within the time period referred to above, it may be enforced as though it were a local court judgment and a party may apply for a Garnishee Order, t Writ of Execution or Sequestration, Winding Up Petition, or Charging Order.

An interim order may also be issued to restrain a party from diminishing its assets, including funds held in bank accounts located in Hong Kong or elsewhere. This is known as a Worldwide Mareva injunction, for which application may also be made ex parte.

Post-award ship arrest

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Hong Kong is a favorable jurisdiction for arresting a ship and commission on a judicial sale *pendente lite* is less than in Singapore. A party may apply for a ship arrest in Hong Kong at relatively low cost, with low risk of an accusation of wrongful arrest (if proper legal advice is taken) and without any obligation to put up counter-security.

This arrest friendly reputation was further enhanced forthwith the High Court judgment in *Handytankers KS v Owners and/or Demise Charterers of Alas [2014] HCMP 2315/2014*. The court confirmed that a cause of action *in rem* remains available even after a final arbitration award has been rendered, so long as that award remains unsatisfied. However, the application must not be framed as an application to enforce the award but rather as an ordinary security arrest for an *in rem* claim. The plaintiff must be entitled to invoke the Admiralty jurisdiction of the court to arrest a vessel as security for the *in rem* claim.

In summary, Hong Kong does permit ship arrest for the underlying purpose of enforcing an arbitration award on a maritime claim.

Concluding Remarks

The global maritime industry is well served by both Hong Kong and Singapore, and their own designated arbitral bodies and sets of rules specifically tailored for maritime disputes. The default position of the Hong Kong Court is to treat SCMA awards no differently from Hong Kong awards.

For further information and assistance in relation to this topic, feel free to reach the authors of this article or your usual contacts at Hill Dickinson.

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[1] Queen Mary University of London, "2025 International Arbitration Survey: The path forward: Realities and opportunities in arbitration" (White and Case LLP 2025), <https://www.qmul.ac.uk/arbitration/media/arbitration/docs/White-Case-QMUL-2025-International-Arbitration-Survey-report.pdf>, accessed 4 September 2025.

[2] en2

[3] "2023 Statistics" (*HKIAC,* March 06, 2024) <https://www.hkiac.org/about-us/statistics>, accessed 3 September 2025.

[4] LCQ14: Hong Kong as an International Arbitration Hub", <https://www.info.gov.hk/gia/general/201912/18/P2019121800402.htm>, accessed 3 September 2025.

[5] "2024 Administered Arbitration Rules" (*HKIAC*) <https://www.hkiac.org/sites/default/files/ck_filebrowser/2024%20HKIAC%20ADMINISTERED%20ARBITRATION%20RULES%20-%20English.pdf>, accessed 4 September 2025.

[6] "Practice Note on Compatibility of Arbitration Clauses under the HKIAC Administered Arbitration Rules" (*HKIAC*, January 20, 2025) <https://www.hkiac.org/sites/default/files/ck_filebrowser/Practice%20Note%20on%20Compatibility%20of%20Arbitration%20Clauses_EN.pdf>, accessed 4 September 2025.

[7] "Marine Legal Services" (*HKMPB*) <https://www.hkmpb.gov.hk/en/marine-legal-services.html>, accessed 4 September 2025.

[8] "CISG by jurisdiction – Hong Kong SAR (China)" (*CISG*) <https://cisg-online.org/CISG-by-jurisdiction?command=detail&detail=100>, accessed 4 September 2025.

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Our Hong Kong office is also highly regarded for its international trade work assisting banks, commodities traders, shipowners, charterers and insurers with trade and transport-related arbitration and litigation. This work often evolves into advising on sanctions issues and trade strategies and structures, as well as insolvency and restructuring advice. We also have a solicitor advocate, as well as accredited arbitrators and mediators.

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INDIA

INDIA

Introduction

Arbitration in India has a rich historic lineage stretching back to ancient times, where similar informal dispute resolution mechanisms were prevalent. The formalisation of arbitration law in India began during the British colonial era, with the enactment of the Bengal Regulation Act, 1772, which legitimized arbitration agreements and proceedings within presidencies. Similar Regulations were promulgated in Bombay (now Mumbai) and Madras (now Chennai). Then came the Arbitration Act, 1940 ("**1940 Act**") which consolidated all existing provision prevailing in India. Thereafter, Foreign Awards (Recognition and Enforcement) Act, 1961 ("**1961 Act**") came into existence which was applicable in parallel with the 1940 Act. Both 1940 Act and 1961 Act were criticised for allowing excessive court intervention and procedural complexity.

Post-independence, India's arbitration regime evolved significantly with the enactment of the Arbitration and Conciliation Act, 1996 ("**1996 Act**"). The 1996 Act was enacted to "*consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to the conciliation and for matters connected therewith or incidental thereto*".[1] It also brought domestic as well as international commercial arbitration in consonance with the UNCITRAL Model Law, the New York Convention, and the Geneva Convention, and consolidated all Acts relating to arbitration in India. The 1996 Act aimed to reduce judicial interference, promote party autonomy, and provide a streamlined and effective framework that supports both domestic and international arbitration proceedings. Subsequent amendments in 2015, 2019, and 2021 have sought to refine the process further, making India an arbitration-friendly jurisdiction with a growing institutional framework.

The 1996 Act and its evolution through amendments and precedents

The 1996 Act is divided into four parts. Part I and Part II set out the laws governing domestic and foreign arbitration respectively. Part III deals with conciliation and Part IV contains supplementary miscellaneous provisions.

The 1996 Act has undergone several key amendments over the years, substantially reshaping India's arbitration landscape. The 2015 amendment marked a turning point, ushering in what many regard as an entirely new arbitration regime. One of its important changes was the designation of the relevant High Court as the default forum for applications concerning international commercial arbitrations[2] (*i.e., arbitrations where at least one party is foreign, irrespective of whether the arbitration is seated in India or abroad*). This ensured that such matters were heard by courts with greater expertise in complex cross-border disputes.

Further amendments followed in 2019 and 2021. The 2019 amendment attempted to dilute the progressive framework introduced in 2015, particularly in relation to vesting jurisdiction in the High Courts for international commercial arbitration[3]. However, the Supreme Court struck down

[1] *Interplay Between Arbitration Agreements Under The Arbitration And Conciliation Act 1996 And The Indian Stamp Act 1899* Curative Pet(C) No.44/2023 In R.P.(C) No. 704/2021 In C.A. No. 1599/2020.
[2] Section 2(1)(e)(ii) of the Arbitration and Conciliation Act, 1996.
[3] Section 3 of the Arbitration and Conciliation (Amendment) Act, 2019.

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certain provisions of the 2019 amendment as unconstitutional, thereby restoring the position established in 2015.[4]

The 1996 Act provisioned for automatic stay on an arbitral award upon filing of an application challenging such award. 2015 amendment took away such provision of automatic stay on the award and a separate application was required to be filed and allowed for a stay on the award. In 2021, the Parliament enacted the Arbitration and Conciliation (Amendment) Act, 2021, carving out a provision allowing for the unconditional stay of enforcement of a domestic arbitral award where it was obtained by fraud or corruption[5]. Usually under Section 36, filing an application to set aside an award does not automatically stay its enforcement. A separate application under Section 36(3) is necessary, and courts typically condition such stays on furnishing security, unless exceptional circumstances justify otherwise.

The 1996 Act also empowers Indian courts to grant interim relief, including orders for securing assets. in both domestic and foreign-seated arbitrations.[6] In *Essar House Pvt Ltd v. Arcellor Nippon*,[7] the Supreme Court clarified that while granting interim relief, courts are not rigidly bound by the stringent requirements of Order 38, Rule 5 of the Code of Civil Procedure, 1908 (CPC). Instead, those requirements serve only as guiding principles, with the overarching aim being the delivery of justice. However, in *Sanghi Industries Limited v. Ravin Cables & Anr*,[8] the Supreme Court took the opposite view, holding that compliance with the strictures of Order 38, Rule 5 was mandatory. Other decisions, however, reaffirm the broader position that courts retain wide discretion to grant interim relief provided that the applicant demonstrates a strong *prima facie* case, balance of convenience, and due diligence in approaching the court.[9] In some situations, courts may order a party to deposit security where the defence appears untenable[10] or post award. The Indian Courts, in relation to jurisdiction of a court while dealing with an application under Section 9 of the Arbitration Act where both parties are foreign, have taken diverse view. Some courts have held that they lack subject-matter jurisdiction where a dispute involves foreign parties without any nexus to India,[11] whereas others have held that if assets are located in India, applications for interim measures in aid of a foreign-seated arbitration may be entertained,[12] especially after a foreign award has been obtained.

In a landmark judgment, *Amazon.com NV Investment Holdings LLC v. Future Retail Limited*,[13] the Supreme Court held that orders passed by foreign-seated emergency arbitrators will be treated akin to interim measures allowed under Section 17 of the 1996 Act passed in aid of arbitration and failure to comply with such order will lead to contempt. The Court clarified that an "emergency arbitrator" qualifies as an "arbitral tribunal" under the Act, and consequently, emergency orders carry the same legal weight as orders of any other tribunal. Importantly, no appeal lies from enforcement of such emergency awards under Section 17(2). In this regard, the

[4] *Hindustan Construction Company Limited v. Union of India & Ors* (2020) 17 SCC 324.
[5] Section 2 of the Arbitration and Conciliation (Amendment) Act, 2021.
[6] Section 9 of the Arbitration Act, 1996.
[7] 2022 SCC Online SC 1219.
[8] 2022 SCC Online SC 1329.
[9] *Sepco Electric Power Construction v. Power Mech Projects Limited*, 2022 SCC Online SC 1243.
[10] *Essar House Private Limited v. Arcellor Mittal Nippon Steel India Ltd*, 2021 SCC OnLine Bom 149; *Valentine Maritime Ltd v. Kreuz Subsea Pte Ltd & Anr*, 2021 SCC OnLine Bom 75.
[11] *Cyrstal Sea Shipping Company Ltd v. Bostomar Shipping Pte Ltd & Ors* (I.COM.A.O.A. No. 1 of 2021; order dated 5 March 2021 passed by Andhra Pradesh High Court) and *Cyrstal Sea Shipping Company Ltd v. Bostomar Shipping Pte Ltd & Ors* (AP No. 136 of 2021, order dated 11 March 2021 passed by Calcutta High Court).
[12] *Shanghai Electric Group v. Reliance Infrastructure Ltd*, OMP (I) (Comm) 433 of 2020, judgment dated 19 July 2022.
[13] (2022) 1 SCC 209.

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proposed Arbitration and Conciliation (Amendment) Bill 2024 provides formal statutory recognition for emergency arbitration.

The 2019 amendment also impacted Section 45 of the Act,[14] which now permits Indian courts to refer parties to foreign-seated arbitration unless a *prima facie* case is established that the arbitration agreement is "*null and void, inoperative or incapable of being performed*." Earlier, in *Chloro Controls India Private Ltd v. Severn Trent Water Purification Inc.*,[15] the Supreme Court had allowed courts to conduct a full-fledged inquiry, including oral and documentary evidence, before deciding whether to refer parties to arbitration. This position has since been diluted by the amendment. Notably, the *Chloro Controls* judgment also endorsed the "group of companies" doctrine, enabling non-signatories to be bound by arbitration where the parties' intent was to bind both signatory and non-signatory members of a corporate group. In *Cox and Kings v. SAP India (P) Ltd*,[16] the Court expressed doubt about this doctrine's linkage to the phrase "through or under" used in the Act, and referred the matter to a larger bench. The larger bench in *Cox and Kings Ltd v. SAP India (P) Ltd (Cox and Kings II)*[17] subsequently upheld the doctrine as a stand-alone legal principle rooted in the Arbitration Act, though not tethered to the statutory phrase "through or under."

On the recurring debate of "seat versus venue," the Supreme Court clarified that mere designation of a venue does not confer exclusive supervisory jurisdiction on the courts at that place. This interpretation has since been affirmed by a three-judge bench, which ruled that in the absence of a designated "seat," jurisdiction could vest in multiple courts depending on the cause of action. The Court further affirmed that parties remain free to mutually change the seat of arbitration, thereby shifting exclusive jurisdiction to the courts of that seat.

The Supreme Court's decision in *PASL Wind Solutions Pvt Ltd v. GE Power Conversion India Pvt Ltd*[18] confirmed that two Indian parties may validly agree to a foreign-seated arbitration, and such an agreement does not preclude them from seeking interim relief under Section 9 of the Act. The judgment also recognized that Indian parties may select foreign substantive law to govern their contract. However, the Court cautioned that foreign law cannot be invoked to circumvent mandatory provisions of Indian law. If Indian law is contravened, the resulting award may still be challenged on public policy grounds under Section 48(2)(a) at the time of enforcement.

The 2015 amendment introduced "fast-track" or "documents-only" arbitration, where, on consent of the parties, a sole arbitrator may decide the case purely on documentary evidence without oral hearings, with the award to be delivered within six months of reference. Time limits for arbitration were also addressed in the 2019 amendment. It requires pleadings to be completed within six months of the arbitrators' appointment.[19] In domestic arbitrations, the tribunal must render its award within 12 months after pleadings are completed, while in international commercial arbitrations, this timeline is only directory.[20] This timeline of 12 months

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[14] Section 45 of the Arbitration Act, 1996 applies to foreign seated arbitrations and deals with the power of a judicial authority to refer parties to arbitration.
[15] (2013) 1 SCC 641.
[16] 2022 SCC Online SC 570.
[17] 2023 SCC OnLine SC 1634
[18] 2021 SCC Online SC 331.
[19] Section 23 of the Arbitration Act, 1996.
[20] Section 29A of the Arbitration Act, 1996.

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for domestic arbitrations can be extended by specific court order in applications under Section 29A.

Maritime Law in India

India's vast coastline and reliance on maritime trade necessitated a robust legal regime to handle disputes connected with shipping and navigation. This need culminated in the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("**Admiralty Act**").[21] The Admiralty Act consolidated and modernized colonial-era admiralty laws, aligning Indian practice with global standards. Admiralty jurisdiction allows designated High Courts to adjudicate disputes relating to vessels and maritime claims and liens, thereby providing certainty and uniformity in this critical area of commerce. Under the Admiralty Act, admiralty jurisdiction is vested in the High Courts of Bombay, Calcutta, Madras, Karnataka, Gujarat, Orissa, Kerala, and Hyderabad.[22]

A vessel can be arrested before any of the abovementioned High Courts by instituting an admiralty suit and showing existence of a maritime claim. Maritime claims under the Admiralty Act *inter alia* include ownership disputes, loss or damage caused by a vessel, loss of life or personal injury arising from ship operations, carriage of goods, and use or hire of vessel under charterparty or otherwise, and related contractual or tortious liabilities.[23]

Pursuant to Section 5 of the Admiralty Act, an action can be initiated for arrest of a vessel for the purpose of providing security against a maritime claim. However, a vessel can be arrested for a maritime claim only if there is no change in ownership between the date the claim arose and the date of arrest of the ship.[24] The other option is to bring an action *in personam* directly against the vessel's owner against whom the maritime claim has arisen. The Bombay High Court has held that the vessel sought to be arrested needs to be a party to the suit as the jurisdiction arises by virtue of the vessel being in the jurisdiction of the court, and the court will not entertain the arrest of a vessel in an *in personam* proceeding, nor can the vessel be detained by way of an injunction to circumvent the provisions of the Admiralty Act.[25]

Under Indian law, unlike the Arrest Convention, there is no provision for security for arbitration allowing a party to arrest a vessel for simpliciter security in aid of judicial and arbitral proceedings taking place outside India. The way it is circumvented is by filing a substantive suit in India for arrest of the vessel and thereafter, seeking for parties to be referred to arbitration under Section 45 of the Admiralty Act. A single judge of the Bombay High Court has clarified the position and held that it is permissible for a party to obtain security pending arbitration by way of an arrest in India, since the Admiralty Act is silent on this issue and does not expressly prohibit it, provided that the suit is filed for a decree and determination on the merits of the underlying maritime claim. According to the Bombay High Court, a party has a statutory right to initiate *in rem*

[21] Admiralty Act came into force on 1 April 2018.
[22] Section 2(1)(e) of the Admiralty Act.
[23] Section 4 of the Admiralty Act.
[24] *Chrisomar Corporation v. MJR Steels Private Ltd*, 2017 SCC OnLine SC 1104.
[25] *Angsley Investments Limited v. Jupiter Denizcilik Tasimacilik Mumessillik*, San Appeal No. 902 of 2006 in Admiralty Suit No. 15 of 2001.

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proceedings under the Admiralty Act, which cannot be denied if a party otherwise had a valid maritime claim.[26]

Enforcement of arbitral awards in India

Domestic Award

In India, an arbitration proceeding can be *ad hoc* or institutional. Part I of the Arbitration Act governs Indian domestic arbitrations and international commercial arbitrations seated in India. Accordingly, an arbitration conducted under the rules of Singapore Chamber of Maritime Arbitration (“**SCMA”**), if seated in India will be governed by Part I of the Arbitration Act and awards rendered pursuant thereto would be enforceable under Section 36 of the Arbitration Act.

An award holder can file for enforcement and execution of a domestic award after a cooling-off period of three months from receipt of the award,[27] during which period the award debtor may challenge the award under Section 34 of the Arbitration Act. If the award is not challenged, or if challenged but no stay has been obtained, or if a stay has been obtained but the challenge fails, the award is enforced like a court decree under the Code of Civil Procedure of India, 1908.[28]

Foreign Award

The enforcement of arbitral awards issued outside India is governed by Part II of the Arbitration Act. Accordingly, any award rendered in an SCMA arbitration seated outside India would fall within the scope of Part II.

While the Arbitration Act incorporates the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) ("**New York Convention**"), a foreign award may only be enforced in India if the country where the award was made has been declared a ‘reciprocating territory’ by the Indian government under Section 44 or 53 of the Act.

To enforce a foreign award in India, the award holder must file an application before the competent court, i.e., one having jurisdiction over the location of the award debtor’s assets.[29] There is no requirement for converting the foreign award into a domestic court judgment through separate proceedings. Instead, enforcement and execution can be initiated in a consolidated manner.[30] It is also permissible to file enforcement proceedings in multiple courts, if necessary.[31] The party seeking enforcement is required to produce the following documents before the Indian court:

(a) The original award or a duly authenticated copy in accordance with the laws of the country where the award was made;
(b) The original arbitration agreement or a certified copy thereof; and
(c) Any other necessary evidence to establish that the award qualifies as a "Foreign Award". Typically, this includes an affidavit from a legal practitioner in the seat of

[26] *Siem Offshore Redri AS v. Altus Uber*, 2018 (6) ABR 361 (upheld by both Appellate Bench and Supreme Court).
[27] Section 34(3) of the Arbitration Act, 1996.
[28] Section 36 of the Arbitration Act, 1996.
[29] *Bharat Aluminium Co v. Kaiser Aluminium Technical Services* (2012) 9 SCC 552.
[30] *Fuerst Day Lawson Ltd v. Jindal Exports Ltd* (2001) 6 SCC 356.
[31] *NCC Infrastructure Holdings Ltd and Anr v. TAQA India Power Ventures Pvt Ltd* (Arb OP Nos. 410 and 412 of 2021, judgment dated 11 January 2023).

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arbitration confirming that the award is final, binding, and not under challenge in that jurisdiction.

In *PEC Limited v. Austbulk Shipping SDN BHD*,[32] the Supreme Court held that the word "shall" in Section 47 of the Act should be interpreted as "may", making the submission of original documents non-mandatory at the initial filing stage. Furthermore, in *Gemini Bay Transcription Pvt. Ltd. v. Integrated Sales Service Ltd.*,[33] the Court clarified that the requirements under Section 47 are procedural in nature and are intended only to satisfy the enforcing court that the award is indeed a Foreign Award enforceable against the parties concerned.

An award debtor may oppose enforcement on the grounds provided under the New York Convention, which have been adopted in Section 48 of the Act. In *Government of India v. Vedanta Limited & Ors*,[34] the Supreme Court reiterated that enforcement can be refused if:

(a) The arbitral process was fundamentally flawed, violating procedural due process or the right to fair and equal treatment of the parties; or

(b) The award conflicts with the basic notion of justice, violates India's substantive public policy, including instances of fraud, corruption, or fundamental unfairness.

The burden of proof lies with the party resisting enforcement, who must establish that one of the grounds under Section 48(1) or (2) applies.[35] Absent such a showing, the award must be enforced.

Historically, the 'public policy' exception under Section 48 was frequently used by award debtors to reopen issues already decided on merits. However, two landmark Supreme Court rulings in 2015 significantly narrowed this scope.[36] These were subsequently codified through the 2015 amendment to the Arbitration Act, which clarified that a violation of public policy does not permit a re-examination of the merits of the underlying dispute. Post-amendment, an award may be refused enforcement on public policy grounds only if:

(a) It was induced or affected by fraud or corruption;

(b) It contravenes the fundamental policy of Indian law; or

(c) It is contrary to the most basic notions of morality or justice.

In *Shri Lal Mahal Ltd. v. Progetto Grano SPA*,[37] wherein 'public policy' under Section 48(2)(b) of the Arbitration Act was narrowly interpreted, recourse for challenging enforcement of foreign awards under the ground of 'patent illegality' was abolished. Similarly, pursuant to the 2015 amendment to the Arbitration Act, 'patent illegality' is not available as a ground to challenge the arbitral award rendered in an 'international commercial arbitration'.[38] Accordingly, 'perversity' which effectively falls under ground of 'patent illegality'[39] is no longer available to challenge enforcement of awards obtained in foreign and international commercial arbitrations.

Indian courts have since adopted a more restrained approach to reviewing foreign awards. In *Vijay Karia & Ors v. Prysmian Cavi E Sistemi SRL*,[40] the Supreme Court clarified that the grounds

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[32] 2018 SCC Online SC 2549.

[33] (2022) 1 SCC 753.

[34] 2020 SCC Online SC 749

[35] *Gemini Bay Transcription Pvt. Ltd. v. Integrated Sales Service Ltd.* (2022) 1 SCC 753.

[36] *Oil and Natural Gas Corporation v. Western Geco International Ltd* (2014) 9 SCC 263 and *Associate Builders v. Delhi Development Authority* (2015) 3 SCC 49.

[37] (2014) 2 SCC 433.

38 Section 34 (2A) of Arbitration Act.

[39] *Ssangyong Engg. & Construction Co. Ltd. v. NHAI,* (2019) 15 SCC 131.

[40] 2020 SCC OnLine SC 177.

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under Section 48 fall into three broad categories: jurisdictional defects, issues impacting party interests alone, and violations of Indian public policy. However, the Supreme Court's decision in *NAFED v. Alimenta SA*[41] raised concerns when it refused enforcement of a foreign award on the basis that the underlying contract violated Indian law, thus invoking public policy. Despite this, Indian courts generally maintain a pro-enforcement stance. In a more recent decision, the Supreme Court rejected a challenge to enforcement based on allegations of arbitral bias, holding that such objections, especially when raised at the enforcement stage, should not be entertained unless there is a clear and demonstrable breach of international due process standards or basic notions of justice and morality.[42]

SCMA and India

While there are no reported cases where an SCMA award has been enforced by an Indian Court, however, the decision of the Bombay High Court in *Alphard Maritime Limited v Samson Maritime Limited*[43] is of considerable interest where the High Court granted interim relief in a foreign seated arbitration conducted under SCMA Rules. In this case, the dispute arose under a settlement agreement governed by Singapore law and providing for arbitration under the SCMA Rules with Singapore as the seat. Alphard invoked arbitration after alleging breaches of the settlement, including an attempt by Samson to transfer the entire shareholding of a subsidiary, Underwater Services Company, to a third party, J.M. Baxi Marine Services, in contravention of express contractual restrictions.

Since the SCMA Rules do not provide for an emergency arbitrator, Alphard approached the Bombay High Court under Section 9 of the Arbitration Act seeking interim protection. The Court was required to consider whether specific performance remained open to Alphard, given that its notice of arbitration had initially emphasised indemnity. Rejecting a restrictive approach, the Court held that the notice of arbitration is only an indicative instrument and does not finally bind a claimant to a particular set of remedies. The Court concluded that Alphard could still pursue specific performance and that interim relief was warranted to preserve the subject-matter of the dispute.

The Court found the pledge of shares to Baxi to be opaque and timed suspiciously, coinciding with the issuance of Alphard's notice of arbitration. In these circumstances, it directed that the *status quo* over the shares be maintained, preventing their transfer or encumbrance, until the arbitral tribunal constituted under the SCMA Rules could take a view on the matter.

This case illustrates how Indian courts have stepped in to grant interim relief in aid of SCMA arbitrations seated abroad and signals a willingness of the judiciary to protect the integrity of SCMA proceedings and secure assets within India that are central to the dispute, ensuring that the arbitral process remains effective.

It is however, important to highlight that while confidentiality is maintained during the arbitration proceedings, however, once the matter reaches to Indian Courts, whether for interim relief or enforcements, the facts, including names of the parties, claim, etc. become public.

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[41] 2020 SCC Online SC 381.
[42] *Avitel Post Studioz Limited and Ors v. HSBC PI Holdings (Mauritius) Limited*, 2024 SCC OnLine SC 345.
[43] 2025 SCC OnLine Bom 841.

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Bose & Mitra & Co. is the largest specialized shipping & trade law firm in India with 17 fee earners, which allows it to cater to every kind of contentious and advisory matter, from the smallest of claims to that of big ticket, high profile multi-million-dollar disputes, and everything in between. In its 20th year of operation and existence, Bose & Mitra & Co. continues to be ranked as a Tier-1/Band-1 law firm, with its Managing Partner, Mr. Amitava Majumdar (Raja) consecutively bagging the title of Best Lawyer/Tier-1/Band-1 Lawyer for shipping & maritime in India by various independent and prestigious rankings such as Chambers & Partner, Legal 500, Who's Who Legal, India Business Law Journal, Economic Times, Legal Era, Marex among others.

Bose & Mitra & Co. has been involved in every major maritime casualty in India in the last decade. Another unique facet of Bose & Mitra & Co.'s practice domain arises is its extensive experience in dealing with matters related to the Indian maritime administration, as Bose & Mitra & Co. regularly advises them on a wide gamut of issues. Furthermore, Bose & Mitra & Co. provides extensive advice on Indian regulations governing the maritime sector, including but not limited to various regulations promulgated by the office of the Director General of Shipping (Ministry of Shipping) in respect of various facets of shipping.

Bose & Mitra & Co.'s scope of work in addition to the traditional shipping & trade matters includes but is not limited to collisions, salvage, wreck removal, total loss, piracy and terrorism, oil pollution, environmental damages etc. While holding its forte in shipping, Bose & Mitra & Co. is also the de-facto choice for trade matters, white-collar crimes and customs disputes as well having represented Clients in big-ticket matters in these areas. Further, Bose & Mitra & Co. has extensive experience in ship finance transactions and provides regulatory and advisory assistance to various funds, banks and financial institutions including providing a roadmap into the Indian jurisdiction as a whole. Additionally, Bose & Mitra & Co.'s Managing Partner, Amitava Majumdar (Raja), in addition to his busy disputes practice, is also the 'go-to'

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counsel for ship ‘sale and purchase’ and ship finance transactions having represented Indian ship-owners and P&I associations in closing deals in Singapore, United Kingdom, Hong Kong, Greece, Italy, United States of America, United Arab Emirates, Germany, Bulgaria and Japan for various types of vessels.

Bose & Mitra & Co. is the legal correspondents for NorthStandard P&I Club and the MS Amlin Insurance SE with underwriting agency MS Amlin Marine NV (formerly RaetsMarine) fixed premium club. It is also extensively instructed by almost all International Group P& I Clubs, and other fixed premium clubs and is on the retainer for three of the largest shipping companies in India. Over the past 10 years Bose & Mitra & Co. has collaborated with the National Law University Odisha to host the International Maritime Arbitration Moot Court Competition. Additionally, Bose & Mitra & Co. also provides a monetary award to outstanding Indian students enrolled in the LLM programs in International Maritime and International Commercial and Maritime Law at Swansea University. It also regularly publishes a newsletter titled ‘India Shipping Update’ and every year publishes the India Edition of the Shipping Law Review. Every year it along with other foreign law firms from 9 countries across the world host the ‘International Maritime Law Seminar’ both in Singapore as well as London.

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INDONESIA

NAVIGATING THE INDONESIAN PERSPECTIVE ON ARBITRATION AND SHIPPING LAW

I. Introduction

This article is intended as a concise overview of arbitration and shipping law in Indonesia. It will outline the fundamental principles underlying these two fields, the regulatory framework that governs them, and the technical aspects of their application in Indonesian practice. Certain emphasis will be placed on the use of arbitration as a dispute resolution mechanism in Indonesia, along with the challenges and mechanisms of enforcement within the Indonesian legal system.

Understanding arbitration and shipping law in Indonesia requires careful attention and a structured legal mind. Within Indonesian legal practice, both arbitration and shipping law are often regarded as "niche" areas of law, specialized domains that may not commonly encountered by an ordinary practitioner. Their technical nature demands not only familiarity with domestic regulations but also a strong grasp of international norms and practices.

II. Overview of the Indonesia Law on Arbitration

Indonesia's introduction to arbitration traces back to the Dutch colonial legal system, as codified in the *Herziene Inlandsch Reglement* (HIR), *Rechtsreglement Buitengewesten* (RBg), and various *Staatsblad* provisions. These colonial regulations provided only a rudimentary framework, recognizing arbitration as an institution outside the courts where disputing parties could appoint a third-party referee. Following independence, this colonial legacy soon became outdated and inadequate for global commercial needs. Renewed attention to arbitration emerged with Indonesia's ratification of the 1958 New York Convention in 1981, followed by domestic measures such as Supreme Court Regulation No. 1 of 1990 on the enforcement of foreign arbitral awards. This trajectory culminated in the enactment of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution ("**Indonesian Arbitration Law**"), which continues to serve as the principal framework for arbitration in Indonesia today.

In essence, the Indonesian Arbitration Law guarantees and affirms the most important principles concerning the institution of arbitration in relation to the legal system, which are: (i) arbitration is an alternative dispute resolution mechanism possess its legal and institutional powers based on and granted by the written agreement/arbitration clause agreed upon by the disputing parties; (ii) the parties have free autonomy to choose the arbitral institution, process, arbitrators, and other procedures; (iii) the courts and judiciary must refuse and refrain from intervening in cases where an arbitration clause exists.

The Indonesian Arbitration Law provides a comprehensive framework for the conduct of out-of-court dispute resolution in Indonesia. The Arbitration and ADR Law fundamentally uphold the core principle of UNCITRAL Model Law 2006, which stated that the arbitration obtained its legal power from an explicit agreement between the parties, and as a result the courts will not have authority to rule over the dispute. Furthermore, the Arbitration and ADR

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Law delineate the scope of disputes that may be submitted to arbitration, restricting it to matters arising from commercial activities, while expressly excluding disputes within the public domain, such as criminal or administrative matters from arbitral adjudication.

The structure of the Indonesian Arbitration Law reflects a systematic attempt to regulate the arbitral process comprehensively, outlined as follows:

1. Chapter I – General Provisions, establishing the definitions and scope of arbitration and alternative dispute resolution.
2. Chapter II – Types of Alternative Dispute Resolution, including mediation, conciliation, and other non-arbitral mechanisms.
3. Chapter III – Requirements for Arbitration and Appointment of Arbitrators, stipulating the qualifications of arbitrators, the conditions for their appointment, and the right of the parties to challenge or disqualify arbitrators.
4. Chapter IV – Arbitration Proceedings, detailing the procedural framework, and granting arbitral tribunals powers to issue provisional or interlocutory measures. These may include ordering interim relief such as security measures, the deposit of goods, the sale of perishable or damaged goods, and the hearing of witnesses and experts.
5. Chapter V – Requirements Concerning Arbitral Awards, setting standards for the form, substance, and legal effect of arbitral awards.
6. Chapter VI – Enforcement of Arbitral Awards, providing the procedures by which awards may be executed through the Indonesian judiciary.
7. Chapter VII – Annulment of Arbitral Awards, allowing awards to be challenged and annulled under specific and narrowly defined circumstances.
8. Chapter VIII – Termination of the Arbitrator's Duties, clarifying the circumstances under which the mandate of the arbitrator or tribunal ends.
9. Chapter IX – Arbitration Costs, regulating the allocation and payment of arbitration-related expenses.
10. Chapter X – Transitional Provisions, addressing disputes that were already filed, pending, or adjudicated prior to the enactment of the law, ensuring continuity and legal certainty.

In addition, a distinctive feature of the Indonesian Arbitration Law is its recognition of the concept of public order, whereby the enforcement of an arbitral award may be denied if it is deemed contrary to domestic public policy. In the Indonesian Arbitration Law, it appears that the Public Order applies not only in relation to foreign arbitral awards but also to the enforcement of domestic arbitral awards.[1] This is a significant distinction, as public order in arbitration is generally regulated in a limited manner specifically in connection with foreign arbitral awards under the New York Convention, which allows states to refuse recognition or enforcement of an arbitral award if doing so would be "contrary to the public policy of that country". This expansive application creates a significant distinction, as it potentially increases judicial discretion in reviewing awards and thereby poses a greater challenge to the finality and certainty of arbitration in Indonesia

Indonesia also has several specialized and sectoral arbitration institutions that focus on disputes arising within specific industries, for example, BASE Arbitration, which handles disputes in the energy sector, and LAPS SJK, which deals with disputes in the financial services sector. However, unlike the London Maritime Arbitrators Association (LMAA) in the

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United Kingdom or the Singapore Chamber of Maritime Arbitration (SCMA) in Singapore, Indonesia has yet to establish a sectoral arbitration institution for shipping and maritime disputes.

III. Overview of the Indonesia Shipping Law regulatory framework

In its early development, Indonesia's shipping regulatory framework was primarily governed by the Indonesian Commercial Code and the Indonesian Civil Code. These codes recognized and regulated fundamental aspects of shipping law and commercial maritime practices, including, inter alia, ship ownership, charter parties, bills of lading, maritime liens, ship mortgages, and the responsibilities of masters and crew. The enactment of Law No. 17 of 2008 on Shipping, along with its subsequent amendments (the "**Indonesian Shipping Law**"), marked a significant advancement in Indonesia's efforts to modernize and strengthen its shipping industry. Pursuant to the principle of *lex posteriori derogat legi priori*, whereby later laws take precedence over earlier ones, the Indonesian Shipping Law has, in general, superseded the provisions on shipping matters previously contained in the Indonesian Commercial Code and the Civil Code.

The Indonesian Shipping Law delineates the principal regulatory domains of the maritime sector, encompassing, inter alia: (i) the implementation of the cabotage principle; (ii) the classification of shipping and maritime activities; (iii) the regulation of maritime safety and security; (iv) the authority and functions of port administrations and harbourmasters; and (v) the protection and preservation of the marine environment.

With respect to vessels, the Indonesian Shipping Law conceptualizes a ship primarily as a form of property to be fully possessed, controlled, and enjoyed by its registered owner. This approach reflects the civil law tradition in which ships are treated as objects of ownership rather than legal subjects in their own right, a position that differs from certain strands of international maritime law, where ships may be ascribed a quasi-subject status, for example in matters of limitation of liability, arrest, or registration under a flag state. This legal framework consequently affords limited standing or recognition to ship operators or charterers, who in practice do not acquire rights comparable to that kind of legal standing. As a result, key aspects of Indonesian maritime administration i.e., vessel registration and title ownership, compliance with statutory safety and seaworthiness requirements, and the granting of various technical licenses and operational permits, are vested exclusively in the shipowner. By contrast, other jurisdictions extend ownership-like rights and responsibilities to bareboat (demise) charterers for the duration of the charter, often formalized through a bareboat charter registry.

Maritime/Shipping Disputes in Indonesia

The Indonesian legal system is structured such that the Supreme Court holds the highest authority in administering judicial affairs, with direct supervision over the civil, criminal, administrative, religious, and military courts. [2] Admiralty courts, however, do not fall under the jurisdiction or administrative supervision of the Supreme Court. Instead, they were established under the authority of the Ministry of Transportation and are vested with limited competence, primarily concerning certain shipping-related matters, particularly vessel collisions and maritime labour disputes.

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Pursuing claims in a shipping dispute must be built carefully, highlighting the relationship between the nature of the claim and the court's authority to rule over the dispute. Before submitting, it is important to classify the type of claim, as this will help present it clearly to the right court and prevent rejection due to lack of jurisdiction.

For instance, if the claimant intends to pursue claims because of a collision accident with another vessel, the claimant does not automatically possess the right to submit a tortious and/or civil claim to the civil court. Under the Indonesian Shipping Law, the declaration of negligence in a collision must be served by the Harbourmaster under technical assessment and ultimately decided by the Admiralty Court, in particular, whether there is negligence of the crew.[3] After the admiralty court determines that there is negligence of the master or the crew (specifically under the Collision Regulation), the claimant will obtain good standing to pursue the claim in the civil court by asserting the proof that the admiralty court has ruled over the collision.

On the contrary, claims submitted as a result of collision may be considered premature, and liable to be dismissed by a motion if they are not supplemented by the Harbourmaster's assessment and/or the Admiralty Court's decision in advance.[4] Nevertheless, these procedures concerning collisions of vessels, in many cases, may not also be enforced as they also depend on the willingness of both parties to settle the dispute without resorting to the courts. This is similar to what is known in many jurisdictions as a "collision agreement," although in Indonesian practice, such agreements are not always safeguarded by recognized forums or frameworks, unlike the SEADOCC claims under the SCMA.

Ship Arrest

Indonesia has ratified the Ship Arrest Convention 1999 and incorporated the ship arrest proceedings through the Indonesian Shipping Law. With regard to the classification of ship arrest, the Indonesian Shipping Law states that maritime claims serve as the basis for a ship arrest and also explicitly regulates that a ship arrest can be made based on criminal proceedings.[5]

However, the Indonesian Shipping Law does not regulate the payment of deposit upon the ship arrest, nor provides any mechanism related to the conduct of arrests of sister ships, unlike the Ship Arrest Convention. The absence of payment of deposit in ship arrests may result in unclear stages of settlement and the release of the arrested vessels, consequently demanding further negotiations and mutual consensus between disputing parties. Additionally, it is worth mentioning that the Indonesian regulatory framework does not clearly define what is referred to as an *in rem* claim, nor does it distinguish between the *in rem* and *in personam* approaches in relation to civil claims brought against another party.[6] In general, the Indonesian regulatory framework only recognizes the *in personam* approach. Therefore, if a claim is made against a vessel, it must be addressed to its registered owner (or operator), even though the disputed vessel may subsequently be subjected to seizure or treated as part of the claim. On the other hand, the Indonesia Shipping Law recognizes that in addition to ship arrest due to civil claims, a ship can also be detained (*penyitaan*) through criminal proceedings. The key difference between a ship

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arrest and ship detention is that they operate under two distinct legal frameworks: ship arrests fall under civil law, while ship detention is governed by public or criminal law. The details regarding ship detentions were not included in the Indonesian Shipping Law due to the fact that ship detentions primarily fall under the Indonesian criminal law regulatory framework.[7]

IV. Enforcement of foreign arbitral awards

The Indonesian Arbitration Law grant the authority to handle the recognition and enforcement of foreign arbitration awards to the jurisdiction of the Central Jakarta District Court.[8] Further, an international arbitral award can be enforced in Indonesia as long as: (i)The scope of the arbitral award falls within the domain of commercial law; (ii) the international arbitral award does not contravene public order; and (iii) the international arbitral award has obtained an exequatur from the Chief Judge of the Central Jakarta District Court.

All procedures for the registration, recognition, and enforcement of international arbitral awards are governed by: (i) Indonesian Arbitration Law; (ii) Supreme Court Regulation No. 1 of 1990 on The Procedure for the Implementation of Foreign Arbitration Awards ("**PERMA 1/1990**"); and (iii) Supreme Court Regulation No. 3 of 2023 on Procedures for the Appointment of Arbitrators by the Court, Right to Recusal, Examination of Applications for the Enforcement and Annulment of Arbitral Awards ("**PERMA 3/2023**"), which are enacted as a implementing regulations to the ratification of the New York Convention.

As stipulated under Article 65 of the Indonesian Arbitration Law and Article 1 PERMA 1/1990, the authority to handle the recognition and enforcement of international arbitral awards falls under the jurisdiction of the Central Jakarta District Court, with a prescribed timeframe of approximately three months.

On the registration and recognition stage, the Central Jakarta District Court requires a registration application letter, along with the following supporting documents:[9]

- The original copy or authenticated duplicate of the international arbitral award, in accordance with foreign document authentication requirements, along with its official translation into Bahasa Indonesia (apostilled);
- The original copy or authenticated duplicate of the agreement forming the basis of the international arbitral award, in accordance with foreign document authentication requirements, along with its official translation into Bahasa Indonesia (apostilled);
- A statement issued by the Indonesian diplomatic representative in the country where the international arbitral award was rendered, confirming that the country of the applicant is bound by a bilateral or multilateral agreement with Indonesia concerning the recognition and enforcement of international arbitral awards.

In addition, to support the registration application letter, the following supporting documents are also requested by the Central Jakarta District Court:

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- A Power of Attorney issued by the Arbitration Tribunal (apostilled), along with its official translation into Bahasa Indonesia (apostilled), specifically for the registration of international arbitral awards; and
- A Power of Attorney from the applicant to the attorneys for the registration and recognition of the international arbitral award.

Once a foreign arbitral award has been recognized by the Central Jakarta District Court, if the losing party fails to voluntarily comply, the prevailing party may proceed with enforcement by submitting an application for *exequatur* to the same court. Under Indonesian law, *exequatur* refers to the formal authorization granted by the court permitting the enforcement of a foreign arbitral award within the territory of Indonesia. This mechanism reflects the dualist approach of the Indonesian legal system, in which foreign awards, even after recognition, require judicial approval before being executed. The authority to issue *exequatur* rests exclusively with the Central Jakarta District Court, and, in the case of awards involving the State of Indonesia as a party, requires prior recommendation from the Supreme Court.

Further, upon the appointment of the *execuatur* by the Central Jakarta District Court the proceedings of execution of assets can be commenced. It is to be noted that under the Indonesian law, the enforcement of assets follows a different procedure from the registration of international arbitral awards, and its complexity depends on the available information regarding the assets. Once the Chief Judge of the Central Jakarta District Court issues an execution order, the subsequent enforcement process is delegated to the Chief Judge of the District Court that has relative jurisdiction over the execution.[10] The execution may include the seizure of assets and properties belonging to the defendant/respondent. However, it is important to note that the procedures for asset seizure and enforcement must comply with the procedural rules set forth in the Indonesian Civil Procedure Law. [11]

With regard to the enforcement procedure, there are additional required documents which are: (i) An Enforcement Application Letter; (ii) A Power of Attorney issued by the Arbitration Tribunal (apostilled), along with its official translation into Bahasa Indonesia (apostilled), specifically for the enforcement of international arbitral awards; and (iii) a Power of Attorney from the applicant to the attorneys for the enforcement of the arbitral award.

Annulment of Arbitral Awards

In the event that one or more disputing parties intend to file a challenge against an arbitral award, a written application must be submitted no later than 30 (thirty) days from the date of the submission and registration of the arbitral award with the court clerk.[12] The application for annulment can be filed if there is suspicion that the arbitral award contains one of the following elements:

1. Letters or documents submitted during the examination, after the award is rendered, are acknowledged as fraudulent; or
2. After the award is rendered, decisive documents are discovered that were concealed by the opposing party; or
3. The award is obtained through fraudulent practices by one of the parties during the dispute examination.

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The above elements must be proven by attaching relevant documents/evidence to the annulment application. Subsequently, the annulment application will undergo a Court hearing process consisting of the following stages:

1. The first hearing for the reading of the application
2. The second hearing for responses
3. Interim decision (if any)
4. Hearing with evidentiary proceedings
5. Hearing for the reading of the decision.

The Court decision on the annulment application for the arbitral award will be rendered no later than 30 (thirty) days from the date the application is read during the court hearing process. However, it is important to note that the Court can only grant an annulment application if it is proven that the arbitral award in question meets one of the abovementioned three (3) elements.

In many jurisdictions, the discussions concerning public order have been developing, including in Indonesia. Although 'public order' is considered abstract and tends to lack a definitive means that governs it in detail, it is generally interpreted as fundamental legal principles of society and the values of the society that are still existing and practiced. In practice, many practitioners utilise this reason and elaborate further in detail the reason why a foreign arbitration award can be annulled for violating 'public order' in Indonesia. In certain cases and notable Indonesian court precedents, it appears that adherence with local public order also requires that foreign arbitral awards must conform to, and not be in conflict with any ongoing due process of law or other proceedings related to the same claim ruled over by such foreign award.[13]

It is advisable to create a narrative and maintain control in arbitration proceedings to eliminate all possibilities and specific loopholes which may contravene 'public order' from any jurisdiction in an arbitration case. But one thing is certain: in order to mitigate the risks arising from such divergent interpretations, effective cooperation and coordination between attorneys with expertise in multiple jurisdictions may be required. Such collaboration ensures that strategic measures remain aligned with international standards while respecting the sensitivities of local legal frameworks.

V. Status of SCMA award in Indonesia

Both Indonesia and Singapore are signatories to the New York Convention. This means that an SCMA award will be treated as a foreign arbitral award in Indonesia and, in principle, shall be recognized and enforced through the Indonesian courts, subject to the technical requirements of registration, recognition, and execution as previously discussed.

In practice, we see that commercial transactions and cross-border dealings across Southeast Asia have grown significantly in the past few decades. Along with this growth, there has been a marked increase in the reliance on specialized arbitral institutions, as businesses with different legal and economic interests now tend to safeguard themselves

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by agreeing on the governing law as well as the choice of arbitration institution when entering into cross-border contracts in advance.

On the regulatory side, Indonesia is actively updating its legal framework to align with these developments. The Indonesian Shipping Law was amended at the end of 2024, giving the Admiralty Court new powers to rule and adjudicate the preliminary mediation of labour disputes. At the same time, public source reporting indicated that amendments to the Arbitration Law are also being prepared. Among other things, these are expected to provide clearer boundaries on the definition of public order, incorporate adjustments to UNCITRAL standards, and introduce other refinements.[14] Taken together, these developments suggest that Indonesia is moving toward a more arbitration-friendly regime, particularly when it comes to cooperation with foreign arbitral institutions. For practitioners and businesses alike, this should make the enforcement of foreign arbitral awards in Indonesia more predictable and efficient in the years ahead.

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ARMA Law was established by four lawyers, uniquely qualified from various expertise and backgrounds, spanning across corporate, M&A, banking & finance, shipping & maritime, to litigation matters.

Since our inception in 2019, ARMA Law's journey has showcased remarkable growth and a steadfast dedication to client-centric innovation. We dive beyond the complexity of the legal structure in Indonesia, to deliver practicable, precise, and efficient legal solutions.

As a testament to its consistent success, ARMA Law has been accredited in many accolades such as IFLR 1000, Asia Business Law Journal "Award Winning Law Firm" 2025, ALB's fast 30: Asia's fastest growing firms 2024, and many more. At its core, we regard these accolades not merely as honours but also reminders of our ongoing commitment to excellence and to consistently delivering client satisfaction.

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[1] See Article 62 (1) of the Indonesian Arbitration Law and Article 66 (c) of the Indonesian Arbitration Law.
[2] Preamble (a) of the Law No. 48 of 2009 regarding Judicial Authority.
[3] See Article 251 (a) and (b) of the Indonesian Shipping Law.
[4] See Supreme Court Decision No. 140/PK/Pdt/2005, Supreme Court Decision No. 2132/K/Pdt/2001, Jakarta High Court Decision No. 219/Pdt/2000/PT DKI, and South Jakarta District Court Decision No. 243/Pdt.G/1999/Pn.Jak.Sel., all of them essentially ruled that Admiralty Court decisions shall serve as the basis for determining unlawful acts in ship accidents. Only after the examination by the admiralty court, the damaged party can proceed to elevate the case into the civil court.
[5] See Article 222 (2) of the Indonesian Shipping Law.
[6] As generally recognized within common law practice, an *in rem* claim means that a legal action addressed against a thing, property, or an asset, while the *in personam* basis, by contrast, is a legal actions directed against a specific individual or a legal entity.
[7] Article 1 (16) of the Indonesian Criminal Procedural Law defined detention as a series of actions by an investigator to take over and/or place under their control movable or immovable objects, tangible or intangible, for the purpose of evidence in investigation, prosecution, and trial.
[8] See Article 65 of the Indonesian Arbitration Law.
[9] Article 67 of the Indonesian Arbitration Law.
[10] See Article 69 of the Indonesian Arbitration Law.
[11] See Article 69 (2) and (3) of the Indonesian Arbitration Law, whereby it is reiterated that the procedures for enforcing an arbitral award is governed by the rules on the enforcement of court judgments under the Indonesian Civil Procedural Law.
[12] See Article 71 of the Indonesian Arbitration Law.
[13] See Bankers Trust Company and Bankers Trus International Plc v PT Mayora Indah Tbk in Supreme Court Verdict No 02/K/Ex'r/Arb.Int/Pdt/2000.
[14] See the Explanatory Memorandum regarding the Amendment of the Indonesian Arbitration Law prepared by Agency of National Law Development under the Ministry of Law.

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JAPAN

Overview of Arbitration Enforcement Proceedings in Japan

Summary

Singapore and Japan are signatories to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**"). Japanese Arbitration Law is closely modelled on the UNCITRAL Model Law (1985). As such, SCMA Awards are likely to be enforceable in Japan. This article explains the basic procedure of the enforcement of foreign arbitration awards, including SCMA Awards, in Japan, and introduces the newly amended Japanese Arbitration Law, which provides for interim measures set out in the UNCITRAL Model Law (2006).

1. Overview of Japanese Law on Arbitration

The Japanese Arbitration Law (2003) ("**JAL**") is closely modelled on the UNCITRAL Model Law on International Commercial Arbitration (1985). However, the JAL also incorporates provisions that recognize arbitration agreements concluded through electronic communications, as provided for in the 2006 amendments to the Model Law. Presently, the Japanese government is in the process of amending the JAL to more fully align it with the 2006 Model Law. The amended JAL is expected to include a legal framework for interim measures as provided in Chapter IV A of the 2006 Model Law. Japan is a party to the New York Convention. Consequently, arbitral awards rendered in other Convention member states are enforceable in Japan under the JAL. Since Singapore is also a signatory to the Convention, arbitral awards issued under the SCMA are therefore enforceable in Japan.

2. Overview of Japanese Law of Maritime Law in Japan

Japan ratified Hague- Visby Rules and Carriage of Goods by Sea Act (1957) as amended in 2019, which applies not only to the carriage of goods by bills of lading but also to any contracts of international carriage of goods by sea generally, including carriage by sea waybill. Under Japanese law, clauses pertaining to arbitration, jurisdiction and the governing law in a bill of lading are valid as long as they are not contrary to public policy. Consequently, a carrier may issue a bill of lading which is subject to Singapore law and jurisdiction and/or SCMA arbitration without any issue as to validity. The arbitration clause is more often used in charterparties, which are governed by the Japanese Commercial Code through provisions on bareboat, time and voyage charterparties. There are no issues with

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the use of the SCMA Model Clause in a charterparty.

3. Enforceability of Foreign Award in Japan

1) Procedure to execute foreign award

An Arbitral Award (irrespective of whether or not the place of arbitration is in Japan; hereinafter the same meaning shall apply to all future references to an Arbitration Award in this Chapter) has the same effect as a final and binding judgment. However, an execution order by a Japanese court in accordance with Article 46 of the JAL is required if the award holder wants to execute the award in Japan.[1] A party that intends to have a civil execution based on an Arbitral Award may file a petition with a Japanese court for an execution order[2] designating the obligor as the respondent.[3] The court having the jurisdiction over the execution order is the court (i) which the parties agree on; or (ii) where the respondent's address or domicile is; or (iii) where the subject matter of the claim or the seizable property of the obligor exists. The Tokyo District Court and/or the Osaka District Court have the jurisdiction as long as the obligor's domicile and or the seizable assets are in Japan.[4] In filing the petition, the award holder should submit a copy of the written arbitral award, a document proving that the contents of said copy are the same as those of the written arbitral award, and a Japanese translation of the written arbitral award (unless the court decides the translation is unnecessary).[5] In addition to the documents, the arbitration agreement, the proof of the notification of arbitration to the respondent will be required to prove the award is valid. The Power of Attorney ("**POA**") to the attorney and the company certificate showing the authority of the signor of the POA and the company certificate of the respondent are necessary in accordance with Japanese Execution Law.

2) Enforceability of Arbitral Awards

An arbitral award may not be enforceable if the following grounds exist:[6]

(a) the Arbitration Agreement is not valid due to the limited capacity of a party;

(b) the Arbitration Agreement is not valid on grounds other than the limited capacity of

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[1] JAL, Article 45(1).

[2] An order allowing the civil execution based on an Arbitral Award.

[3] JAL (supra n. 1), Article 46(1).

[4] Ibid, Article 46(4).

[5] Ibid, Article 2.

[6] Ibid, Article 45(2).

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a party pursuant to the laws and regulations designated by the agreement of the parties as those which should be applied to the Arbitration Agreement (if said designation has not been made, the laws and regulations of the country to which the place of arbitration belongs);

(c) the party did not receive the notice required under the laws and regulations of the country to which the place of arbitration belongs (if the parties have reached an agreement on the matters concerning the provisions unrelated to public order in such laws and regulations, said agreement) in the procedure of appointing arbitrators or in the arbitration procedure;
(d) the party was unable to defend itself in the arbitration procedure;

(e) the Arbitral Award contains a decision on matters beyond the scope of the Arbitration Agreement or of a petition in the arbitration procedure;
(f) the composition of the Arbitral Tribunal or the arbitration procedure is in violation of the laws and regulations of the country to which the place of arbitration belongs (if the parties have reached an agreement on the matters concerning the provisions unrelated to public order in said laws and regulations, said agreement)
(g) according to the laws and regulations of the country to which the place of arbitration belongs (if the laws and regulations applied to the arbitration proceedings are laws and regulations of a country other than the country to which the place of arbitration belongs, said other country) the Arbitral Award is not final and binding, or the Arbitral Award has been set aside or its effect has been suspended by a judicial body of that country;
(h) the petition filed in the arbitration procedure is concerned with a dispute which may not be subject to an Arbitration Agreement pursuant to the provisions of Japanese laws and regulations; or
(i) the content of the Arbitral Award is contrary to the public policy in Japan.

The grounds above are identical to those set out at Article 5 of the New York Convention and Article 36 of the UNCITRAL Model Law.

The court is required to make an execution order unless one or more grounds exist.[7] An execution order is different from a judgment, in that such an order may be issued on the basis of documentary evidence, without the need for an oral hearing. A dissatisfied party may appeal to the High Court within 2 weeks from the date of receipt

[7] Ibid, Articles 45(2) and 46(7).

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of the order.[8]

a. Grounds for invalidity

The arbitration agreement is not valid under the governing law of the arbitration[9]

An arbitration agreement needs to be in writing. This may take the form of a document signed by all the parties, letters or telegrams exchanged between the parties (including those sent by facsimile device or other communication measures for parties at a distance which provides the recipient with a written record of the communicated content), or other documents.[10] If a document containing a clause of an arbitration agreement is quoted in a contract concluded in writing as constituting part of said contract, such arbitration agreement shall be in writing.[11] The agreement made in electromagnetic record is regarded as that "in writing".[12] As such, an arbitration agreement concluded by email exchange and/or contained in a PDF file attached email or by facsimile is valid. For example, an arbitration agreement in a bill of lading quoted from the charterparty is valid.

It is, however, open for a respondent to argue that the signor did not have the authority to sign the agreement on behalf of the debtor company, or the arbitral agreement was too vague.[13]

The respondent did not receive the notice required by the governing law of the arbitration[14]
A respondent may argue that they did not receive "a written Notice of Arbitration" provided in Rule 6.1 of the SCMA Arbitration Rules.[15] Such an argument is quite usual if the respondent did not appear the arbitral proceedings. The respondent's receipt of the notice can be proved by the certificate of receipt issued by the courier or the affidavit of the local lawyer who served the notice to the debtor.

[8] Ibid, Article 7.

[9] Ibid, Article 45(2)(i) – (ii).

[10] Ibid, Article 13(2).

[11] Ibid, Article 13(3).

[12] Ibid, Article 13(4).

[13] Ibid, Article 45(2)(v).

[14] Ibid, Article 45(2)(iii).

[15] 4th Ed, Jan 2022.

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The respondent could not defend the case[16]

A respondent may argue that the Statement of Claimant's Case was not served properly on the respondent, thereby constituting the Claimant's failure of their obligation provided Rule 18.1 of SCMA Rules.

The composition of the tribunal or the arbitration procedure was illegal under the law of the arbitration place[17]

Claiming that the award is "illegal" simply because the tribunal misinterpreted or misapplied the law does **not** amount to illegality. Under Article 45(2)(vi) of the JAL, only procedural illegality should be taken into consideration.

Recently, the Supreme Court had the opportunity to deal with a case concerning a challenge to an arbitrator's impartiality and independence. In this matter, an arbitrator affiliated with a large law firm issued an award without disclosing that another lawyer within the same firm had provided advice to one of the parties. The arbitrator did not know of this fact at the relevant time. The Supreme Court held that an arbitrator is under a duty to disclose any circumstances that could reasonably give rise to doubts about his or her impartiality or independence, provided that the arbitrator knew or could have known of such circumstances through reasonable inquiry. Ultimately, the High Court rejected the debtor's objections and upheld the execution order, concluding that the arbitrator had acted without fault during the arbitral proceedings. This decision stands as a significant precedent regarding the standards of impartiality and independence applicable to arbitrators in Japan.

The award was not final and binding[18]

It is noteworthy that interim measures granted by a Tribunal under the UNCITRAL Model Law[19] shall be enforceable under Article 46 of the JAL.

The award to the disputes which may not be subject to an arbitration under Japanese law or

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[16] JAL (supra n. 1) Article 45(2)(iv).

[17] Ibid, Article 45(2)(vi).

[18] Ibid, Article 45(2)(vii).

[19] See Article 17A.

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against Japanese public policy[20]

These grounds appear to bear little relevance to maritime disputes, save that it is commonly understood that the concept of punitive damages, recognized under United States law, is contrary to Japanese public policy.

3) Judicial Sale of a Ship Pursuant to an Execution Order.

An applicant seeking a judicial sale of a vessel must file the application with the court having jurisdiction over the location of the ship under Article 113 of the Civil Execution Law ("**CEL**"). The required documents typically include the execution order, the arbitral award, a power of attorney, the applicant's corporate registry certificate, the respondent's corporate registry certificate, and the ship's registry certificate.

If the foreign vessel remains at sea, the applicant may apply to court for an order to invalidate or remove the vessel's national certificate at one of the following district courts: Muroran, Sendai, Tokyo, Yokohama, Niigata, Nagoya, Osaka, Kobe, Hiroshima, Takamatsu, Kitakyushu, or Okinawa.[21] Upon arresting the vessel for the purpose of judicial sale, a court enforcement officer is authorized to remove the national certificate from the ship.[22]

The court will appoint an evaluator to assess the vessel's value and will determine the minimum sale price based on that evaluation.[23] The vessel will then be sold by tender or public auction.[24] The bidder offering the highest price is, in principle, designated as the successful purchaser by court decision.[25] The purchaser must pay the purchase price to the court by the court-specified deadline.[26] The funds deposited with the court are subsequently distributed to the applicant and any other creditors who have participated in the judicial sale proceedings.[27]

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[20] JAL (supra n. 1) Article 45(2)(vii) and (viii).

[21] CEL, Article 115(1).

[22] Ibid, Article 114(1).

[23] Ibid, Articles 58 and 60.

[24] Ibid, Article 64.

[25] Ibid, Article 69.

[26] Ibid, Article 78.

[27] Ibid, Article 84.

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4) Enforcement of Approval Order of Interim Measures Orders

Article 24(1) of the JAL provides that until an arbitral award is made, unless otherwise agreed by the parties, upon the petition of a party, an arbitral tribunal may order the other party to take the following measures:

(i) to prohibit the disposal of or any other change to property necessary for the payment of money, when it is likely that an enforcement regarding a claim for payment of money will not be possible, or it is likely that significant difficulties will arise in implementing enforcement;

(ii) to prohibit the disposal of or any other change to any property which is the subject of a claim to seek provision of property benefits, when it is likely that the exercise of the right regarding the claim to seek provision of property benefits (excluding payment of money) will not be possible or will be extremely difficult;

(iii) to prevent any substantial loss or imminent danger from arising that would occur to the party that filed the petition with regard to the property or relationship of rights which is the subject matter of the dispute, take necessary prevention measures, or restore the status quo of the property or relationship of rights if it has been changed, in order to avoid the loss or danger in question;

(iv) to prohibit actions that cause harm or prejudice to the proceedings in the arbitration procedure (excluding the actions stated in the following item); or

(v)to prohibit actions such as disposing, erasing or altering evidence necessary for the proceedings in the arbitration procedure.

A Japanese court may allow the execution of interim measures orders which are issued in Japan or a foreign country provided in JAL art. 24 (iii). If a respondent violates or is likely to violate the interim measures orders provided in Art 24(i), (ii), (iv) and (v), a Japanese court may issue an order to pay certain amount which the court considers appropriate.[28]

The execution procedure is the same as that of the arbitration award.

5) Institutional Arbitration and Ad Hoc Arbitration

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[28] Ibid, Article 46.

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Ad hoc arbitration is sometimes provided for in charterparties but has not gained traction in Japan due to the procedural difficulties generally associated with *ad hoc* arbitrations, as these arbitrations depend almost entirely on the arbitrator's ability, knowledge and experience. As such, institutional arbitrations, such as those provided by the Tokyo Maritime Arbitration Commission (TOMAC) of the Japan Shipping Exchange, are much more popular than *ad hoc* arbitrations. However, the JAL does not distinguish between institutional and *ad hoc* arbitrations.

6) Status of SCMA Awards in Japan

There is currently no precedent in Japan specifically addressing the enforcement of SCMA awards. Nevertheless, because Singapore is a contracting state to the New York Convention and Singapore-seated arbitrations are widely regarded for their reliability, no impediment is expected to arise regarding enforceability under the JAL. Accordingly, SCMA awards should be enforceable in Japan, enabling creditors to pursue satisfaction of their claims against debtors holding assets within the jurisdiction.

Japan ratified United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) on 10 October 2024. The Law of Enforcement of Singapore Convention Concerning the International Settlement Agreements Resulting from Mediation (LECS) came into force on 1 April 2024. Therefore, the international settlement agreement resulting from mediation at Singapore Mediation Center in the process of SCMA Arb-Med-Arb Protocol shall be enforceable in Japan.

The party who intends to have a civil execution based on the internation settlement agreements through meditation may file a petition with the court for an execution order against the obligor, as the respondent. The court having the jurisdiction over the execution order is the court (i) which the parties agree on; or (ii) where the respondent's address or domicile is; or (iii) where the subject matter of the claim or the seizable property of the obligor exists. The Tokyo District Court and/or the Osaka District Court have the jurisdiction as long as the obligor's domicile and or the seizable assets are in Japan.29 (LECS Article 5(6)). It should be noted that the parties should agree that the international settlement agreement shall be enforceable in accordance with the convention and the law implementing the convention in order to enforce the settlement agreement in Japan.30 (LECS Article 3, Singapore Convention Article 8(1)(b)).

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Therefore, international dispute resolution mechanisms assume a more significant role in both Japan and Singapore.

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KOREA

Arbitration and Maritime Law in Korea – A Comprehensive Overview

Overview of Korean Law on Arbitration

Korean Arbitration Law

The primary source of Korean arbitration law is the Korean Arbitration Act 1999 ("**Act**") which governs both domestic and international arbitration proceedings seated in Korea unless the Act specifically provides otherwise_. The Act, as revised in November 2016, is largely based on the UNCITRAL Model Law on International Commercial Arbitration Model Law 1985 ("**Model Law**") with the latest revisions in line with the 2006 amendments of the Model Law. The main features of the latest amendments include:

- A broader definition of "arbitration" to cover the subject matter of dispute based on non-property rights capable of being resolved by the parties' agreement (Article 3).
- A more streamlined procedure for recognition and enforcement of domestic and foreign arbitral awards (Articles 37 to 39).
- Detailed provisions regarding interim measures, for example: (i) maintaining the *status quo* pending determination of dispute; (ii) preservation of assets (and providing a means of preserving assets); (iii) preservation of evidence; and (iv) taking actions to prevent imminent harm or prejudice to the arbitral proceedings (Article 18).
- Detailed provisions regarding recognition and enforcement by the Korean courts of partial and interim arbitral awards, while these are limited to the arbitration proceedings seated in Korea (Article 18-7 and Article 2(1)).
- A provision dealing with how the "written form" requirement could be deemed satisfied insofar as the parties' arbitration agreement is concerned (Article 8).

However, there are certain differences between the Model Law and the Act. Amongst other things, the Act has no provision equivalent to Chapter IV A, Section 2 of the Model Law which addresses the parties' request for the granting of preliminary orders so as not to frustrate the purpose of the interim measure requested. Whilst Article 18-7 of the Act allows the interim measures to be recognised and enforced by the Korean courts (subject to the conditions for granting and grounds for refusing interim measures), its application does not extend to arbitrators' preliminary orders.

Moreover, under Article 34(4) of the Model Law, the court may suspend the setting aside proceedings "*in order to give the arbitral tribunal an opportunity to resume the arbitration proceedings or take other actions that may eliminate the grounds for setting aside the award*". However, the power to stay or suspend the setting aside proceedings is not available under the Act.

New York Convention

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Korea is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which has been in force since 9 May 1973 ("**New York Convention**"). This is however subject to both "reciprocity" and "commercial" reservations, meaning that an arbitral award is only treated as a New York Convention award pursuant to the Act if it is rendered in a country that is also a party to the New York Convention and involves commercial transactions arising from the parties' commercial relationship.

Arbitral institutions

The only arbitral institution in Korea is the Korean Commercial Arbitration Board (KCAB) whose principal office is in Seoul.[1] The KCAB has adopted Domestic Arbitration Rules, International Arbitration Rules and Maritime Arbitration Rules. Notably, the KCAB International Rules have been recently amended, will become effective since 1 January 2026 and will apply to international arbitration proceedings commenced on or after 1 January 2026. The main features of the KCAB International Rules 2026 are as follows:

- Establishment of the KCAB International Arbitration Court (Article 1.3)
- Introduction of a fast-track procedure for the claims of 500 million Korean Won or less (Chapter 7)
- Increased monetary threshold for Expedited Procedure to 4 billion Won or less (Chapter 6)
- Update the provisions on Joinder of the Additional Parties, Consolidation of Arbitrations and Concurrent Proceedings (Chapter 4)
- Introduction of Early Determination (Article 36)
- Scrutiny of the Award by the Secretary-General (Article 40)
- Encourage the Parties to use electric filings (Article 8(3)), use virtual hearings (Article 31 (6)) and AI tools (Article 16 (5))
- Security for the Costs (Article 16 (8))

The KCAB in March 2018 launched the Asia Pacific Maritime Arbitration Center ("**APMAC**") in Busan, the second largest city in Korea and the largest port city in Korea, to cater for and attract maritime cases in Korea and abroad. The KCAB, through the APMAC, has prepared the Maritime Arbitration Rules providing a dispute resolution procedure for disputes in shipping, shipbuilding, marine products, fisheries and related insurance matters.

In conjunction with an establishment of APMAC in Busan, as part of the KCAB, the institutional arbitration, the Korean maritime society has established the Seoul Maritime Arbitrators' Association (SMAA), non-institutional arbitration organization similar to Singapore Chamber of Maritime Arbitration (SCMA) and adopts its own maritime arbitration rules.

Substantive law

Under Article 29 of the Act, the parties may agree to the law applicable to the merits of the case and in the absence of the parties' agreement, an arbitral tribunal is required to apply the law of the state that it considers to have the closest connection to the subject matter of the dispute. An arbitral tribunal may not decide the merits of the case based on equity and/or good faith unless the parties expressly agree (Article 29(3)).

Appointment of arbitrators

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There are no restrictions in the Act as to who may act as an arbitrator, nor are there specific eligibility requirements based on qualifications, experience, nationality, gender and religion. The parties may agree on the qualifications of arbitrators and the procedure for selection and appointment of arbitrator(s). The KCAB maintains a separate pool of domestic and international arbitrators from which the parties are free to choose.

The parties are free to agree on the number of arbitrators (Article 11 (1) of the Act). Failing prior agreement of the parties, there is a default mechanism for the appointment of arbitrators under Article 11(2) of the Act which provides that *"the number of arbitrators shall be three"*. In case of a tribunal with three arbitrators, each party shall appoint one, and the party-appointed arbitrators shall appoint the third arbitrator within 30 days of their appointment, unless otherwise agreed by the parties. If the parties fail to appoint the third arbitrator within 30 days of the request from one party, the third arbitrator shall be appointed by the court or the arbitration institution designated by the court pursuant to Article 12(3)(ii) of the Act.

If the parties have agreed to appoint a sole arbitrator but fail to do so within 30 days of request from one party, the arbitrator shall be appointed by the court or the arbitration institution designated by the court pursuant to Article 12(3)(i) of the Act.

In case of the international or maritime arbitration, the KCAB International or Maritime Arbitration Rules follows the procedures for selection of the arbitrator(s) contained in the Act. On the other hand, in case of the domestic arbitration, the selection procedures are different in that the KCAB Domestic Arbitration Rules require the parties to give priority on the list of candidate arbitrators which is provided by the KCAB.

Interim measures

Under Article 18 of the Act, the tribunal may grant, at the request of the party, interim measures including preservation of a party's property and evidence and maintaining the *status quo* pending determination of the dispute, to the extent not otherwise agreed by the parties. For domestic and international arbitrations seated in Korea, Article 18-7 of the Act allows arbitral interim measures to be recognized and/or enforced through the Korean court. Prior to the November 2016 Act adopting the 2006 Model Law, an arbitral tribunal had power to grant interim measures but the parties were not able to enforce such measures under Korean law

For these reasons, and in view of the interim or provisional remedies being readily available by the court in Korea,[2] arbitral interim measures in Korea had not been common in practice.

We note that the Act does not address recognition and/or enforcement of interim measures rendered by tribunals being seated outside Korea. For foreign interim measures rendered outside of Korea, their recognition and enforcement are subject to (i) the New York Convention (the place of arbitration is in the contracting state) or (ii) the Korean Code of Civil Procedure and the Korean Code of Civil Execution.

Where the party seeks recognition and enforcement of arbitral interim measures, the court may order that the applicant provide appropriate security if the arbitral tribunal did not already make

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such an order or where such an order is necessary to protect third parties' rights (Article 18-7 (3) of the Act).

Awards

Article 32 of the Act requires an award to be in writing and signed by all of the tribunal members. The award should be made by a majority of the tribunal members unless the parties agree otherwise (Article 30 of the Act).

The International and Maritime Arbitration Rules do not expressly deal with dissenting opinions but there have been some instances of dissenting opinions being issued in arbitral awards.
The Act does not specify a time limit in which to issue an award. The KCAB Domestic and Maritime Arbitration Rules provide that an award shall be made no later than 30 days for the domestic arbitration proceedings and 45 days for maritime arbitration proceedings after the closure of hearing or closing submissions with the possibility of extensions (the "Closing Date"). In case of the KCAB International Arbitration, the draft award shall be submitted to the Secretary-General no later than 60 days after the Closing Date. Upon review of the draft award by Secretary-General or the KCAB International Arbitration Court, the signed award shall be submitted to the Secretary within 15 days.

Mandatory provisions

In general, the parties are free to agree particular procedural rules, and arbitrators also have wide discretion to determine how the arbitration proceedings should be conducted. The procedural rules laid down in the Act are "default" rules in nature, applicable only in the absence of the parties' agreement. There are however certain mandatory provisions within the Act from which the parties may not deviate. For example, Article 19 of the Act requires that each party shall be treated fairly and impartially, and given a full opportunity to present its case. Article 13 of the Act also requires potential arbitrators to disclose all circumstances which are likely to give rise to justifiable doubts as to their impartiality or independence.

The Act is silent on which specific circumstances that will be regarded as giving rise to justifiable doubts as to independence or impartiality of an arbitrator. However, in relation to the domestic arbitration proceedings under the KCAB Rules, Clause 2 of the KCAB Code of Ethics provides useful guidance as to when arbitrator's impartiality and independence may be questioned. The Korean Supreme Court has ruled that the parties cannot waive this requirement; and Article 7 of the Act empowers the Korean court to set aside domestic awards and to hear application challenging recognition or enforcement of such arbitral awards.

Virtual hearings

There is no mandatory law in Korea for an arbitration hearing to be conducted by way of "in-person" hearing only. With the virtual hearing format becoming more acceptable in the context of international arbitration since the COVID-19 outbreak, the KCAB has declared that virtual hearings in lieu of in-person hearings are permitted. It also offers guidance that could be used for virtual hearings and meetings, such as the Seoul Protocol on Video Conferencing in International Arbitration. So long as the parties to arbitration expressly agree to proceed with a virtual hearing,

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and the proceeding has been conducted in accordance with the arbitration rules to which the parties agree, an arbitral award will most likely be enforced in Korea.

Overview of Maritime Law in Korea

Korea is a civil law system country and most of the laws are codified as statutes. The most important source of law dealing with the primary maritime issues is Chapter V (Maritime Commerce) of the Korean Commercial Code. While Korea has not ratified most of the maritime conventions, Korea has by and large adopted the positions of the international conventions and enacted the same in its domestic laws as noted in more detail below.

Since maritime matters involve by nature cross-border and foreign elements, Korean substantive maritime laws may not exclusively be applied in Korea, which necessitates a consideration of which law and jurisdiction is applicable to the case in question. In this regard, the Private International Law of Korea has been amended as of 4 January 2022 and has now provided international jurisdictions on specific matters under which the Korean court can exercise international jurisdictions , as well as providing which law is applicable to various matters, including “maritime commerce” (at Chapter 10, Articles 89 through 96).

Arrest of ships

Korea has not adopted any of the Arrest Conventions (1952 or 1999). Korean law does not recognize *in rem* proceedings, either.

Under Korean law, there are two possible bases to arrest the vessel, (i) by obtaining a prejudgment attachment of a vessel from the court if the claim is asserted against the owner of the vessel; or (ii) by obtaining an arrest order based on mortgage or maritime lien (see below for maritime lien).

An arrest based on the prejudgment attachment is (i) to obtain security for the claims until the judgment is rendered on the merits and there is no restriction as to the nature/kind of the claims (unlike the Arrest Convention) based on which arrest can be made. On the other hand, an arrest based on a maritime lien is (ii) to enforce its rights and proceeds to the auction sale of the target vessel.

Under Korean law, an arrest cannot be executed if the target vessel is ready for sail (Article 744 of the Korean Commercial Code).

Shipowner’s Limitation of Liability

a. Applicable law

The matters relating to the global limitation of the shipowner’s liability shall be determined by the law of the port of registry of the vessel (Article 94, (iv) of the Private International Law). Thus, in case of the limitation of liability involving a vessel registered in a foreign country, the Korean court will apply the law of the port of registry of that vessel.

b. Korean law

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Korea has enacted its domestic law of shipowner's limitation of liability (the global limitation in contrast to the package/weight limitation in an individual carriage of goods by sea) based on the 1976 Limitation Convention, with some modification (Articles 769 through 775 of the Korean Commercial Code). Korea has ratified the International Convention on Civil Liability for Bunker Oil Pollution Damage ("**Bunker Convention**") and the claims arising from the spillage of the bunker shall be subject to the limitation of liability under the said Commercial Code provisions (Article 45 of the Oil Pollution Damage Compensation Guarantee Act).

On the other hand, Korea has ratified the 1992 Civil Liability Convention ("**CLC**"), the 1992 IOPC Fund Convention, and the Supplementary Fund Convention. Thus, the claims arising from the oil pollution under 1992 CLC shall be subject to the 1992 CLC (and the related Fund Conventions). While the international conventions as ratified in accordance with the Korean Constitutional Law shall have the same effect as the domestic law (Article 6 of the Constitutional Law), Korea has enacted the domestic law named "Oil Pollution Damage Compensation Guarantee Act" to implement the CLC, the IOPC Fund Convention and the Bunker Convention.

In order to invoke the global limitation of liability of the shipowner, the owner (which also includes the charterer, the salvor, the liability insurer who intend to invoke limitation) shall commence the limitation proceedings within 1 year (6 months, in case of the oil pollution under the CLC; Article 7(2) of the Oil Pollution Damage Compensation Guarantee Act) from the receipt of the claim(s) in writing in excess of the limitation amount (Article 776(1) of the Korean Commercial Code). In Korea, limitation of the shipowner's liability cannot be pleaded as a defence in the legal proceedings.

Maritime liens

a. Applicable law

According to the Private International Law of Korea, matters relating to maritime lien claims (for example, claims that give rise to maritime lien and the priority among the maritime lien claims) shall be determined by the law of the port of registry of the vessel (Article 94 (i) and (ii)).

b. Korean law

Under Korean law, a maritime lien is a statutory security right based on which the maritime lien holder can proceed with the arrest of the vessel, the sale of the vessel by auction and the receipt of the claims in priority from the auction proceeds. Korea does not recognize *in rem* action.

Under Korea law, the following claims give rise to a maritime lien (Article 777(1) of the Korean Commercial Code):

1. Legal costs for the common interests of the creditors; taxes imposed on the vessel in connection with the voyage; pilotage, towage; preservation and inspection costs of the vessel at the last port of call;
2. Claims relating to the employment of crew and other employees of the vessel;
3. Salvage remuneration for the salvage of the vessel and the claims for the general average contribution;

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4. Damage claims due to the collision or other maritime casualties; claims for the damage to the maritime facilities, port facilities or sea route; any claims for loss of lives or injury to the crew or passengers; and
5. Claims which are subject to limitation under the CLC (Article 51 of the Oil Pollution Damage Compensation Guarantee Act).

Carriage of goods by sea

a. Applicable law

The parties may agree, expressly or impliedly, to a governing law which may govern the matters relating to the carriage of goods by sea (Article 45(1) of the Private International Law). The governing law may not necessarily be one. The parties may agree different governing laws in respect of certain matter, say, one law for the formation of the contract while another law for the liability of the carrier (depecage of the governing law: Article 45(2) of the Private International Law). Korean courts ruled that the Paramount Clause in the bill of lading could be interpreted to be a parties' agreement as to the governing law in respect of the liability (including its exemption or limitation) of the carrier even if the bill of lading provides for another governing law (Supreme Court Judgment of 12 June 2014 in re 2012 Da 10658 Case).

If the parties do not agree on the governing law, the Korean court shall find the law of a country which has closest connection to the contract (Article 46(1) (i) of the Private International Law).

b. Korean law

Korea has not ratified any convention relating to the carriage of goods by sea such as the Hague Rules, the Hague-Visby Rules or the Hamburg Rules. However, Korea has enacted domestic law on the carriage of goods by sea (Korean Commercial Code Articles 791 through 814) by adopting the provisions of the Hague Visby Rules.

The features of the Korean law for the carriage of goods by sea are as follows:

- Korean law covers the period from the receipt of the cargo to the delivery of the cargo;
- the carrier's liability is based on negligence (no strict liability) but the burden to disprove negligence lies with the carrier;
- similar exemption catalogue as the Hague–Visby Rules is available under Korean law;
- limitation of liability based on the number of the packages and/or the weight (which is almost identical to the Hague-Visby Rules) is also available;
- the lessening of the liability, limitation, or exemption in favour of the carrier shall not be valid;
- employees and agents of the carrier (but not an independent contractor unless expressly agreed in the relevant contract/bill of lading) may invoke the exemption/limitation of the carrier; and
- shorter time bar of one year for both the shipper/consignee's claims against the carrier and the carrier's claims against the shipper/consignee.

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Carriage of passengers by sea

a. Applicable law

See the section on the carriage of goods by sea above.

b. Korean law

Korea has not ratified Athens Convention on the carriage of passengers by sea. In the Korean Commercial Code, there are provisions relating to the carriage of passengers by sea (Articles 817 through 826), which provide for the obligations of the carrier, termination of the contract for the carriage of passengers, etc.

In respect of the global limitation of the liability of passenger ships, the Korean Commercial Code provides for limitation of the liability of the shipowner of the passenger ships in line with the provisions of 1996 Protocol to the 1976 Limitation Convention (Article 770(1)(i) of the Korean Commercial Code).

Charterparties

a. Applicable law

See the section on the carriage of goods by sea above.

b. Korean law

The Korean Commercial Code contains the provisions relating to the voyage charterparties, time charterparties and bareboat charterparties (Articles 827 to 851). The Korean Commercial Code provides for the definition of a particular charterparty, relationship with a third party and the time bar. Since charterparties are subject to party autonomy, the provisions of the Korean Commercial Code relating to the charterparties (except the relationship with a third party) are in principle complementary. However, it is noted that under Korean law the time bar for claims arising from the charterparties is 2 years, subject to extension by agreement (Articles 840, 846 and 851).

General Average

a. Applicable law

According to the Private International Law of Korea, matters relating to general average shall be determined by the law of the port of registry of the vessel (Article 94(v)).

b. Korean law

The Korean Commercial Code provides for some provisions relating to the general average (Articles 865 to 875). However, in practice, the provisions of the Antwerp Rules may apply according to the agreement of the parties. In this regard, it is noteworthy that the time bar for the

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claims (including the recourse or subrogation claims) arising from the general average is one year from the conclusion of the average adjustment (Article 875).

Collision

a. Applicable law

According to the Private International Law of Korea, matters relating to the collision shall be determined by the law of the place of the collision if the collision occurs at the territorial sea. If the collision occurs at an open sea, then the governing law of the collision shall be the law of the port of registry of the opponent vessel (Article 95).

b. Korean law

Korea has not ratified the 1910 Collision Convention. However, the provisions in the Korean Commercial Code relating to the collision are enacted in line with the 1910 Collision Convention, namely, split of liability according to the respective proportions of negligence in case of the damage to the vessel and/or to the cargo on board, while joint and several liability in case of the personal injury or loss of life. The time bar for the collision claims is 2 years.

Salvage

a. Applicable law

According to the Private International Law of Korea, matters relating to the salvage remuneration shall be determined by the law of the place of the salvage if the salvage is carried out at the territorial sea. If the salvage is carried out at an open sea, then the governing law of the salvage remuneration shall be the law of the port of registry of the vessel which conducted salvage (Article 96).

b. Korean law

Korea has not ratified the 1983 Salvage Convention. However, the provisions of the Korean Commercial Code relating to salvage are enacted in line with the 1983 Salvage Convention.

Oil pollution

As noted above, Korea has ratified international conventions relating to oil pollution, such as the 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Convention and the Bunker Convention.

Marine Insurance

a. Applicable law

See the section on the carriage of goods by sea above.

b. Korean law

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The Korean Commercial Code has provisions relating to marine insurance (Articles 693 to 718), which are not in line with the UK Marine Insurance Act 1906. However, in practice, the parties use the internationally recognized forms (such as ICC (A), (B), (C) or ICC Hulls) including English law as governing law.

Enforceability of Foreign Awards in Korea

Application

A party wishing to enforce an arbitral award may apply to the Korean court for recognition and enforcement of the arbitration award under Article 37 of the Act. The party must submit an application together with a copy of the arbitral award and, if the award is issued in non-Korean language, a Korean translation has to be filed along with the original award. There is no requirement for a translated copy to be certified and authenticated. The applicant must also submit a power of attorney if legal counsel is appointed, together with a payment receipt for process service and filing fees.

Competent court

There is no separate court in Korea with sole and exclusive jurisdiction over the issue of enforcement of foreign awards.[3] An application for recognition and enforcement of both domestic and foreign arbitral awards is required to be filed pursuant to Article 7(4) of the Act. This may be a court designated by the arbitration agreement, or a court that has jurisdiction over:

- the place of arbitration;
- the place where a respondent's property is located;
- the respondent's domicile or place of business;
- the respondent's place of abode if neither the domicile nor place of business can be found; or
- the respondent's last known domicile or place of business.

There is no need to identify the place of the respondent's properties or assets unless the application is made based on the location of the respondent's assets.

Timeframe

Generally, it takes about 3 to 6 months to obtain the court's decision without a formal hearing (i.e. summary proceedings) and 6 -12 months to obtain the court's judgment with a formal hearing(s). However, the court's decision enforcing arbitral awards will likely take a period of 6 months or longer since the court will likely hold a hearing(s).

Enforceability of New York Convention foreign awards

Under Article 39 of the Act, a foreign arbitral award made in a New York Convention state will be recognised and enforced in accordance with the New York Convention upon the application to the competent court. It may not be refused unless there is proof (a) of incapacity or invalid

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arbitration agreement; (b) of a lack of proper notice or opportunity to defend; (c) that the award is beyond the scope of the submission to arbitration; (d) of a defect with the arbitral authority or procedure; (e) that the award not binding or has been set aside; (f) that the award is in conflict with the good morals and other forms of social order of Korea (Article 39 and Article 36 of the Act; Article V(1) of the New York Convention).

In practice, the grounds for refusing recognition and enforcement of a New York Convention award are very narrow and limited. Korean courts are 'arbitration friendly' and have a pro-arbitration attitude towards enforcing arbitral awards and they have rarely refused enforcement. In 2018, the Korean Supreme Court held that procedural irregularity or unfairness in the arbitral proceedings ought to be established to the extent that it is intolerable. This is a very high threshold to meet, whereby the applicant is required to prove beyond a simple violation of the parties' agreed procedure or applicable arbitration law (Supreme Court Judgment of 13 December 2018 in re No. 2016 Da49931 Case).

The Supreme Court in re No. 2018 Da240387 rendered on 13 December 2018 also confirmed that Article 36(2)2(b) of the Act (the moral and social order ground for refusal) should not be interpreted to include a case where arbitrator's finding is erroneous on fact and/or law. The enforcement of a foreign arbitral award may not be refused solely on the basis that the foreign arbitral award is unlawful. In the case of *Majestic Woodchips v Donghae Pulp Corporation* (Supreme Court Judgment of 28 May 2009 in re No. 2006Da20290 Case), the Supreme Court also held that recognition and enforcement of an arbitral award can be refused on the basis of fraud only if:

- there is clear evidence that a party seeking enforcement of an arbitral award committed fraud in the arbitral proceedings;
- the counter-party was not aware of the fraud and did not have an opportunity to raise the issue of fraud during the arbitral proceedings; and
- a causal connection exists between the fraud and the outcome of the arbitral proceedings.

Non-New York Convention foreign awards

In relation to foreign arbitral awards from the states that are not party to the New York Convention, Article 39 of the Act provides that these awards will be considered in the same manner as foreign court judgments, pursuant to Article 217 of the Code of Civil Procedure and Articles 26(1) and 27 of the Code of Civil Execution. Under those provisions, a Korean court will recognise and enforce a foreign award not subject to the New York Convention if:

- the award is final and conclusive;
- the jurisdiction of the arbitral tribunal is consistent with Korean law and treaties to which Korea is a party;
- the losing party received adequate notice of the arbitration and sufficient time to defend its case;
- the award is not in conflict with the good morals or other public policy of Korea; and
- the country in which the arbitral award was issued provides reciprocity to Korean arbitral awards.

Post-enforcement actions

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Once a final decision of the court recognising and enforcing an award has been obtained, it may be enforced against the defendant's assets by means of compulsory execution (Article 28 of the Code Civil Execution). For compulsory execution by the court bailiff, a writ of execution must be obtained from the court that rendered the recognition and enforcement decision. The plaintiff can obtain the writ of execution by making an application.

Institutional vs ad hoc Arbitration – Korean perspectives

Institutional and ad hoc arbitration are types of arbitration for administering the dispute resolution process based on the terms of agreement and applicable law. In essence, there is no different treatment in Korea in terms of their status, enforcement or recognition of the award. Generally, arbitration parties often favour institutional arbitrations. This is also a general perception prevailing in Korea, at least for profoundly contentious and high value matters. As with the leading international arbitration practice and institutions such as ICC, LCIA, SIAC, Korean arbitration law and arbitral institutions have also developed to assist arbitration parties comprehensively from beginning to end, as well as catering for contingencies that might arise, even if the parties fail or refuse to cooperate.

It is also common practice in Korea to incorporate arbitration institution's rules into a contract. The contracting parties are well aware of the benefits of (i) avoiding the time and expense of drafting a suitable ad hoc clause; and (ii) relying on the availability of pre-established rules and procedures which ensure the arbitration proceedings begin in a timely manner.

That said, ad hoc arbitration proceedings have the potential to be more flexible, quicker and cheaper than institutional proceedings, provided that the parties are willing to mutually agree upon a set of rules and approach the arbitration with cooperation. Ad hoc arbitration could also be more suitable to a specialized area of law, especially maritime law disputes.

Further, the absence of administrative fees or certain procedural elements alone provides an excellent incentive to use the ad hoc procedure. Users of ad hoc arbitration also value the procedural flexibility it offers, which they feel enhances party autonomy when compared with institutional arbitration. Ad hoc arbitration is also favoured in certain sectors, e.g. the shipping and commodities sectors, or by contracting parties who are sophisticated users of arbitration.

In practice however, achieving the parties' consensus on how the arbitration proceedings should be conducted may be difficult, particularly where contested claims involve high value and a complex commercial relationship.

Status of SCMA Awards in Korea

Singapore is a party to the New York Convention; and a SCMA award will be treated as a New York Convention award under the Act as if it was rendered in Korea. As such, the SCMA award will be enforced in accordance with Article 39 of the Act.

Further, considering that there are a number of cases where LMAA awards were successfully recognized and enforced by the Korean court, SCMA awards would also likely be treated as such.

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[1] http://www.kcabinternational.or.kr/.
[2] Under Korean law and practice, interim preservation measures are readily available by the Korean court. Thus, we do not think that interim measures in the Act may be used in Korea since the interim measures shall need the Korean court's assistance in order for them recognized and enforced in Korea while the provisional remedies by the Korean court (with the same effect as the interim measures in arbitration procedures) shall be readily available in Korea.
[3] A draft bill is now pending at the Parliament, which establishes "Maritime and International Commercial Court." If the special court dealing with Maritime and International Commercial matter is established, then the court may have jurisdiction over the recognition and enforcement of foreign arbitral awards.

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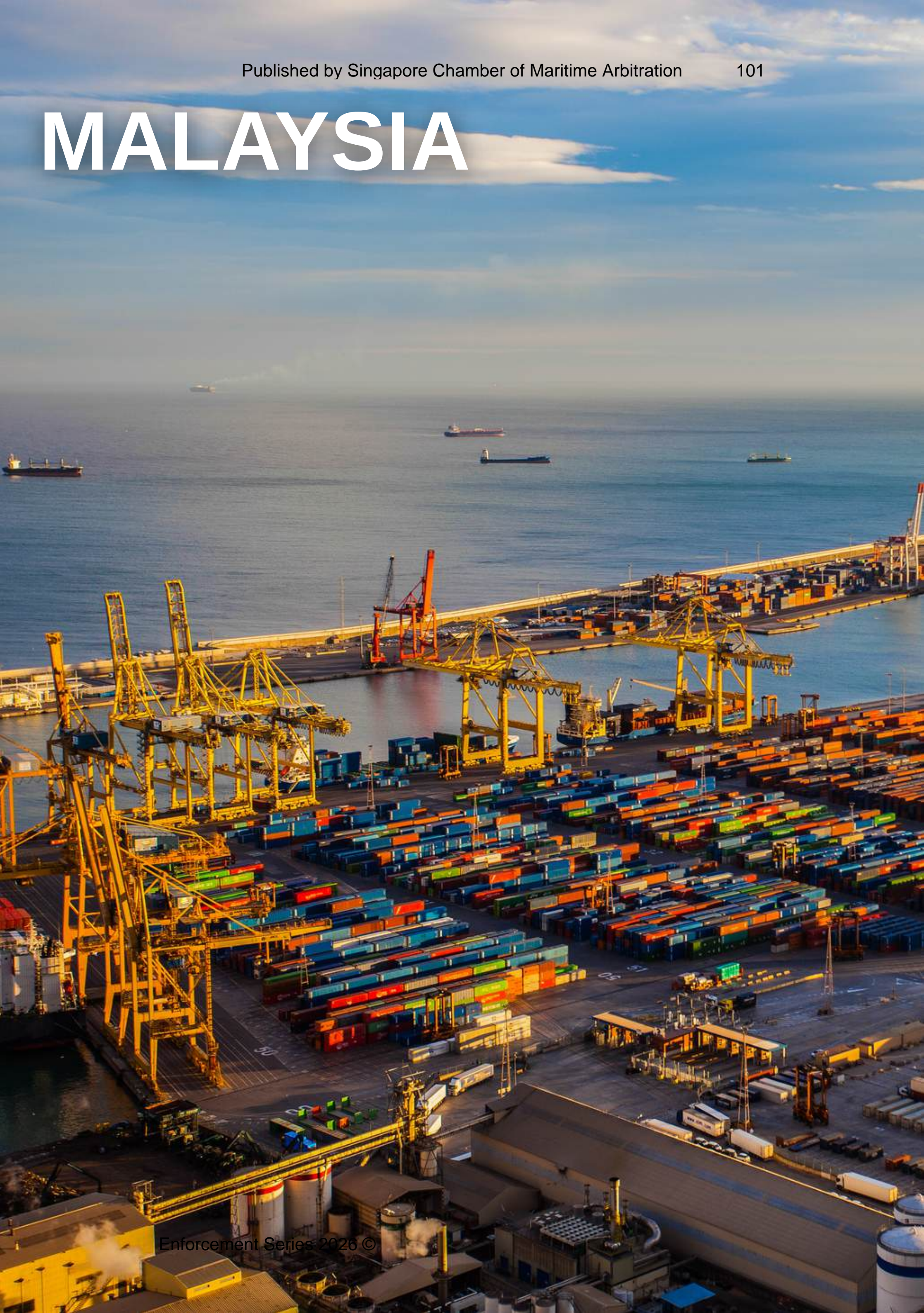
MALAYSIA



Malaysian Arbitration and Maritime Law: Recent Legislative and Judicial Developments

1.0 Introduction

Malaysia has firmly established itself a leading arbitration hub in Asia, a reputation underpinned by the judiciary's consistent pro-arbitration approach and legislative initiatives. Malaysian courts have regularly upheld the principles of party autonomy and minimal judicial interference, thereby strengthening confidence as an effective and neutral seat for arbitration proceedings. This article serves as an update to the earlier publication, "2021 Maritime Arbitration Enforcement Series: Malaysian Arbitration & Maritime Law" (which can be accessed here) by examining recent legislative and judicial developments in the arbitration landscape in Malaysia.

2.0 The Amendment Act and AIAC Arbitration Rules 2026

The Arbitration (Amendment) Act 2024 ("**the Amendment Act**") was gazetted on 1 November 2024 and came into force on 1 January 2026.[1] It amends the Arbitration Act 2005 ("**AA**"), which governs domestic and international arbitration as well as the recognition and enforcement of foreign arbitral awards in Malaysia, with its stated objective "*to enhance Malaysia's standing amongst the global international arbitration community*."[2] It introduces several key reforms aimed at further aligning Malaysia's arbitration framework with the UNCITRAL Model Law, and prevailing international best practices.

In conjunction with these reforms, the Asian International Arbitration Centre ("**AIAC**") launched the AIAC Arbitration Rules 2026 ("**2026 Rules**") which took effect on 1 January 2026.[3] The 2026 Rules complement the legislative amendments by modernising certain procedural aspects of AIAC-administered arbitrations and reinforcing institutional best practices.

Some of the key reforms introduced under the Amendment Act are outlined below.

2.1 Restructuring of the AIAC

The 2026 Rules establishes the AIAC Court of Arbitration and sets out the respective functions of the President, the AIAC Court, and the Registrar in AIAC administered arbitration proceedings. They also prescribe relevant factors that the President may consider in the appointment of arbitrators, thereby promoting greater transparency and diversity in the arbitral appointment processes.

The Amendment Act amends the relevant provisions of the AA to facilitate these changes and also provides that all appointments, decisions and other acts of the former Director of

[1] P.U.(B)368/2025 (Appointment of Date of Coming into Operation), <https://lom.agc.gov.my/act-detail.php?act=A1737&lang=BI>.
[2] See Explanatory Statement in the Arbitration (Amendment) Bill 2024.
[3] AIAC Arbitration Rules 2026, page 4, <https://admin.aiac.world/uploads/ckupload/ckupload_20251008054348_16.pdf>.

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the AIAC shall be deemed to have been made by the President. This deeming provision ensures that the transition in leadership does not affect the validity of any previous arbitral appointments or administrative decisions made by the AIAC.

Further, Section 48 of the AA is amended to strengthen institutional protection for those acting as appointing authorities by expressly granting immunity to any person or institution, including the President, acting in the capacity of an appointing authority authorised by the parties. Such persons or bodies shall not be liable for any act done or omitted in the discharge of their functions unless it is proven that the act or omission was made in bad faith.

2.2 Automatic Recognition of Arbitral Award as Binding

The present Section 38(1) of the AA requires a party to apply to the High Court for an arbitral award [whether rendered in Malaysia or in a foreign state] to be recognised as binding and be enforced by entry as a judgment in terms of the award. The Amendment Act amends Section 38(1) to provide that an arbitral award shall be automatically recognised as binding thereby eliminating the need for a separate recognition process, and an application to the High Court is required only to enforce the award subject to Section 39. This aligns Malaysia's arbitration framework with the UNCITRAL Model Law thereby enhancing the finality and efficiency of arbitral proceedings in Malaysia.

2.3 Default Law Applicable to Arbitration Agreement

Section 5 of the Amendment Act introduces a new Section 9A which provides that the parties are free to agree on the law to be applicable to their arbitration agreement and failing such agreement, that law shall be the law of the seat of arbitration. This is a welcomed amendment which brings certainty to the complex issue of whether (absent express agreement) the law of arbitration agreement should be the law of the seat, or the law that applies to the substance of the dispute as determined by the application of conflict of laws rules.

2.4 Joint Appointment of Arbitrator in Multi-Party Arbitration

The Amendment Act also introduces a new Section 13(3A) on multi-party arbitrations which provides that where the arbitration consists of three arbitrators and there are multiple claimants or respondents, all claimants must jointly appoint one arbitrator, and all respondents must jointly appoint another, with the two appointees selecting the presiding arbitrator. This amendment clarifies the appointment process and facilitates the efficient conduct of arbitrations involving multiple parties.

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2.5 Introduction of Third-Party Funding in Arbitration

Under Malaysian law, third-party funding of litigation is contrary to public policy under the common law doctrines of maintenance and champerty which prohibited litigation support by a person with no legitimate interest in the proceedings in order to prevent corruption in the justice system.[4]

Section 10 of the Amendment Act contains provisions to permit and regulate third-party funding in arbitration. This significant reform enables parties with limited financial resources to pursue their legitimate claims through arbitration by receiving financial support from a party who is not involved in the legal dispute in exchange for a share of any financial benefit resulting from its outcome.

Some of these key amendments include provisions which state that the common law rule against maintenance and champerty shall cease to apply to the third-party funding of arbitration, which is no longer deemed contrary to public policy. A new Section 46D empowers the Minister charged with the responsibility for arbitration to issue a code of practice prescribing the practices and standards to be observed by third-party funders, and Section 46F allows disclosure of information by a party for the purpose of seeking or securing third-party funding from a person.

Section 46G imposes a duty on the funded party to disclose the existence of a third-party funding agreement and the identity of the third-party funder to the other party and to the arbitral tribunal or the court before which the proceedings are brought in respect of the arbitration, as the case may be. Lastly, Section 46H requires the funded party to disclose termination or cessation of a third- party funding agreement to the other party and to the arbitral tribunal or the court before which the proceedings are brought in respect of the arbitration, as the case may be.

2.6 Use of Digital and Electronic Signatures on Arbitral Awards

Section 8 of the Amendment Act provides that arbitrators are permitted to sign awards using digital or electronic signatures[5], which modernises the process by recognising such forms of signatures and reduces delay associated with the physical signing of awards.

2.7 Tribunal's Discretion to Repeat Hearings if Arbitrator(s) Replaced

Section 17(2) of the AA is amended to grant the arbitral tribunal discretion to decide whether earlier hearings should be repeated when any arbitrator including the presiding

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[4] See *Hasina bt Meera Maidin v. Tetuan Rajinder & Goh (sued as a firm) & Ors* [2025] 9 MLJ 236.
[5] As defined under Section 2 of Digital Signature Act 1997 and Section 5 of Electronic Commerce Act 2006 respectively.

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arbitrator is replaced. This changes the current requirement for a mandatory rehearing upon the replacement of a sole or presiding arbitrator, unless the parties agree otherwise. The amendment introduces greater procedural flexibility and helps to expedite the conclusion of arbitral proceedings.

3.0 Recent Significant Developments in Arbitration and Maritime Case Law

3.1 In *Cockett Marine Oil (Asia) Pte Ltd v. MISC Bhd*[6], the Court of Appeal ("**CA**") overturned the High Court's decision to grant an anti-arbitration injunction and held that the lower court had exceeded its jurisdiction in ruling that the arbitration agreement was unenforceable. The CA emphasised that Section 18 of the AA confers broad powers on the arbitral tribunal to rule on its own jurisdiction, including preliminary objections and challenges to the existence or validity of the arbitration agreement. Therefore the jurisdiction of the court is limited to identifying whether there is prima facie an arbitration agreement in existence, and once such prima facie determination is made the matter must be stayed and referred to arbitration for a full determination on whether there is in fact a binding arbitration agreement.

The CA also held that the arbitration agreement was incorporated by reference via a hyperlink contained in the appellant's exchange of correspondence, which referred to its standard terms and conditions including the arbitration clause. Thus parties may effectively incorporate an arbitration clause through electronic references which are clear and accessible.

3.2 In *Telekom Malaysia Berhad v. Obnet Sdn Bhd*[7], the Federal Court ("**FC**") held that an oral pronouncement on liability by the arbitrator in a bifurcated hearing was invalid and could not be enforced. Although the oral decision was on the substance of the dispute and final and binding on the issue of liability, Section 2 read together with Section 33 of the AA mandatorily required the arbitrator to publish a written award regarding his decision on liability. Even if the proceedings are bifurcated, the arbitrator is not entitled to proceed with the determination of quantum until a written award on liability has been issued which is necessary to ensure that the tribunal is functus officio on the issue of liability.

3.3 The validity of a "hybrid" dispute resolution clause that allowed the parties to choose between litigation and arbitration was upheld by the CA in *Setia Awan Management Sdn Bhd v. SPNB Aspirasi Sdn Bhd*[8]. The CA reasoned that including an option to litigate in court or arbitration did not diminish the certainty of the parties' intention or contractual commitment to arbitrate. Once a party elects to proceed with arbitration, an arbitration agreement comes into existence and the other party cannot proceed with litigation. This

[6] [2022] 6 MLJ 786.
[7] [2024] 6 MLJ 293.
[8] [2025] 7 CLJ 578.

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principle applies whether the right to arbitrate is vested in one party alone or whether both parties have the option to choose between court and arbitration, including cases where arbitration is the default option. The test is whether any party has elected arbitration, at which point a binding arbitration agreement is established.

The CA also clarified that the absence of detailed procedural terms in the arbitration agreement such as the seat, number of arbitrators, or mode of appointment did not invalidate the arbitration agreement. Where the arbitration clause is silent on such matters, the Arbitration Act provides for a default procedural framework which ensures that the arbitration can proceed.

3.4 In a landmark decision, the FC in *ING Bank NV & Anor v. Tumpuan Megah Development Sdn Bhd*[9] held that a foreign arbitral award could be enforced in Malaysia either directly under the AA (which gives effect to the New York Convention) or through the Reciprocal Enforcement of Judgments Act 1958 ("**REJA**") after the award had been made enforceable as a judgment at the arbitral seat which is a reciprocating country under REJA[10]. Thus, the AA is not the exclusive route to enforce a foreign arbitral award in Malaysia, which can also be enforced as a confirmation judgment under the REJA regime because the definition of "judgment" in the REJA includes an arbitration award. The FC clarified that these are two separate and independent statutory frameworks which operate distinctly and in parallel. The REJA contains its own limited grounds for not recognising the foreign judgment[11] and the arbitration award may be scrutinised only on these grounds (and not the Model Law grounds for refusing recognition), although such scrutiny is confined to a limited review of the existing record and not a de novo rehearing as the enforcing court is not an appellate court which is able to rehear the case.

3.5 This decision is significant as it establishes that there are two enforcement routes in Malaysia for a foreign arbitration award, and the award creditor has a strategic choice of obtaining a confirmatory judgment in terms of the award in the arbitral seat and thereafter enforcing that judgment in Malaysia under the REJA, instead of proceeding with enforcement under the AA.

3.6 On the maritime front, an important decision which has clarified the powers of the Malaysian Court to order the arrest of a vessel for the purpose of obtaining security for an arbitration award is the judgment of the High Court ("**HC**") in *Unicious Energy Pte Ltd v. The Owners and/or Demise Charterers of the Ship or Vessel "Alpine Mathilde"*[12].

[9] [2025] 8 CLJ 873.
[10] The First Schedule to the REJA sets out the reciprocating countries which are the United Kingdom, Hong Kong SAR, Singapore, New Zealand, Sri Lanka, India (excluding certain states/areas) and Brunei.
[11] Section 5 of the REJA sets out the cases where the registered judgment must or may be set aside. This includes where the original court had no jurisdiction, the judgment was obtained by fraud and the enforcement of the judgment would be contrary to the public policy of Malaysia.
[12] [2023] 1 LNS 2516.

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3.7 The plaintiff had commenced in rem proceedings and arrested the vessel in Malaysia for breach of a voyage charter party which provided for disputes to be determined by arbitration in London. In its affidavit in support of the arrest, the plaintiff stated that the proceedings were commenced in order to obtain security for the arbitration proceedings. The HC set aside the arrest and held that its admiralty jurisdiction (which was conferred by Section 24(b) of the Courts of Judicature Act 1964 ("**CJA**") read with Sections 20 and 21 of the UK Senior Courts Act 1981 ("**UK SCA**")) could only be invoked for the in rem action that was commenced, and not to arrest the vessel for the sole purpose of obtaining security for a prospective award in arbitration proceedings.

3.8 The Court reaffirmed that Malaysia's admiralty jurisdiction did not include the statutory provisions introduced in the United Kingdom after 1981 (by the CCJA 1982 and the UK Arbitration Act 1996) which allowed for arrest to secure an arbitration award, as these provisions do not apply in Malaysia. An admiralty arrest of a vessel as security for arbitration proceedings can only be effected pursuant to the Court's powers to order the arrest either as an interim measure under Section 11(1)(c) of the AA, or to retain the arrest under Section 10(2A) upon granting a stay of the in rem action. The Court drew a distinction between an arrest effected pursuant to its admiralty jurisdiction under Sections 20-24 of the UK SCA which was available as of right (provided that the formal requirements for the arrest are satisfied) and an arrest to obtain security for an arbitration award which is a discretionary remedy granted by the Court, therefore requiring the plaintiff to make full and frank disclosure of all material facts in the arrest application.

3.9 The HC also made it clear that as neither Sections 10 nor 11 widened the existing admiralty jurisdiction or created a new category of "maritime claim", the claimant would therefore have to satisfy the relevant requirements under Sections 20-24 of the UKSCA in order to validly invoke the admiralty jurisdiction of the Court[13].

4.0 Status of SCMA Awards in Malaysia

As set out in our 2021 article SCMA Awards have been upheld in Malaysia and would be regarded like any other foreign arbitral award subject to the same procedures for recognition and enforcement as outlined above.

5.0 Conclusion

In conclusion, these developments collectively highlight the pro arbitration approach of the Malaysian courts, enhancing confidence in the country as a neutral and reliable seat for arbitration that is capable of effectively supporting cross-border dispute resolution. The evolving case law and legislative reforms demonstrate Malaysia's proactive approach in maintaining a robust and internationally respected arbitration framework, ensuring that it remains responsive to the needs of parties and aligned with global best practices.

[13] The court endorsed the "5-step" test and standards of proof articulated by the Singapore Court of Appeal in *The "Bunga Melati 5"* [2012] SGCA 46 for invoking the admiralty jurisdiction of the court.

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MYANMAR

Arbitration of Maritime Disputes – a Myanmar Perspective

Introduction

When Myanmar's economy opened up in or around 2011, there was a significant increase in the flow of Foreign Direct Investment ("**FDI**") into the country. This was accompanied with legal reforms to ensure that there is a strong legal framework to attract and protect foreign investment, as well as provide a better environment for all investors to do business. Consequently, various new laws were enacted such as the Companies Law, the Arbitration Law, the Investment Law and the Insolvency Law.

In contracts involving foreign parties, arbitration has been a preferred mechanism used in settling disputes.

This article discusses arbitration and maritime law in Myanmar to provide insights to investors interested in Myanmar. It is an update to the original article published in November 2021, which was co-authored by Minn Naing Oo, Kang Yanyi and Nang San Aung.

Overview of Myanmar Law on Arbitration

On 5 January 2016, the Union Parliament of Myanmar enacted the Arbitration Law 2016 ("**Arbitration Law**") which is based on the UNCITRAL Model Law on International Commercial Arbitration (1985) ("**Model Law**"). The Arbitration Law gives effect to Myanmar's ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and replaces the Myanmar Arbitration Act of 1944.

The Arbitration Law is the main procedural law on domestic and international arbitration.

The Arbitration Law respects the principle of party autonomy. The parties are free to choose the law governing the arbitration and the seat of the arbitration. If the seat of arbitration is Myanmar, the Arbitration Law will govern the arbitration. If the seat of arbitration is in any country other than Myanmar or if the seat of arbitration has not been designated or determined upon, sections 10, 11, 30, 31 and Chapter 10 of the Arbitration Law shall be relevant. These set out the Myanmar Court's power to order a stay of proceedings in favour of arbitration, to intervene in arbitral proceedings, to provide assistance in the taking of evidence, to enforce the interim awards made by the arbitral tribunal, and to recognise and enforce foreign arbitral awards.

The significant departures from or amendments to the Model Law are as follows:

(1) The Arbitration Law sets out specific instances where a party must state its objection without undue delay, failing which, it will be deemed to have waived such an objection (compare Article 4 of the Model Law). These include pleas that the arbitral tribunal has no jurisdiction; that the arbitral proceedings were not conducted properly; that any provision of the arbitration agreement or the arbitration law was not complied with; and that the arbitral tribunal or the arbitral proceedings were affected in some manner leading to the proceedings not being conducted properly. If a party proceeds with the arbitration without stating any such objections, he shall be deemed to have waived his right to object.

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(2) The Arbitration Law makes clear that where an action is brought before a court, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue of whether the court proceedings should be stayed in favour of arbitration is pending.

(3) Contrary to the Model Law, if the parties have not agreed on a number of arbitrators in the arbitration agreement, the default position is that a sole arbitrator is to be appointed.

(4) The Arbitration Law adds to the Model Law by stating that in the event of any dispute concerning whether any of the grounds for the termination of the mandate of the arbitrator is triggered, a party may request the court to decide the issue. However, no appeal lies from a decision of the court on the issue.

(5) The Arbitration Law, going beyond the Model Law, appears to have adopted the position under the Singapore International Arbitration Act ("**Singapore IAA**") in granting a right of appeal against both positive and negative determinations of jurisdiction by an arbitral tribunal. Therefore, the Arbitration Law provides that a party may appeal against a jurisdictional decision of the arbitral tribunal within 30 days of such decision.

(6) The Arbitration Law also confers specific powers on an arbitral tribunal to grant interim measures of protection and orders, although the formulation of the powers of the tribunal does not follow the text of the Model Law, but is instead modelled closely on Section 12 of the Singapore IAA (the version at the material time). Therefore, Myanmar did not adopt the 2006 version of the Model Law on measures and orders by the tribunal.

(7) The Arbitration Law specifically provides that orders, decisions and directions issued by an arbitral tribunal may be enforced with the permission of the court as if they were court orders. This is an important adoption of the principle of Article 17H Model Law but not its text.

(8) The Arbitration Law expands on Articles 9 and 17J of the Model Law and sets out in some detail the nature of interim measures of protection that may be ordered by a court in aid of arbitration. Further, an order made by the court granting any such interim measures of protection will cease to have effect if the arbitral tribunal makes an order on the same issues.

(9) When the parties fail to make a choice of law, the Arbitration Law does not adopt the indirect approach of Article 28(2) Model Law which require reference to rules of conflicts of law (that is, "the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable") but rather the direct approach which does not require reference to any rules of conflicts of law (that is, "the arbitral tribunal shall apply the rules of law which it considers applicable"). It should also be noted that whereas the Model Law allows the parties to choose "rules of law", the Arbitration Law only allows the tribunal to choose "the law" thus limiting the tribunal to a choice of a national law rather than some other rules such as the UNIDROIT Principles of International Commercial Contracts.

(10) When both parties are from Myanmar (that is, in a domestic arbitration), the tribunal shall decide the dispute in accordance with the prevailing substantive law of Myanmar. There is no equivalent provision in the Model Law.

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(11) The Arbitration Law additionally confers on the arbitral tribunal the power to determine, in the award, the costs of arbitration and its apportionment among the parties.

(12) Unlike the Model Law, under the Arbitration Law, any party may, unless agreed otherwise by the parties and with notice to the arbitral tribunal and other parties, apply to the court for a ruling on an issue of law arising from the arbitral proceedings even before the award is issued. The court may rule on such an issue of law if it is convinced that the rights of parties are materially prejudiced. This recourse is only available to domestic arbitrations and not international arbitrations. The court will however not consider such an application if it is convinced that such an application was not made in accordance with the agreement of the parties, or was made without notice to the arbitral tribunal, or that the consideration of such an application will increase costs or delay the proceedings. An arbitral tribunal may continue with the arbitral proceedings notwithstanding that such an application is pending before the court.

(13) Unlike the Model Law, a party may also appeal on an issue of law arising from a domestic award. However, parties may agree to exclude such a right. The court shall allow the appeal if it is convinced that its ruling upon the issue materially prejudices the rights of a party or the award of the arbitral tribunal in respect of the dispute submitted for its decision is completely wrong. Consequently, the court may confirm the award, vary the award, return the award to the arbitral tribunal for reconsideration of the whole or any part of the award, or set aside the whole or part of the award.

Both domestic and foreign arbitral awards can be enforced under the Arbitration Law as a decree rendered by the Myanmar court under the Code of Civil Procedure (the "**CPC**").

In terms of seeking the court's assistance under the Arbitration Law, any application made under the Arbitration Law shall be classified as a Civil Miscellaneous Case and will be conducted in accordance with the CPC.

While still in its nascent stages of development, arbitration in Myanmar is growing as a preferred mode of dispute resolution. As the market develops, specialised arbitration institutes such as SCMA will also become better known and utilised.

Overview of Maritime Law in Myanmar

Myanmar Maritime Law mainly consists of:

(1) Legislation, which includes:

   a. the Merchant Shipping Act,
   b. the Carriage of Goods by Sea Act,
   c. the Bills of Lading Act, and
   d. the Territorial Sea and Maritime Zones Law;

(2) Rules issued under the laws, and directives and orders issued by the Myanmar Port Authority ("**MPA**") and the Department of Marine Administration ("**DMA**"); and

(3) International treaties, including the Maritime Labour Convention and the United Nations Convention on the Law of the Sea.

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The Merchant Shipping Act, Carriage of Goods by Sea Act and Bills of Lading Act are respectively based on the India Merchant Shipping Act 1923, India Carriage of Goods by Sea Act 1925 and the India Bills of Lading Act 1856. The Territorial Sea and Maritime Zones Law was re-enacted in 2017.

The MPA is responsible for amongst other things, exercising regulatory functions with respect of marine and port services and facilities, facilitating port operators and port users in order to promote smooth flow of trade, initiating port development plans and implementing projects in collaboration with the private sector and conducting fruitful cooperation with regional/international organisations and business institutions.

The DMA is responsible for amongst other things, maritime legislation, accident investigations, safety, environmental protection, security, ship survey, ship registration, and seafarers' certification and verification.

Myanmar Courts have jurisdiction over any civil claims including maritime disputes. However, parties can agree to settle maritime disputes through arbitration by including an arbitration clause in the contract or by entering a separate written arbitration agreement. We are not aware of any reported cases related to maritime arbitration in Myanmar to date.

Enforceability of Foreign Arbitral Awards in Myanmar

Since Myanmar is a party to a New York Convention, Myanmar Courts can recognize and enforce foreign arbitral awards rendered in the contracting states of the New York Convention and awards rendered in Myanmar can similarly be enforced in other contracting states of the New York Convention.

Section 46(b) of the Arbitration Law provides that the court may refuse to recognise and enforce a foreign award, if any of the following in submission for recognition and enforcement of foreign award can be proved by the respondent:

(1) a party to the arbitration agreement was, under the law applicable to them, under some incapacity;
(2) the arbitration agreement is not valid under the law to which the parties have subjected it, or in the absence of any indication in that respect, under the law of the country where the award was made;
(3) the party was not given proper notice of the appointment of the arbitrator, or the arbitration proceedings were not carried out properly or the respondent was otherwise unable to present its case in the arbitration proceedings;
(4) the award deals with a dispute not contemplated by, or not falling within the terms of, the submission to arbitration or it contains a decision on the matter beyond the scope of the submission to arbitration;
(5) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
(6) the 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, that award was made.

Section 46(c) of the Arbitration Law further provides that the court may refuse to enforce the award if it finds that:

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(1) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the State; or
(2) the enforcement of the award would be contrary to the public policy of the State.

Section 46(d) of the Arbitration Law provides that where the court is satisfied that an application for the setting aside or for the suspension of the award has been made to a competent authority referred to in subsection (b) of section 46, the court may, if it considers proper to do so, postpone the order to enforce the award and may also order the respondent to provide appropriate security on the application of the party claiming enforcement of the award.

As a matter of procedure, Section 45 of the Arbitration Law provides that the party seeking to enforce a foreign award must produce to the court:

(1) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;
(2) the original arbitration agreement or an authorised copy thereof; and
(3) such evidence as may be necessary to prove that the award is a foreign award.

Further, where the award or arbitration agreement required to be produced is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in the Union of Myanmar.

In general, every court in Myanmar has jurisdiction to enforce foreign arbitral awards subject to certain pecuniary limit of its jurisdiction. The pecuniary limit of the Myanmar Courts are as follow: Township Court up to MMK 10 million, District Court up to MMK5,000 million and no limits apply to the High Courts. In addition to such pecuniary limits, the Courts have territorial limits. Suits must therefore be instituted in a Court which has territorial jurisdiction based on the location in which the defendant resides, carries on business or personally works for gain, or where the cause of action arises.

After the foreign arbitral award is recognised, the judgement creditor shall apply to execute the foreign arbitral award in a Myanmar Court against the judgement debtor, based on its relevant jurisdiction.

The usual methods of execution applicable to a judgment issued by the Myanmar court will apply:

(a) attachment and sale of any property;
(b) examination of the judgment debtor on his property;
(c) application for garnishee orders requiring third parties, such as banks, who are indebted to the judgment debtor to pay the judgment creditor the amount of any debt due or accruing due to the judgment creditor in satisfaction of the judgment;
(d) arrest and detention in prison; and
(e) commencement of insolvency (against individuals) or winding up (against companies) proceedings, where applicable.

Application for execution of the decree may be either oral or written pursuant to Order 21, Rule 11 of the CPC.

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Institutional vs ad hoc arbitration – Myanmar Perspective

Myanmar Courts, in general, have jurisdiction to enforce both institutional and ad hoc arbitral awards under the Arbitration Law.

As mentioned above, arbitration is well accepted in Myanmar and is the preferred mode of dispute resolution in commercial contracts, particularly in cross-border transactions or where a foreign party is involved. Parties in such transactions would also generally prefer to have an international arbitral institution and its rules to administer their disputes. SCMA, as a specialised international arbitral institution, is well placed to be one of such institutions.

Whilst the Union of Myanmar Federation of Chambers of Commerce and Industry established the Myanmar Arbitration Centre in 2019, it has not been widely adopted as the arbitral institution of choice in arbitration agreements of Myanmar-related transactions. Further, it does not yet have an established panel of international arbitrators and its procedures and rules are not publicly or easily accessible. Nevertheless, it has taken on a small handful of ad hoc cases but there is no publicly available information on the outcome of these cases.

Status of SCMA Awards in Myanmar

Currently, we are not aware of any reported SCMA awards that have been enforced in Myanmar. However, given that SCMA is a specialised maritime arbitration centre with rules tailored for maritime disputes, we expect that there will be increased usage of SCMA in shipping disputes connected to Myanmar.

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NEW ZEALAND

Enforcement Proceedings in New Zealand

Enforcement is an essential, and final part of any dispute resolution process. Whether a party has secured a court judgment or an arbitral award, the outcome only has real value if that decision can be translated into a practical remedy – such as payment, transfer of property, or compliance with an order.

Arbitral Awards: Background

Arbitration is widely used in New Zealand. The Arbitration Act 1996 (the "**Act**") is largely based on the UNCITRAL Model Law on International Commercial Arbitration. The Model Law promotes party autonomy, procedural fairness, and minimal court intervention. These principles underpin the Act and ensure that New Zealand's arbitration regime aligns with global best practice. This article outlines how New Zealand courts enforce domestic and foreign arbitral awards, including similarities and distinctions.

Domestic Arbitration Awards

Under sch 1, art 35 of the Act, arbitral awards are:

- final and binding, and
- must be recognised and enforced upon application.

Applications to enter the award as a judgment are typically made to the High Court or, where the award value falls within jurisdiction, the District Court. The application needs to be accompanied by relevant documentation to comply with requirements under sch 1, art 35(2) of the Act. These requirements include:

- the duly authenticated original award or a duly certified copy;
- the original arbitration agreement or a duly certified copy (if agreement is in writing); and
- a duly certified translation into English (if required).

If the Court Registrar is satisfied that the requirements under sch 1, art 35(2) are met and the parties are in agreement, the process is simple. Once the parties jointly apply to the Court Registrar, the Registrar must enter the judgment as soon as practicable. In the absence of parties' consent, whichever party wishes to enforce the award can do so through a) an originating application, or b) enforcement by action.

Originating Application

An originating application is the most common route for enforcement; the applicant files the award, the arbitration agreement, and (if needed) translations. If unopposed, the judgment may be entered by default. Under r 20.106(2) of the District Court Rules 2014 ("**Rules**"), any opposition must be filed within 10 working days, or any shorter period fixed by the Court. A respondent opposing entry must apply for refusal under art 36 of the Act with an affidavit establishing grounds such as invalidity, non-arbitrability, or conflict with public policy (further

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analysed below). If no timely or successful objection is made, the successful party is entitled to a judgment.

Enforcement by Action

Enforcement by action is an uncommon and more expensive route. It requires commencement by statement of claim under the standard procedure provided in r 5.28 of the Rules. It is suited to situations where the issues are sufficiently complex to make the originating application process inappropriate.

Foreign Arbitration Awards

While the enforcement procedure for foreign arbitral awards closely mirrors that applicable to domestic awards, the Act introduces some additional considerations that arise only in the international context.

Article 1 of sch 1 of the Act defines foreign arbitration broadly. An arbitration will be considered foreign if:

- the parties have their places of business in different states;
- the place of arbitration, the place of performance of the underlying obligations, or the location most closely connected with the dispute lies outside the parties' home jurisdiction; or
- the parties expressly agree that their dispute has connections with more than one country.

This definition of a foreign arbitration is functional rather than formal. A dispute between two New Zealand based entities, for example, may nevertheless be a foreign arbitration if the relevant contractual performance or project was located offshore.

As with domestic awards, foreign arbitral awards must be recognised as binding and enforced by entry as a judgment under art 35, sch 1 of the Act. The documentation requirements (authenticated award, arbitration agreement, and any necessary translations) are the same as those for domestic awards. The procedural routes (originating application or, more rarely, enforcement by action) are likewise identical.

Once entered as a New Zealand judgment, a foreign award becomes enforceable exactly like any other New Zealand judgment. If the debtor is a company, a statutory demand remains the most common enforcement step. Other civil enforcement procedures – such as charging orders, garnishee orders, or applications for liquidation or bankruptcy – may also be used.

The same limitation periods and procedural timeframes apply to foreign and domestic arbitral awards. Under s 35 of the Limitation Act 2010, enforcement must be initiated within 6 years of the date of judgment; after this period, the creditor must seek the Court's leave to proceed. In practice, the 6 year period for enforcement usually runs from when the award is breached rather than from the date of the award itself.

Navaratnam v HG Metal Manufacturing Ltd [2022] NZCA 425

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The Court of Appeal's decision illustrates how New Zealand courts apply the pro-enforcement framework under the Act and, importantly, how they can be reluctant to allow technical objections to undermine enforcement.

The case concerned a Singaporean arbitral award issued against Mr and Mrs Navaratnam, who later relocated to New Zealand without satisfying the amounts ordered. HG Metal applied to the High Court for recognition and enforcement under art 35 of the Act. In response, the Navaratnams repeatedly argued that HG Metal had not provided a "duly authenticated" award as required by art 35(2)(a). They maintained that, because this threshold requirement had not been met, no obligation arose for them to engage with the enforcement proceeding.

Both of the appeals by the Navaratnams were ultimately struck out for failure to comply with High Court Rules and specific Court directions. More significantly, the Court of Appeal rejected their substantive complaint outright, confirming the statutory objectives of the Act which include encouraging arbitration and facilitating enforcement. The Court reaffirmed that New Zealand operates under a general presumption in favour of enforcing foreign arbitral awards. Consistent with that presumption, the documentation required under art 35 of the Act is deliberately minimal – namely, the authenticated award, the arbitration agreement, and translations where relevant. The Court held that HG Metal had met those requirements, and that the objections raised had "no substance".

The decision reinforces two important enforcement principles. First, art 35 of the Act imposes only light evidential demands on a party seeking recognition. Second, the grounds for resisting enforcement under art 36 are narrowly construed. Attempts to rely on technical or procedural points are unlikely to succeed.

Grounds for Refusing Enforcement

Once recognised, the award is enforced as if it were a court judgment. The courts generally adopt a narrow approach whereby enforcement may be refused only on the limited grounds under sch 1, art 36 of the Act. Some of these grounds are examined below.

1. Invalidity of the arbitration agreement – if a party lacked legal capacity to enter the arbitration agreement, or if the agreement itself is invalid under the governing law.

2. Improper notice or procedural unfairness – where the opposing party did not receive proper notice of the arbitrator's appointment or the proceedings, or was otherwise prevented from presenting their case.

3. Excess of jurisdiction – if the award addresses matters not submitted to arbitration or goes beyond the scope of the arbitration agreement. However, enforceable portions can be recognised separately if they are severable.

4. Non-arbitrability – if the tribunal's composition or the procedure used did not comply with the parties' agreement, or if no agreement, did not comply with law of the country where arbitration occurred.

5. Award not final – if the award is not yet binding on the parties, or if it has been set aside or suspended by a competent Court in the country of origin.

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Appeals of Arbitral Awards in New Zealand

Clause 5 of sch 2 of the Act allows for appeals of arbitral awards on a question of law, given that the:

- parties have agreed before making the award;
- parties have agreed after making the award; or
- the High Court has granted leave.

A leave to appeal will not be granted unless the Court is satisfied, after considering all the circumstances that "the determination of the question of law concerned could substantially affect the rights of one or more of the parties" (sch 2, cl 5(2) of the Act).

New Zealand Courts have generally been reluctant to interfere with arbitral awards. The Court of Appeal in *Gold & Resource Developments (New Zealand) Ltd v Doug Hood Ltd* [2000] 3 NZLR 318 (CA) considered the general objective of finality (sch 1, art 35 of the Act) to be an important factor when determining whether to grant an appeal.

Section 6(2) of the Act provides that sch 2, which concerns appeals of arbitral awards, does not apply automatically to international arbitrations. If, and only if, the parties have agreed to incorporate sch 2, then an appeal to the High Court on a question of law may be available. In the absence of such an agreement, there is no appellate recourse.

Status of SCMA Awards in New Zealand

New Zealand is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**"), which allows for the recognition and enforcement of foreign arbitral awards.

Pursuant to art 3 of the New York Convention, awards are enforceable according to the rule of procedure of the territory where the award is intended for enforcement. This means SCMA awards are enforceable in New Zealand according to its rules of procedure. The Act, which incorporates the New York Convention, creates a regime that allows for enforcement of both domestic and foreign awards.

Observations

New Zealand's enforcement regime can be regarded as creditor-friendly, largely because its statutory and common law frameworks provide judgment and award creditors with effective and often concurrent means of recovery.

Arbitral awards, both domestic and foreign, are enforced as if they were judgments once recognised under the Act, giving creditors immediate access to all enforcement tools. Furthermore, the grounds for resisting enforcement are narrowly confined as noted above.

Debtors receive no automatic protection through appeals, as stays of enforcement are discretionary and granted only where clearly justified under the Rules. This prevents debtors from using appeals as a tactic to delay recovery. Combined with a long 6 year limitation period

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for enforcement, these features collectively place New Zealand at the favourable end of the enforcement spectrum for creditors.

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Hesketh Henry is a sector focused law firm based in New Zealand. It has one of New Zealand's leading trade and transport practices, with a particular specialisation in maritime law. It handles disputes both domestically and internationally, in Courts and various arbitral forums. Our lawyers regularly advise on enforcement of foreign judgments and arbitration awards in New Zealand and elsewhere.

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PHILIPPINES

From Victory to Validation: Enforcing Arbitral Awards in the Philippines

Introduction

Securing a favorable arbitral award may feel like a hard-won victory—but in the Philippines, it is only half the battle. Once the arbitral tribunal hands down its Award, the next challenge begins: transforming that award into an enforceable judgment. Contrary to common expectation, enforcement is not automatic.

Under Rule 19.7 of A.M. No. 07-11-08-SC, known as the *Special Rules of Court on Alternative Dispute Resolution* (or simply, the *Special ADR Rules*), there is no appeal on the merits of the arbitral award. This finality is one of arbitration's key advantages. Yet even so, the winning party cannot simply walk away with the award unless the losing party surrenders and pays—which, as practice shows, is far from guaranteed.

Often, the party on the losing end of an arbitral award may turn to the courts in an attempt to delay, resist, or altogether prevent enforcement. This is where the second phase of the arbitration journey begins: judicial recognition.

In the Philippines, a party seeking to enforce an arbitral award must file a petition with a local court to recognize and enforce it. The applicable procedure depends on the **source** of the award:

- **Rule 12** of the Special ADR Rules applies to *international commercial arbitration awards rendered in the Philippines*.
- **Rule 13** of the Special ADR Rules governs *foreign arbitral awards rendered outside the Philippines*.

Despite this distinction, the **Petition for recognition and enforcement under either rule is filed with the Regional Trial Court**, and the Petitioner enjoys flexibility in choosing the venue. Permissible venues include:

- where any of the assets to be attached or levied upon are located;
- where the act to be enjoined will be or is being performed;
- where any party to the arbitration resides or has its place of business; or
- within the National Capital Judicial Region.
- Additionally, **Rule 12 allows one more option**: at the place where the arbitration proceedings were conducted.

Though streamlined in principle, this court-assisted process is rife with procedural requirements that demand careful compliance. One misstep—such as submitting photocopies instead of authenticated originals—can derail an otherwise meritorious petition, no matter how just the underlying award.

Understanding the intricacies of these rules is essential, not only for enforcing an award but for ensuring that the hard-earned benefits of arbitration are not lost in translation—from arbitral tribunal to court judgment.

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Procedure Matters: A Hard Lesson in *Manis Shipping v. Century Peak*

Whether under Rule 12 or Rule 13, a party must exercise diligence in submitting the proper documentation—otherwise, the petition may suffer from a procedural infirmity and be dismissed. This is the painful lesson learned in *Manis Shipping Pte. Ltd. v. Century Peak Corporation*, a case that underscores the consequences of a procedural lapse in enforcing foreign arbitral awards in the Philippines.

Manis Shipping initiated its petition for recognition of an Award in its favor by submitting only photocopies of the arbitration agreement and the arbitral award—documents that, while appearing sufficient at first glance, failed to meet the stringent documentary requirements under Philippine procedural rules. The Regional Trial Court at first instance recognized the award, but the Court of Appeals later reversed the trial court's decision, citing Manis' failure to submit an original or authenticated copy of the arbitration agreement, as required under Rule 13.5 of the Special ADR Rules.

Manis argued that this requirement was an unnecessary technicality, especially given that electronic copies of voyage charter parties are widely accepted under international maritime practice. It further contended that such formality is not strictly demanded by the New York Convention, which governs the recognition and enforcement of foreign arbitral awards.

However, the Supreme Court was unmoved. In affirming the Court of Appeal's ruling, the High Court emphasized that procedural rules cannot be disregarded. Article IV of the New York Convention, Rule 13.5 of the Special ADR Rules, and Section 42 of the Alternative Dispute Resolution Act of 2004 all uniformly mandate the submission of authentic or original copies of both the arbitration agreement and the arbitral award. Without these, the petition suffers from a fatal jurisdictional defect.

Thus, Manis' non-compliance proved fatal. While the dismissal was **without prejudice** to refiling, the case serves as a stark reminder: procedural precision is non-negotiable.

Grounds for Refusal: Rules 12 and 13 Compared

Once the procedural hurdles are cleared, enforcement is still not guaranteed. **Rules 12 and 13** also set out **specific grounds** upon which recognition and enforcement may be refused—although they differ slightly based on whether the award is domestic or foreign in origin.

Under Rule 13, which is anchored on Article V of the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), recognition and enforcement of a foreign arbitral award may be refused if:

- A party was under incapacity, or the arbitration agreement is not valid under the law to which the parties have subjected it, or failing any indication, under the law of the country where the award was made;
- A party was not given proper notice or was unable to present its case;
- The award deals with matters beyond the scope of submission;

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- The composition of the tribunal or the procedure was not in accordance with the parties' agreement, or failing such an agreement, was not in accordance with the law where arbitration took place

  The award is not yet binding or has been set aside or suspended by a court of the country in which that award was made.

Additionally, a Philippine court may independently refuse enforcement if:

- The subject matter is not capable of settlement or is not arbitrable under Philippine law; or
- Recognition or enforcement would be contrary to public policy.

Rule 12 essentially mirrors these grounds but applies Philippine law in determining certain aspects, such as the capacity of the parties, validity of the arbitration agreement, composition of the arbitral tribunal or arbitral procedure, and subject-matter of the dispute, as specified under Rules 12.4(a) (i), (a)(iv) and (b)(i). However, Rule 12 does not allow refusal on the ground that the award is not yet binding or has been set aside by a foreign court—this ground is unique to Rule 13.

Crucially, under **Rule 19.10**, the Regional Trial Court **cannot vacate or set aside an arbitral award** simply because it believes the arbitral tribunal made an error of fact, law, or both. The court is not allowed to substitute its judgment for that of the arbitrators.

Moreover, in both Rules 12 and 13, **only the grounds explicitly enumerated** may be considered. No additional grounds are entertained, further strengthening the finality and integrity of arbitral awards.

Time is of the Essence: Deadlines and Procedural Traps

Timing is another critical aspect in the enforcement process. Under **Rules 12. and 13**, a party seeking enforcement can file at **any time after receiving the award**.

What differs is the manner and the period to resist recognition and enforcement.

Under **Rule 13**, the respondent may raise the grounds to resist recognition by way of an **opposition** which should be filed **within thirty (30) days** from receipt of the court's notice and petition.

Under **Rule 12**, the timelines differ slightly. A party seeking to **set aside** the award must act quickly—within **three (3) months** from receipt of the award or the decision resolving a request for correction or interpretation. Failure to meet this deadline is fatal. Worse, a party that does not file a timely petition to set aside is **precluded** from raising grounds to resist enforcement later on. In short, silence becomes waiver.

If a party timely files a **petition to set aside** the award, the respondent, in lieu of an opposition, may file in the same proceedings the petition for recognition and enforcement within a **fifteen (15) day period**.

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On the other hand, if a **petition for recognition and enforcement** is filed ahead, the respondent, in lieu of an opposition, may file the application to set it aside, if not yet time-barred.

Unlike Rule 13, Rule 12 does not contain a strict three-month bar, but the procedural response window is still narrow and unforgiving.

No Easy Escape: Appeals Don't Automatically Stay Enforcement

Even after a court recognizes an award, a losing party might try to delay execution by elevating the case to the Court of Appeals. But this, too, is tightly controlled. The procedural framework under the Special ADR Rules firmly limits such maneuvering.

Specifically, Rule 19.22 makes it clear that an appeal to the Court of Appeals does **not** stay the execution of a decision recognizing or enforcing a foreign arbitral award—unless the appellate court expressly orders otherwise. Even when such a stay is granted, Rule 19.25 imposes a stringent safeguard: the appellant must post a bond in favor of the prevailing party, equal to the full amount of the arbitral award.

Failure to post this bond is no trivial matter. It constitutes valid grounds for outright dismissal of the appeal, effectively reinforcing the finality and enforceability of arbitral awards and deterring frivolous or dilatory appeals.

This rule serves an important function: The Special ADR Rules discourages frivolous or dilatory appeals and champions the finality that arbitration is meant to deliver.

This framework underscores the Philippines' commitment to upholding its obligations under the New York Convention and preserving the integrity of arbitral processes. For parties facing enforcement, the message is clear: resistance through procedural delay carries a high bar—and a high cost.

Status of SCMA Awards in the Philippines

SCMA awards are regarded as commercial arbitral awards and are recognized and enforced using the procedure outlined above.

Conclusion: Arbitration's Promise Depends on Enforcement

Arbitration offers a fast, private, and specialized method of dispute resolution—but without effective enforcement, its value diminishes. In the Philippines, the path from arbitral award to court-enforced judgment is clear but uncompromising. From documentary requirements to strict timelines and limited grounds for refusal, the procedural terrain demands vigilance.

For parties relying on arbitration in cross-border or commercial disputes, understanding and complying with **Rules 12 and 13 of the Special ADR Rules** is not just a legal requirement—it is a strategic necessity in order to successfully enforce an award.

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In the wake of the Philippines' soaring economic growth and expansive transformation, VeraLaw remains steadfast in its commitment to its founding philosophy: to deliver cutting-edge legal services on a global scale with an unwavering pursuit of excellence. In its pursuit of excellence, VeraLaw has solidified its reputation as a leading authority in the legal arena, drawing upon over 70 years of rich history. Founded by V. E. Del Rosario in 1949, the firm has evolved from a solo endeavor into a powerhouse in the legal community. Its enduring success is rooted in a steadfast commitment to excellence and a dedication to both professional expertise and a familial ethos.

Under the dynamic leadership of Valeriano Del Rosario, the firm has undergone a remarkable transformation, culminating in the partnership of Del Rosario Raboca Gonzales Grasparil—a testament to the firm's enduring dedication to success. Each partner, having dedicated the majority of their career to the firm, bring a wealth of experience and expertise, nurturing a culture of natural expansion, fostering organic growth, and leading the firm to numerous triumphs. This unique trajectory has woven a familial culture into the very fabric of the organization, extending to all stakeholders of the firm, past, present, and future.

VeraLaw's core areas of specialty encompass Maritime and Admiralty Law, Insurance Law, Intellectual Property Law, Litigation and Alternate Dispute Resolution, and Corporate Law. With a dynamic team of legal professionals, VeraLaw has consistently pushed the boundaries of legal innovation, providing clients with strategic counsel, meticulous attention to detail, and steadfast advocacy. Whether navigating complex maritime disputes, drafting intricate corporate contracts, or providing expert guidance in intellectual property matters, VeraLaw remains at the forefront of legal excellence, delivering unparalleled results for its clients.

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The VERA of VeraLaw

The name VeraLaw originates from the initials of the firm's founder, Mr. V. E. DEL ROSARIO. He established the firm in 1949 and named it **V.E**. Del **R**osario and **A**ssociates. To honour the heritage of the firm and to forever memorialize its journey, the firm was renamed VeraLaw. From its humble beginnings as a one-person practice, the firm has expanded into a full-service law firm with a diverse clientele from across the globe. Continuing his legacy, Valeriano Del Rosario, his son, now serves as the managing partner of VeraLaw.

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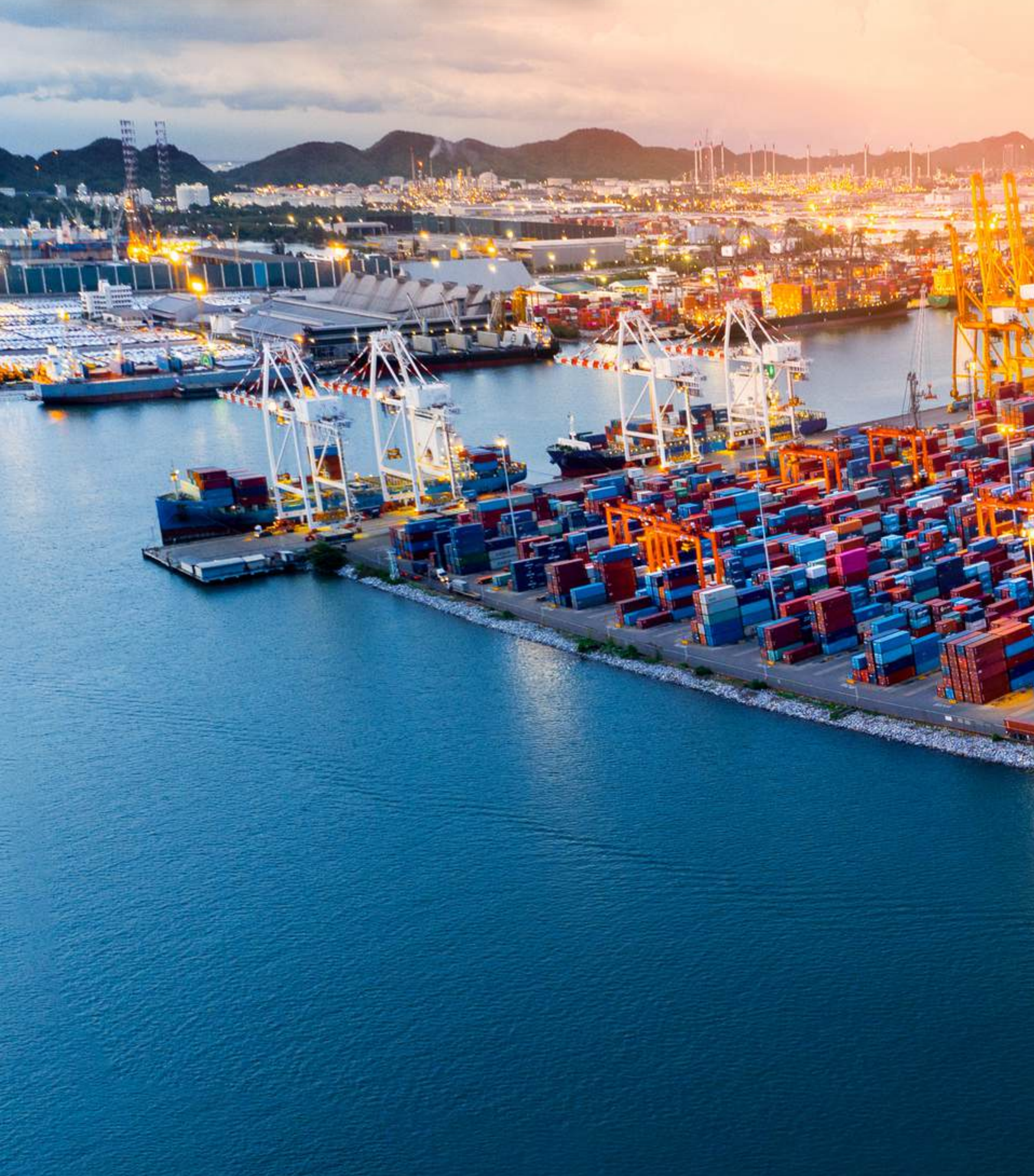
SINGAPORE



Securing the Spoils of Victory: Turning Awards Into Reality

Introduction

Singapore's status as a global dispute resolution hub rest on its robust legal infrastructure and pro-arbitration stance. For the maritime sector, this is particularly vital considering the cross-border nature of shipping disputes. This article examines the landscape for enforcement proceedings in Singapore, including those conducted under the Singapore Chamber of Maritime Arbitration ("**SCMA**"), and the interplay between the arbitral tribunals and Singapore courts.

Legislative Framework in Singapore

Arbitration in Singapore is governed by two primary statutes: the International Arbitration Act 1994 (2020 Revised Edition) ("**IAA**")[1] and the Arbitration Act 2001 (2020 Revised Edition) ("**AA**")[2].

The IAA promotes minimal curial intervention[3] to align with international standards[4] like the UNCITRAL Model Law the ("**Model Law**")[5] and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the United Nations on 10 June 1958 in New York (the "**Convention**")[6] ensuring predictability for cross-border disputes, while the AA permits greater judicial scrutiny to foster local jurisprudence under Singapore law for purely domestic matters.

Unless otherwise agreed, the IAA applies by default if at least one party to the arbitration agreement has its place of business outside Singapore at the time of conclusion of the relevant arbitration agreement ("**Agreement**"), or where the place of arbitration, contractual performance, or the dispute's nexus is outside Singapore, or where the parties expressly agree that the subject matter spans multiple countries.

The AA applies to arbitrations where the seat is in Singapore and Part 2 of the IAA does not apply, covering domestic disputes without international elements.

Arbitration under the SCMA

The SCMA Rules (4th Edition, 1 January 2022) (the "**Rules**")[7] were designed to support international arbitration in Singapore, providing a default seat of arbitration as Singapore (unless otherwise agreed) and where the seat is Singapore to apply the IAA (unless otherwise agreed by the parties).

The SCMA Rules are robust yet not unduly restrictive, fundamentally supporting the principle that parties are masters of the proceedings. SCMA arbitrations are generally unadministered, emphasising the need for self-regulation and legislative safety net in the IAA. Accordingly, the Tribunal enjoys the widest discretion in all seat-permitted matters, always subject to the parties' Agreement. Party autonomy extends to key elements of the arbitration:

1. **Applicable Law and Seat –** The Tribunal must apply the law designated by the parties to the substance of the dispute. While the seat of arbitration is Singapore by default, parties may agree otherwise.

2. **Procedure –** When matters are not expressly covered by the Rules, those administering the arbitration (the Tribunal, Chairperson, and Registrar) must act in accordance with the spirit of the Rules.

3. **Representation** – A party may be represented by any authorized representative, whether or not that person is a legal practitioner.

Recognising the needs of different sectors within the maritime industry, the Rules have a section dedicated to bunker disputes, collisions and an expedited procedure.

- ***Singapore Bunker Claims Procedure*** (“**SBC Terms**”)[8] **–** The SBC Terms, maintained by the Singapore Standards Council, are a distinct set of dispute resolution rules specifically designed for the bunkering industry. Parties to a contract for the sale or supply of bunkers may incorporate the SBC Terms as part of their supply terms. Alternatively, where a bunker dispute claim and counterclaim do not exceed SGD 100,000.00, the Registrar may direct the dispute to be resolved under the SBC Terms upon the application of a party.

- ***SCMA Expediated Arbitral Determination of Collision Claims*** (“**SEADOCC Terms**”)[9] **–** Parties involved in disputes arising from a collision may agree to arbitrate the matter pursuant to SEADOCC Terms. This procedure is unique in that the fees and costs of the appointed arbitrator are shared equally by the parties, regardless of the arbitration’s final outcome.

- ***SCMA Expedited Procedure* –** The Expedited Procedure (“**EP**”) is applicable where the aggregate amount of the claim and counterclaim is equal to or less than USD 300,000 (excluding interest and costs) or if parties agree in writing to application of the EP. The unique feature of this procedure is the rapid determination and disposal of a matter.

In summary, SCMA Rules suit Singapore-seated arbitrations by balancing statutory clarity with party autonomy. The default seat invokes the IAA’s minimal curial intervention framework, enabling tailored procedures and specialised processes for quick, cost-effective resolutions while preserving safeguards. Given the central role of the IAA under the Rules, the remainder of this article will focus on the enforcement of awards and/or orders under the IAA.

Enforcement in Singapore

The term “enforcement” is a broad concept, encompassing the enforcement of interim orders issued by the tribunal, court-ordered interim measures to support the arbitration, and final awards dispositive of the subject-matter dispute. Each of these will be discussed in turn.

The contents of this series are intended to provide a general overview of enforcement proceedings of arbitral awards in various jurisdictions and should not be treated as legal advice.

Enforcement of interim orders or directions of the tribunal under Section 12 IAA

Section 12(6) of the IAA provides that all orders or directions made or given by an arbitral tribunal during an arbitration are enforceable in the same manner as if they were orders made by a court[10].

Pursuant to Section 12(1) of the IAA[11] an arbitral tribunal may issue orders relating to:

a) Security for costs;
b) Discovery of documents and facts;
c) Giving of evidence by affidavit;
d) The preservation, interim custody or sale of any property which is or forms party of the subject matter of the dispute;
e) The taking of samples, or any observation 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 arbitration;
g) Securing the amount in dispute;
h) Measures to ensure that any award made in arbitration is not rendered ineffectual by the dissipation of assets by a party; I do
i) An interim injunction or any other interim measure; and
j) Enforcing any obligation of confidentiality.

Court-Ordered Interim measures under Section 12A IAA

There are, however, instances where a party wish to seek relief directly from the court, in the absence of an order and/or direction of the tribunal. This may arise where the tribunal has not been constituted, or where urgent interim relief is necessary for preservation of property, obtain security for the arbitration proceedings, such that it is not practicable to seek relief from the tribunal.

In such cases, the Singapore court may exercise its discretion to grant interim measures even if the seat of arbitration is or will be outside Singapore; but it may decline if it considers inappropriate to grant the order[12]. In urgent cases, a party or proposed party may apply directly for orders needed to preserve evidence or assets[13]. In non-urgent cases, a party may apply only with the arbitral tribunal's permission or the written agreement of the other parties, and with notice to them and to the tribunal[14]. In all situations, the court may act only where the tribunal or any agreed institution or person either lacks the relevant power or cannot act effectively at the time[15].

An applicant seeking interim relief must ensure that the relief sought is one which the tribunal either lacks the power or is unable to grant. Put differently, the applicant must be satisfied that the relief can only be obtained from the curial court, and not from the tribunal. Where the measures requested fall squarely within the tribunal's authority, judicial intervention will not be justified[16].

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Moreover, turning to the courts may amount to an abuse of process if the application is, in substance, a covert attempt to secure an advisory opinion to influence the tribunal or an indirect appeal against the tribunal's procedural decisions, given the "*arbitrator was a master of his own procedure*"[17]. Ultimately, the Court underscored that a party who submits a legal question to an arbitral tribunal and receives an unfavourable response cannot seek to re-argue the same issue before the Singapore courts by way of declaratory relief[18].

Applications to the Singapore Court pursuant to sections 12 and 12A of the IAA

An application for permission to enforce an order or direction given by a tribunal is made by summons supported by an affidavit. If no action has been commenced, the applicant may file an originating application, likewise supported by an affidavit setting out the basis and reasons for the relief sought.

The affidavit shall exhibit a copy of the Agreement or any record of the content of the arbitration agreement and the original order or direction made by the tribunal sought to be enforced; and state the relevant provision of the IAA or applicable rules adopted in the arbitration on which the application is made[19].

In addition to the above, there are certain circumstances where a party to an arbitration can obtain relief from the Singapore court under the IAA without consent of the other party to the arbitration or an order or direction of the tribunal[20]. For example, when the applicant seeks to compel the attendance of a third party to give evidence or produce documents[21]. In such cases, a simple request is made to the registrar of the General Division of the High Court in Singapore under a prescribed form. The order of court once sealed is then served personally against the witness[22].

Enforcement Procedures (Final Awards)

The IAA distinguishes between international awards from Singapore-seated tribunals and foreign awards from tribunals seated in Convention countries outside Singapore. Under Section 2, an "award" for a Singapore-seated tribunal includes decisions on the substance of the dispute, including interim, interlocutory, or partial awards, but excludes any order or direction under Section 12[23]. By contrast, a "foreign award" refers to an arbitral award made under an arbitration agreement in the territory of a Convention country other than Singapore[24].

Often, it will be unnecessary for an application to enforce a Singapore-seated award, as the debtor will usually comply with the award. On the rare occasion that enforcement is necessary, the award may be enforced through the statutory procedures described below.

Recognition and enforcement of awards under the IAA

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Article 35 of the Model Law on the recognition and enforcement of award was not adopted by Singapore and does not apply. The recognition and enforcement of foreign awards is provided by Section 29 IAA, which states:

> "*… 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.*"[25]
>
> (emphasis added)

Section 19 IAA states:

> "*An award on an arbitration agreement may, by permission of the General Division of the High Court, be enforced in the same manner as a judgment or an order to the same effect and, where permission is so given, judgment may be entered in terms of the award.*[26]"

In other words, a foreign award can be enforced by an action or in the same manner as an international award from Singapore-seated tribunals. We deal first with enforcement of an award *by action* followed by enforcement under section 19 IAA.

Enforcement by Action (i.e., enforcement in Common Law)

Enforcement of an arbitral award "by action" refers to suing on the award or the underlying obligation (for example, an implied promise to honour the award) rather than using the statutory mechanism to have the award recognised and enforced as a judgment. In practice, a common law action on a foreign award is rare and is usually considered only where the Convention does not apply, reciprocal judgment registration is unavailable, or such an approach is tactically undesirable.

Enforcement by action requires the claimant to plead and prove the arbitration agreement, the proper constitution of the tribunal, the scope of submission, and the award itself, rather than merely producing the documents and shifting the burden under the Convention scheme. Because it is more fact-intensive and procedurally heavier, enforcement by action is "little used in practice" compared with registration or leave to enforce, which is generally more efficient and aligned with the Convention.

Nonetheless, there remain circumstances where a foreign award may be enforced by action, particularly in shipping and admiralty cases. For example, when an award has been rendered but not satisfied, an action may be available against a res, such as a ship or vessel.

Hence, in ***Alexander G Tsavliris Sons Maritime Co v Keppel Corp Ltd* [1995] SGCA 36**, the salvors had successfully salved the *Atlas Pride* under a Lloyd's standard form salvage agreement and obtained an arbitral award in London for substantial salvage remuneration, interest, and apportioned arbitration costs against the owners of the vessel and its bunkers. When the owners failed to pay, the salvors commenced an admiralty in rem action in Singapore against the *Atlas Pride* (already under arrest in earlier proceedings), seeking to enforce the award for the amounts due from the ship and bunkers, including the apportioned arbitration costs and an additional sum representing the costs and expenses of bringing the in rem proceedings.

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The Court of Appeal treated the in rem action on the salvage award as enforcement "by action," grounded in the agreement to arbitrate and the award arising out of salvage, thereby falling within admiralty jurisdiction. The court allowed recovery of both the salvage remuneration and apportioned arbitration costs as part of the award but did not permit recovery of the separate costs of bringing the enforcement action itself.

Enforcement under section 19 IAA

Enforcement is a two-stage process in Singapore:

Stage 1 (Ex Parte Application): The first stage is an ex parte application filed by the applicant for permission of the court to recognise the award, and entails a formalistic examination of the documents required for permission[27]. The award creditor files an originating application (or summons if an action exists) supported by an affidavit:

1. Exhibiting the arbitration agreement and award (or certified or authenticated copies, whichever applies);

2. Stating the parties' name and the usual or last known place of business of the award creditor and debtor; and

3. Confirming non-compliance or partial compliance[28].

Once the formal requirements are met, the court would grant permission to enforce. The award creditor must then serve the order granting permission on the award debtor in accordance with the rules of court.

It should be noted, however, that an application at Stage 1 is made on an ex parte basis, and there is therefore an expectation of full and frank disclosure. Accordingly, any material non-disclosure that might have affected the Court's decision had it been disclosed may render the application liable to be set aside. In other words, an applicant who withholds material information runs the risk of having its application overturned[29].

Stage 2 (Service and Challenge): The second inter partes stage is where the award debtor is served with the order and has the opportunity to set aside the order based on the available statutory grounds. The order must be served on the debtor (14 days if in Singapore; longer if out of jurisdiction) and enforcement is stayed until this period expires or any set-aside application is resolved inter partes. The award must not be enforced until after expiration of that period.

Typical challenges to enforcement

In Singapore, setting aside an arbitral award differs from resisting its recognition and enforcement in terms of the competent court. An application to set aside must be made to the curial court (the court of the arbitration seat)[30]. Thus, if the seat is outside Singapore, Singapore courts lack jurisdiction over set-aside applications.

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By contrast, resisting enforcement occurs in the enforcing court. For a foreign award sought to be enforced in Singapore, the opposing party may invoke statutory grounds to resist (addressed below). To summarise: challenges to enforce a foreign award proceed in the Singapore court, but setting it aside requires the curial court. Conversely, set-aside procedures apply only to Singapore-seated international awards.

A Singapore-seated award may face both set-aside applications and enforcement resistance, potentially at different times[31].

Setting aside of a Singapore award under the IAA

An award issued by a Singapore-seated tribunal may be set aside within 3 months if the making of the award was induced by fraud or effected by fraud or corruption[32], occasioned by a breach of natural justice[33], or for any grounds set out in Article 34(2) of the Model Law, such as:

1. Incapacity[34];
2. Lack of proper notice of the appointment of arbitrator(s), or of the arbitral proceedings or was otherwise unable to present its case[35];
3. If the award deals with a dispute not contemplated or falling outside the scope of the terms of the arbitration, or contains decisions on matters beyond the scope of the submissions, provided that, said matters falling outside the scope can be separated such that part of the award on matters not submitted to arbitration may be set aside[36];
4. The composition of the tribunal or the arbitral procedure was not in accordance with the agreement of the parties[37];
5. The subject matter of the dispute is not capable of settlement by arbitration under Singapore law[38]; or
6. The award is in conflict with the public policy of Singapore[39].

Notably, the grounds for setting aside an arbitral award set out above largely mirror those for resisting enforcement of a foreign award. The Singapore Court expressly held that, at least in relation to the public policy ground, the grounds for setting aside an award under Article 34(2) of the Model Law mirror those for resisting enforcement under Section 31 of the IAA[40] (discussed below), indicating a clear equivalence.

This suggests that the legal standards and considerations applied when a party seeks to set aside an award are broadly comparable to those applied when a party resists enforcement of a foreign award on the same basis. However, while the courts have recognised substantial alignment between the two sets of grounds, there is no explicit judicial statement confirming a perfect equivalence for all grounds. Case law acknowledges this mirroring but caveats that differences in application and context may arise.

Refusing enforcement of an award under the IAA

Article 36 of the Model Law on the grounds for refusing recognition or enforcement of award was not adopted by Singapore and does not apply. Instead, the grounds on which enforcement of an

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award may be refused are set out in Section 31 of the IAA. Generally, these are grounded in principles of natural justice and fairness and includes:

- **Incapacity**[41] – where the legal capacity of the party at the time the Agreement was entered, as determined under the proper law, is put into question[42]. Yet, if said party participates in the arbitration without reservation, it may be precluded from relying on this ground[43];

- **Invalidity of the Agreement under the *lex arbitri***[44] – where the Agreement is not valid under the law to which the parties have subjected it or under the law of the country where the award was made[45];

- **Failure to give notice** of the arbitration, appointment of the arbitrator(s), or a party was prevented from presenting its case in the arbitration[46] which is a clear breach of the fair hearing rule and rules on natural justice[47]. However, presentation of one's case does not mean one has an unqualified right to present any and all submissions / evidence it pleases[48]. Conversely, litigants are cautioned in raising allegations that submissions / evidence were not considered by the tribunal[49]. Ultimately, once the parties have agreed on the applicable rules and on submitting to the tribunal's jurisdiction, the Singapore courts are likely to accord due deference to the tribunal as the masters of their own procedure[50].

- **The award exceeds the scope of the arbitration** – deals with situations when a dispute not contemplated by, or not falling within the terms of, the submissions to the tribunal, or contains a decision on a matter beyond the scope of the arbitration[51]. A tribunal's jurisdiction derives from its appointment by the parties' consent, whether jointly or under a pre-agreed regime. By virtue of such appointment, together with the principles of party autonomy and *kompetenz-Kompetenz*, the tribunal is empowered to address only those matters for which it has been appointed, and nothing more[52]. In this regard, the court first determines the matters that fall within the scope of the arbitration, and thereafter considers whether the award addresses matters within, or extends beyond, that defined scope[53].

  On this point, we highlight that an error of law or an error of fact does not constitute a basis to refuse enforcement of an award. The Singapore courts have consistently upheld the principle of party autonomy; and while parties enjoy the benefits of that autonomy, they must also accept its consequences[54]. This underpins the policy of minimal curial intervention in arbitral proceedings. In this regard, the courts draw a clear distinction between (a) an arbitral tribunal's erroneous exercise of a power that is properly vested in it, which amounts to no more than an error of law, and (b) a purported exercise of a power which the tribunal does not possess at all. Only the latter may justify curial intervention; the former is insufficient to warrant the setting aside or refusal of enforcement of an arbitral award[55].

- **Non-compliance** under the Agreement or *lex arbitri* on composition, procedure and/or qualifications of the tribunal[56] – Consistent with the foregoing, the principle of party

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autonomy must be upheld. Accordingly, due regard should be given to the parties' choice of arbitrators, their qualifications, and the procedure, which should be observed[57].

- **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[58];

- **The subject matter of the dispute is not capable of settlement by arbitration** under the law of Singapore[59] – for instance in certain areas of law that the state alone shall have exclusive jurisdiction to deal with e.g., family, estate and/or criminal law; and

- **Award is contrary to the public policy of Singapore**[60] – The Singapore courts have consistently emphasised that setting aside an award for being contrary to public policy or for a breach of natural justice requires the applicant to meet a high evidential threshold. Mere technical or procedural irregularities are unlikely to satisfy this threshold[61]. Fraud, however, will suffice if proven[62].

The Singapore High Court set aside an arbitral award insofar as it imposed liability on sellers who were minors (aged 3 to 8 at the time of contracting). Enforcement would have required the minors to pay approximately USD 270 million. The Court held that enforcing such an award "shocked the conscience" and violated Singapore's fundamental notions of justice, and was therefore contrary to public policy[63].

Other methods

In a recent decision by the Singapore Court of Appeal[64], the court determined that the doctrine of transnational issue estoppel ("**TIE**") applies in the context of international commercial arbitration and should be used by a Singapore enforcement court to decide whether to give preclusive effect to a curial court's decision concerning the validity of an award[65]. This doctrine operates as part of the enforcement court's residual domestic law, specifically its conflict of laws rules. By applying TIE, the court affirmed that the party resisting enforcement was precluded from re-litigating the specific jurisdictional arguments that it had previously raised and which were rejected by the curial court in its setting-aside decision.

The Court of Appeal concluded that the requirements for TIE were met because the curial court's decision was final and conclusive regarding those grounds, there was identity of the parties, and the subject matter (the specific jurisdictional arguments) was the same as what had been previously decided[66]. Applying TIE promotes finality, coherence within the international legal order[67], and respects the parties' choice of the arbitral seat[68], thus limiting the re-litigation of matters already determined by a competent court. However, the court also noted that TIE generally does not apply if the issue involves the public policy or arbitrability unique to the enforcement court's jurisdiction, as these matters would not have been previously considered by the curial court[69].

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Developments to keep an eye on

Enforcement of orders by emergency arbitrator(s)

In 2025, the SIAC Rules were revised to provide for emergency arbitrators who can grant interlocutory relief, such as injunctions or preservation orders. To date, there have been no reported cases on how the courts in Singapore would give effect to or assist enforcement of such orders.

Applications to emergency arbitrators are made ex parte instead of the arbitrators jointly appointed under the Agreement; rather, they are made to an arbitrator appointed by the SIAC Registrar.

"Arbitral tribunal" is defined in Section 2(1) IAA to include "an emergency arbitrator". Consequently, orders of an emergency arbitrator ought, in principle, to be enforceable under Section 12(6) IAA in the same manner as any order of a tribunal.

Review of the IAA

Singapore's Ministry of Law conducted a public consultation on the IAA from 21 March to 2 May 2025[70], marking 30 years since the IAA first came into force. This review forms part of Singapore's ongoing efforts to ensure that its international arbitration framework remains modern, competitive, and aligned with global best practices, reinforcing its status as a leading seat for international arbitration, and builds on a study undertaken by the Singapore International Dispute Resolution Academy, which examined whether the IAA remains "*state of the art*" and supports Singapore's attractiveness as an arbitration hub.

Topics covered in the consultation included, among other things, potential refinements to how courts handle setting-aside applications and whether separate cost principles should apply in those contexts.

While the consultation responses have not yet been published, the issues highlighted suggest possible reforms aimed at enhancing procedural efficiency, clarity, and predictability in Singapore arbitration law. These could include a potential role for appeals on questions of law and clearer processes for jurisdictional and award challenges. Such developments would mirror reform trends in other major arbitration jurisdictions and reflect Singapore's intention to continually update its arbitration framework.

Disclaimer

The contents of this article are correct to the best of our knowledge and belief at the date of its publication and is intended to provide a general guide to the subject matter and should not be treated as legal advice or a substitute for professional advice.

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[1] International Arbitration Act 1994 (2020 Revised Edition), accessible at: https://sso.agc.gov.sg/act/iaa1994.
[2] Arbitration Act 2001 (2020 Revised Edition), accessible at: https://sso.agc.gov.sg/Act/AA2001.
[3] *BLC and others v BLB and another* [2014] 4 SLR 79, para [51]; see also *DMZ v DNA* [2025] SGCA 51, para [1].
[4] Singapore Academy of Law, Report on Review of Arbitration Laws (Law Reform Committee, August 1993), para [13].
[5] United Nations Commission On International Trade Law 'UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006' <https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status> accessed 9 December 2025.
[6] New York Convention, Contracting States <https://www.newyorkconvention.org/contracting-states> accessed 9 December 2025.
[7] SCMA, SCMA Rules 4th Edition (Latest; Effective 1 January 2022) <https://scma.org.sg/rules> accessed 10 December 2025.
[8] SCMA Arbitration Rules (4th Edition, 1 January 2022), rule 46 read with the SBC Terms an extract of which is available at <https://scma.org.sg/rules> accessed 10 December 2025.
[9] SCMA Arbitration Rules (4th Edition, 1 January 2022), rule 45 read with the SEADOCC Terms available at <https://scma.org.sg/rules> accessed 10 December 2025.
[10] International Arbitration Act 1994, s 12(6).
[11] International Arbitration Act 1994, s 12(1).
[12] International Arbitration Act 1994, s 12A(3).
[13] International Arbitration Act 1994, s 12A(4).
[14] International Arbitration Act 1994, s 12A(5).
[15] International Arbitration Act 1994, s 12A(6).
[16] *Republic of India v Vedanta Resources plc* [2021] 2 SLR 354, para [21].
[17] Ibid, para[29].
[18] Ibid, paras [55], and [56].
[19] Supreme Court of Judicature Act (Cap. 332) Rules of Court 2021, Order 48, Rule 5(1).
[20] International Arbitration Act 1994, s 13.
[21] *The Lao People's Democratic Republic v Sanum Investments Ltd.* [2013] 4 SLR 947, para [17].
[22] Supreme Court of Judicature Act (Cap. 332) Rules of Court 2021, Order 48, Rule7 read with Order 15, Rule 4(1).
[23] International Arbitration Act 1994, s 2.
[24] International Arbitration Act 1994, s 27(1).
[25] International Arbitration Act 1994, s 29(1).
[26] International Arbitration Act 1994, s 19.
[27] *CKR and another v CKT and another* [2021] SGHCR 4, para [23].
[28] Supreme Court of Judicature Act (Cap. 332) Rules of Court 2021, Order 48, Rule 6.
[29] *CZD v CZE* [2023 5 SLR 806, paras [49] – [53].
[30] *PT Garuda Indonesia v Birgen Air* [2002] 1 SLR(R) 401, para [21].
[31] *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.
[32] International Arbitration Act 1994, s 24(a).
[33] International Arbitration Act 1994, s 24(b).
[34] Model Law, Article 34(2)(a)(i).
[35] Model Law, Article 34(2)(a)(ii).
[36] Model Law, Article 34(2)(a)(iii).
[37] Model Law, Article 34(2)(a)(iv).
[38] Model Law, Article 34(2)(b)(i).
[39] Model Law, Article 34(2)(b)(ii).
[40] *Aju v Ajt* [2011] 4 SLR 739.
[41] International Arbitration Act 1994, s 31(2)(a).
[42] *BAZ v BBA and others and other matters* [2020] 5 SLR 266, para [178] – [179].
[43] *Azov Shipping Co. v Baltic Shipping Co.* [1999] 2 Lloyd's Law Rep 39.
[44] International Arbitration Act 1994, s 31(2)(b).
[45] *Manuchar Steel Hong Kong Limited v Star Pacific Line Pte Ltd* [2014] 4 SLR 832; see also *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, para [156].

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[46] International Arbitration Act 1994, s 31(2)(c).
[47] *AKN and another v ALC and others and other appeals* [2016] 1 SLR 966, para [46].
[48] *ADG and another v ADI and another matter* [2014] 3 SLR 481, [103] – [104].
[49] *CVV and others v CWB* [2024] 1 SLR 32, [30] – [35].
[50] *Republic of Korea v Manson capital LP and another and another matter* [2025] 4 SLR 308, paras [130] and [142].
[51] International Arbitration Act 1994, s 31(2)(d).
[52] *PT First media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV and other and another appeal* [2014] 1 SLR 372; see also *Sanum Investments Ltd v Government of the Lao People's Democratic Republic* [2016] 5 SLR 536.
[53] *COT v COU and others and other appeals* [2023] SGCA 31, para [81].
[54] *AKN v ALC* [2015] 3 SLR 48, para [37].
[55] *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2011] 4 SLR 305, para [33].
[56] International Arbitration Act 1994, s 31(2)(e).
[57] *Insigma Technology Co Ltd v Alstom Technology Ltd* [2009] 3 SLR(R) 936, para [33].
[58] International Arbitration Act 1994, s 31(2)(f).
[59] International Arbitration Act 1994, s 31(4)(a).
[60] International Arbitration Act 1994, s 31(4)(b).
[61] *BBA v BAZ* [2020] 2 SLR 453, paras [100] and [102]; *Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 2 SLR 1279, paras [163] – [167]
[62] *CZD v CZE* [2023 5 SLR 806, paras [38] – [41].
[63] *BAZ v BBA and others and other matters* [2020] 5 SLR 266.
[64] *The Republic of India v Deutsche Telekom AG* [2024] 1 SLR 56.
[65] Ibid, paras [90], [96], and [97].
[66] Ibid, para [64].
[67] Ibid, para [99]
[68] Ibid, para [98].
[69] Ibid, para [86].
[70]Ministry of Law Singapore, Public Consultation on the International Arbitration Act 1994 of Singapore (21 March 2025) <https://www.mlaw.gov.sg/public-consultation-on-the-international-arbitration-act-1994-of-singapore/> accessed 9 December 2025.

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SRI LANKA

Arbitration and Maritime Law in Sri Lanka: Enforcement of SCMA Awards and Key Issues

1. Introduction

Sri Lanka's strategic location extending across the main East–West shipping route has positioned Colombo as a central maritime hub in the Indian Ocean. This prominence naturally exposes the country to a wide range of maritime disputes involving carriage of goods, charterparties, ship finance, collisions, salvage, and other maritime claims. At the same time, significant developments in international business, commerce, and finance have given rise to a considerable number of commercial disputes. Consequently, this has resulted in the emergence of the various forms of alternative dispute resolution (ADR) procedures, out of which Arbitration has become the preferred dispute resolution mechanism for many commercial disputes, particularly those arising in the maritime sector.

This article outlines the Sri Lankan legal framework governing arbitration and admiralty, examines the enforceability of foreign arbitral awards, and analyses practical considerations with particular emphasis on Singapore Chamber of Maritime Arbitration (SCMA) awards.

2. Arbitration Framework in Sri Lanka

2.1 Statutory Framework

Arbitration in Sri Lanka is governed by the Arbitration Act No. 11 of 1995, ("AA")[1] which modernized the country's arbitral framework by repealing the Arbitration Ordinance of 1856 and related provisions of the Civil Procedure Code. Influenced by the UNCITRAL Model Law on International Commercial Arbitration 1985 and partly by the Draft Swedish Arbitration Act of 1994, it was the first statute in South Asia to be based on the UNCITRAL Model Law. The AA also gave effect to Sri Lanka's obligations arising under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ("New York Convention"), providing for both the conduct of arbitral proceedings and the recognition and enforcement of domestic and foreign arbitral awards.

2.2 Arbitration Agreement between parties

Arbitral proceedings may only commence where the parties have agreed through an Arbitration Agreement to submit their disputes to Arbitration. This reflects the principle of "party autonomy", a defining feature of Arbitration. Sri Lankan law, particularly the AA, firmly upholds this principle, granting the contracting parties the freedom to determine key elements of the process, including the composition of the tribunal, the applicable procedural rules, the seat of arbitration, and the language of proceedings. Whether embodied as a clause in the main contract or set out in a separate standalone agreement, the Arbitration Agreement forms the foundation upon which the arbitral process rests.[2]

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2.3 Recognition of Arbitral Awards

Section 33 of the AA provides that foreign arbitral awards are to be recognized as binding and enforced through the High Court, provided the procedural requirements set out under Section 31 are satisfied. An application must be made within one year after the expiry of fourteen days[3] of the making of an award, along with the original award and Arbitration Agreement or certified copies thereof.[4]

Once filed, the Court is obliged to recognize and enforce the award unless a party resisting establishes one of the statutory grounds for setting aside or refusal of an Award.

2.4 Procedure for Enforcement of Arbitral Awards

The procedure for enforcing an arbitral award, whether rendered in Sri Lanka or abroad, is uniform under the AA and the procedure is set out in Section 31 of the AA which is as follows:

- Institute proceedings in the Commercial High Court by way of a Petition supported by Affidavit, accompanied by the arbitral award and Arbitration agreement.
- The Court issues notice on the Respondent, specifying a date for appearance and for filing objections, if any.
- Upon receipt of objections, the Court fixes a date for inquiry, which may be conducted through written or oral submissions.
- At the conclusion of the inquiry, the Court delivers judgment and, where in favour of the applicant, enters a decree giving effect to the award.
- The decree may be enforced in the same manner as any judgment of a Sri Lankan court.
- An appeal may be made to the Supreme Court, which may affirm, vary, or set aside the judgment, unless the parties have entered into an exclusion agreement waving appellate recourse.

2.5 Refusal of the enforcement of a Foreign Arbitral Award

The limited grounds on which the enforcement of a foreign arbitral award may be refused by Sri Lankan Courts is provided for by Section 34 of the AA. These include the following:

- A party to the arbitration agreement lacked capacity, or the agreement itself is invalid under the governing law.
- The party against whom the award is invoked was not given proper notice of the proceedings or was otherwise unable to present its case.
- The award addresses matter not contemplated by the arbitration agreement.
- The tribunal's composition or procedure was inconsistent with the parties' agreement or the law of the seat.
- The award has not become binding or has been set aside or suspended by a competent Court at the seat of arbitration.

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- The subject matter of the dispute is not capable of settlement by arbitration under the law of Sri Lanka; or
- The recognition or enforcement of the award would be contrary to the public policy of Sri Lanka.[5]

When an application is made to resist the enforcement of an arbitral award, the burden of proof lies with the party opposing enforcement. The Commercial High Court has consistently emphasized that the grounds for refusal are both exhaustive and narrowly construed, thereby reinforcing Sri Lanka's pro-enforcement stance in line with its obligations under the New York Convention.

2.6 Finality of Arbitral Awards

The AA recognizes the finality of arbitral awards and expressly precludes judicial review on the merits. Enforcement is automatic unless challenged on the limited grounds set out in Section 32 (domestic awards) or Section 34 (foreign awards). In *Hatton National Bank Ltd v Chandrasiri*[6] the Supreme Court affirmed that, in the absence of an application to set aside an award, the High Court is bound to enforce it under Section 31 of the AA. This reflects the New York Convention principle that arbitral awards should not be subjected to repeated or unnecessary challenges.

Sri Lankan courts have generally adopted a restrained approach, avoiding interference with arbitral rulings unless explicitly permitted by the AA. Case law illustrates the judiciary's commitment to upholding arbitration agreements and limiting judicial intervention. In *Elgitread Lanka v Bino Tyres* (2010),[7] The High Court initially held an arbitration clause invalid because it referred to a non-existent institution. The Supreme Court overturned this, holding that Section 7 of the AA provides mechanisms to appoint arbitrators. The Court stressed that agreements must be interpreted to uphold the parties' intention to arbitrate, even where wording is imperfect. Similarly in *Light Weight Boday Armour Ltd v Sri Lanka Army*,[8] the Supreme Court reversed a High Court ruling that had set aside an arbitral award for alleged errors on merits and public policy.

The Court clarified that the Courts cannot review the merits of arbitral awards, as tribunals are the sole judges of fact and evidence. "Public policy" is a narrowly defined ground, confined to serious issues such as corruption, bribery, or fraud. The public policy doctrine must not be misused to delay or obstruct enforcement of awards.

3. Overview of Maritime Jurisdiction in Sri Lanka

3.1. Admiralty Jurisdiction Act

The maritime law of Sri Lanka is heavily influenced by English law and has developed through a combination of national legislation, international conventions, and judicial interpretation. The Admiralty Jurisdiction Act No. 40 of 1983 ("AJA") serves as the principal legislation governing admiralty matters. Read together with Section 13(1) of the Judicature Act No. 2 of 1978, the AJA vests exclusive jurisdiction in the High Court of Colombo to hear and determine admiralty actions.

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The AJA consolidates and modernizes laws relating to admiralty jurisdiction, including legal proceedings concerning ships, the arrest of vessels and other maritime property. It empowers the High Court to adjudicate a broad range of claims, including those involving ship ownership, disputes among co-owners, mortgages, damage caused by ships, and personal injuries arising out of maritime incidents.[9]

3.2 Maritime Claims under the "AJA"

Section 2(1) of the AJA enumerates a wide range of maritime claims, including, among others, claims for damage caused by a ship, disputes concerning cargo and freight, salvage, towage and pilotage claims, matters arising under maritime liens and mortgages, as well as claims relating to the ownership or possession of a vessel.

Section 7(1) further empowers the Court to order the arrest and detention of a ship as security for maritime claims. Such proceedings *in rem* are directed against the vessel itself and serve as a potent procedural tool for claimants to secure their claims. A vessel may, however, be released upon the provision of sufficient security whether by way of bail, bank guarantee, payment into Court, or in certain circumstances by the provision of Letter of Undertaking issued by a Protection and Indemnity (P&I) Club.[10]

4. Arbitration Clauses and Admiralty Actions

It is well established that the existence of an arbitration clause does not oust the admiralty jurisdiction of the High Court. Many charterparties and bills of lading contain arbitration clauses, requiring disputes to be referred to arbitration. Where legal proceedings are instituted in court despite such an agreement, the opposing party may object and compel reference to arbitration, thereby limiting the jurisdiction of the Court in respect of the dispute.[11]

However, this provision does not displace the admiralty jurisdiction of the High Court. Section 2(1) of the AJA expressly confers jurisdiction "notwithstanding anything to the contrary in any other law," and Sri Lankan courts have consistently recognised the AJA as specialized legislation, prevailing over general provisions of the AA.

This position was affirmed in *Colombo Commercial Fertiliser Limited v Motor Vessel "SCI Mumbai*[12] where Justice Saleem held that Section 5 of the AA does not override or restrict Section 2(1) of the AJA. Although the AA was enacted later (1995) than the AJA (1983), the legislature did not expressly or impliedly repeal Section 2(1). That provision explicitly confers jurisdiction on the Admiralty Court to hear and determine claims "notwithstanding anything to the contrary in any other law."

However, it must be noted that unlike some jurisdictions, Sri Lanka does not permit ship arrest solely as security for a foreign arbitration claim, since Sri Lanka is not a party to the 1999 International Convention on the Arrest of Ships.

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5. Status of SCMA Awards in Sri Lanka

SCMA has gained prominence in Asia as a specialist maritime arbitration forum. Its rules and model clauses are widely used in charterparties, bills of lading, and related contracts.
Sri Lankan law recognizes SCMA arbitration agreements as valid and enforceable.

Awards rendered under SCMA are enforceable in Sri Lanka in two ways:

- Domestic awards: If the seat of arbitration is Sri Lanka, the award is treated as a local award under the AA.
- Foreign awards: If the award is rendered in Singapore, it is enforced under Section 33 of the AA, which incorporates the New York Convention. Both Sri Lanka and Singapore are Convention states, ensuring enforceability subject only to Section 34 grounds for refusal.

Thus, SCMA awards are recognized in Sri Lanka on the same basis as other foreign arbitral awards.

6. Practical Challenges

A recognized limitation of the AA is the absence of an explicit provision authorizing courts to grant interim measures pending arbitration. While Section 13 confers such powers on arbitral tribunals, practical challenges emerge before a tribunal is constituted. In *Baksons Textile Industries Ltd v Hybro Industries Ltd*[13] Edussuriya J acknowledged that courts could provide interim relief to maintain the status quo until the arbitral tribunal is established. Likewise, in *Elgitread Lanka (Pvt) Ltd v Bino Tyres (Pvt) Ltd*, Marsoof J noted that Section 5 of the AA which bars courts from adjudicating disputes subject to arbitration agreements does not preclude the court's power to grant interim protective measures in support of the arbitral process.

These judicial observations have effectively created a practical "safety net," ensuring that urgent relief is not denied solely because the parties have opted for arbitration as their dispute resolution mechanism.

Additionally, parties may face several practical challenges when seeking to enforce an arbitral award. One key difficulty is the requirement to produce authenticated originals or certified copies of the award. Deficiencies in these documents can hinder or delay recognition and enforcement.

Finally, while costs and procedural objections generally do not affect the enforceability of the award itself, they can nonetheless add complexity and prolong the enforcement process.

7. Conclusion

Sri Lanka provides a robust and internationally aligned framework for the enforcement of both maritime and commercial arbitral awards. The AA upholds the finality and enforceability of domestic and foreign awards in line with the New York Convention, while the AJA preserves the High Court's powers, including vessel arrest, ensuring effective remedies even when disputes are subject to arbitration abroad.

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The recognition of SCMA awards further strengthens Sri Lanka's position as a strategic forum for maritime arbitration, balancing support for international arbitration with essential local procedural safeguards. Together, Sri Lanka's clear statutory framework, pro-enforcement judicial approach, and adherence to global standards make it a reliable and efficient jurisdiction, offering parties a distinctive convergence of arbitration and admiralty remedies.

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[1] Preamble to the Arbitration Act No. 11 of 1995 (AA)
[2] Section 3(1), AA.
[3] Section 31(1), AA.
[4] Section 31(2), AA.
[5] Light Weight Body Armour Ltd v Sri Lanka Army SC (HCA) 27A/2006.
[6] SC Appeal 63/2013, decided on 15 October 2015.
[7] Supreme Court Law Report, 2010.
[8] 2007 (1) Sri Lanka Law Reports 411.
[9] Preamble to the Admiralty Jurisdiction Act No.40 of 1983 (AJA).
[10] Section 7(2), AJA.
[11] Section 5, AA.
[12] CA PHC APN 47/2013.
[13] CA 51/97, 28 April 1997, unreported.

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THAILAND

Enforcing Maritime Arbitral Awards in Thailand: Between Law, Practice and Public Policy

1. Introduction

Maritime trade is central to Thailand's economy, with ports such as Bangkok, Laem Chabang, and Map Ta Phut linking Thai shipowners and charterers to global markets. Inevitably, disputes arise in shipping, trade, and logistics, and arbitration has become the preferred means of resolution, valued for its neutrality, flexibility, and cross-border enforceability. Yet arbitration's true value lies not in the award's seat but in its enforcement where assets are located. For parties with Thai connections, this often means seeking recognition and enforcement in Thai courts.

Thailand, a maritime nation with modern arbitral legislation aligned to the UNCITRAL Model Law and the New York Convention, offers a framework where foreign awards should, in theory, be smoothly enforced. In practice, however, enforcement is complicated by challenges grounded in "public order and good morals," procedural formalities, and translation pitfalls. This article examines Thailand's maritime law and explores enforcement's complexities in the courts.

2. Overview of Maritime Law in Thailand

Thailand's emergence as a regional maritime hub in Southeast Asia has been accompanied by the steady development of a domestic legal framework for shipping and carriage of goods. While the country has not consolidated its maritime legislation into a single code, as some civil law jurisdictions have done, over the past three decades, Thailand has enacted four cornerstone statutes that remain fundamental today, the Arrest of Ships Act B.E. 2534 (1991) (the "**Ship Arrest Act**"), the Carriage of Goods by Sea Act B.E. 2534 (1991) ("**COGSA Thailand**"), and the Vessel Mortgage and Maritime Liens Act B.E. 2537 (1994) (the "**Mortgage and Lien Act**") and Act on Contribution in General Average Loss B.E. 2547 (2004) (the "**General Average Act**"). Together with provisions of the Civil and Commercial Code and the Navigation in Thai Waters Act, these instruments form the backbone of Thai maritime law and are frequently encountered in both litigation and arbitration involving Thai parties or assets.

i. Arrest of Ships Act B.E. 2534 (1991)

This Act established a clear and effective mechanism for creditors to secure maritime claims by arresting vessels in Thai ports. It replaced the previous reliance on general civil procedure, which was ill-suited for the unique complexities of shipping disputes. The Ship Arrest Act is notably creditor-friendly, providing several key provisions:

- It broadly defines "maritime claims" to include salvage, mortgages, towage, pilotage, damage, and ownership disputes.[1]
- A claimant with a Thai domicile can apply for an arrest order on an *ex parte* basis, even if the debtor isn't domiciled in Thailand.[2]
- In disputes over ownership or mortgages, the arrest is restricted to the specific vessel involved.[3]
- Applications must detail the claim and the vessel, with court officers executing the arrest and notifying port authorities.[4]
- Claimants must pay a court fee of 1% of the claim, capped at 100,000 THB.[5]

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This framework allows claimants to effectively secure assets while parallel arbitration proceedings are ongoing, serving as an essential bridge between proceedings and enforcement.

ii. Carriage of Goods by Sea Act B.E. 2534 (1991)

Enacted in the same year as the Ship Arrest Act, COGSA Thailand governs carrier liability and codifies the evidentiary role of bills of lading. It is largely based on the Hague Rules of 1924, establishing a minimum standard of carrier responsibility while preventing contractual disclaimers. Key provisions of COGSA Thailand include:

- Carriers must exercise due diligence to ensure a vessel is seaworthy, properly crewed, and fit for cargo.[6]
- Liability is exempted for losses resulting from navigation errors, perils of the sea, or inherent defects in the goods.[7]
- Bills of lading must contain specific particulars and serve as proof of receipt and contractual terms.[8]
- Any clause attempting to reduce liability below the statutory minimum is void.[9]
- Carrier liability is capped at 10,000 THB per package or unit or 30 THB per kilogramme of gross weight, unless a higher value is declared in the bill of lading.[10]

The statutory cap, which amounts to approximately USD 270, is a critical point as it is far below modern commercial expectations. Arbitral tribunals applying Thai law must adhere to this limit, or the resulting awards may risk refusal of enforcement by Thai courts on public policy grounds.

iii. Vessel Mortgage and Maritime Lien Act B.E. 2537 (1994)

This Mortgage and Lien Act modernised Thailand's ship finance law by introducing a formal system for vessel mortgages and clarifying the priority of maritime liens. The Mortgage and Lien Act's practical implications are significant:

- Mortgages must be in writing; pledges of vessels are invalid.[11]
- Mortgages must be registered with the vessel registrar to be enforceable against third parties and can extend to equipment and insurance rights.[12]
- Mortgages on foreign vessels are recognised if valid under the law of the vessel's flag state and registered in a public registry.[13]
- Maritime liens arise automatically for privileged claims, including crew wages, salvage remuneration, and certain torts.[14]
- These liens are explicitly given priority over registered mortgages and other preferential rights under the Civil and Commercial Code.[15]

For financiers, the subordination of mortgages to maritime liens is of considerable commercial importance, while for seafarers and salvors, it provides an essential safeguard. Arbitral awards involving ship finance must respect these statutory priorities to be enforceable in Thailand.

iv. Act on Contribution in General Average Loss B.E. 2547 (2004)

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The General Average Act codifies the maritime principle that extraordinary sacrifices or expenses made for the common safety of a maritime adventure are to be shared proportionally among all parties. Key features of the General Average Act include:

- Shipowners and cargo interests must contribute proportionally to extraordinary sacrifices or expenses made for common safety.[16]
- Identification of the circumstances that count as general average, such as jettison, salvage, or port of refuge expense.[17]
- It allows for the appointment of surveyors to calculate contributions.[18]
- Shipowners are granted the right to retain cargo as security until contributions are paid or guaranteed.[19]
- Jurisdiction for disputes is vested in the Central Intellectual Property and International Trade Court.[20]
- General Average Act sets strict statutory time limits for claims:
    - For shipowner, **1 year** from notification and no later than **5 years** from the date of the occurrence of the general average loss;
    - For other contributors, **1 year** from notification and no later than **7 years** from the date of the occurrence of the general average loss.[21]

Although general average disputes are less frequent, arbitral tribunals must apply these mandatory rules when Thai law governs, as awards that disregard contribution requirements may not be enforced by Thai courts.

These four Acts, governing ship arrest, carriage of goods, finance, and general average, form the cornerstone of Thailand's specialised maritime law. A unifying and crucial feature is that their provisions are mandatory. Consequently, tribunals must ensure their awards are compliant with these specific statutory requirements, or they risk being denied enforcement in Thailand on public policy grounds.

3. Overview of Enforcement Procedure under the Arbitration Act

The enforcement of arbitral awards in Thailand is governed by the Arbitration Act B.E. 2545 (2002), as amended in 2019 (the "**Arbitration Act**"). The Act gives effect to Thailand's obligations under the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "**New York Convention**"), to which Thailand has been a contracting state since 1959. Under the Arbitration Act, arbitral awards, whether rendered in Thailand or abroad, are recognised as binding on the parties.

The Arbitration Act provides the statutory basis for two distinct mechanisms: (i) the setting aside of arbitral awards where the seat of arbitration is in Thailand, and (ii) the recognition and enforcement of both Thai and foreign arbitral awards. The distinction is fundamental.

For foreign awards, recognition is available where the award was rendered in a state that is a party to an international convention, treaty, or agreement on arbitration to which Thailand is also a party.[22] In practice, this means that awards from New York Convention jurisdictions are enforceable in Thailand, subject to the conditions and limitations set out in both the Act and the Convention.

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Before commencing court proceedings, it is customary for the Claimant to issue a formal demand letter to the respondent, calling for compliance within the time specified in the award. Where the award is silent, the letter typically stipulates a reasonable period for voluntary performance. When such a demand is ignored then the Claimant would proceed to the enforcement stage.

i. Application to the Court

A party seeking enforcement must file a motion within **3 years** from the date the award becomes enforceable.[23] The motion may be submitted to (i) the Central Intellectual Property and International Trade Court (IP&IT Court), (ii) a regional intellectual property and international trade court, (iii) the court where the arbitration was conducted, (iv) the court where either party is domiciled, or (v) another court with jurisdiction over the dispute.[24] In practice, most motions are filed with the IP&IT Court in Bangkok, which has specialist jurisdiction and judges experienced in international enforcement.

ii. Filing the Motion

When the Claimant seeks enforcement of an arbitral award in Thailand, the procedural foundation lies in the completeness and accuracy of the filing. The motion to the competent court must be supported by specific documentary evidence that proves both the validity of the arbitration and the authenticity of the award.

The key documents are:

1. **Arbitral Award -** the original award or a certified copy.[25]

2. **Arbitration Agreement -** the original arbitration agreement or a certified copy.[26]

3. **Thai Translation (if applicable) -** where the award or arbitration agreement is in a foreign language, a full Thai translation is required. The translation must be made by a translator who has either:
   - taken an oath or affirmation before the court or in the presence of an authorised official; or
   - be certified by an official authorised to certify translations; or
   - certified by a Thai envoy or consul in the country where the award or arbitration agreement was issued.

Courts attach particular importance to the accuracy and authenticity of these materials, and any defects in certification or translation may delay or derail the application or may even be grounds for objection by the Respondent.

iii. Filing Fees

The filing fees for an enforcement motion depend on both the nature of the arbitral award and the value of the claim. In the case of foreign arbitral awards, the applicable court fee is 1 per cent of the disputed amount, capped at 100,000 baht. Where the claim exceeds 50 million baht, an additional fee of 0.1 per cent applies to the excess.[27] For purposes of calculation, the disputed amount is converted into Thai baht using the Bank of Thailand's published exchange rate on the business day immediately preceding the filing of the motion.

For domestic arbitral awards, the applicable fee is comparatively lower at 0.5 per cent of the disputed amount, subject to a maximum of 50,000 baht, with the same surcharge of 0.1 per cent

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on amounts exceeding 50 million baht.[28] These differential fee structures reflect the procedural distinction between recognition of foreign awards and enforcement of Thai-seated awards under the Arbitration Act.

iv. Defence and Preliminary Hearing

Once the motion to enforce has been accepted, the copy of application including relevant documents will be served to the Respondent which the Respondent may file an objection challenging enforcement on the limited grounds set out in the Arbitration Act. In practice, the court will require that such objection be filed within the first preliminary hearing. If the Respondent raises no objections, the court may grant enforcement ex parte, giving the award the same force as a Thai judgment.

In practice, however, it is common for the Respondent to file objections, even if lacking merit, in order to prolong the proceedings. This transforms the process into a contested hearing. The court then holds a preliminary hearing to identify the issues in dispute, allocate the burden of proof, and schedule the evidentiary hearing. At this stage, the court may also encourage mediation and, with the parties' consent, may act as mediator.

v. Evidentiary Hearing

During the evidentiary hearing, each party may present witnesses and documents to support its case, while the opposing party has the right to cross-examine and rebut. Hearings may take place over several days, not always consecutively. The contested hearing can extend the timeline from a couple of months to a year.

vi. Recognition and Enforcement Order

After considering the motion, the defense, and the evidence presented, the court will determine whether any of the statutory grounds for refusal are established. If none are proven, the court will grant recognition of the award. The decision is issued as a judgment of the competent court, which then serves as the legal basis for further enforcement actions in Thailand.

vii. Appeal the Court Order

Nonetheless, once judgment is rendered, either party may appeal the court's decision to the Supreme Court.[29] The appeal is to be filed within 1 month from the date of judgment (with the possibility of extension for an additional 30 days each time, for 2-3 times).[30] The opposing party must then file a reply to the appeal within 15, 30, 45, or 75 days, depending on the method of service of the appeal papers and whether the opposing party resides domestically or abroad. Once filed, the Supreme Court typically takes about 2 years to render a decision on the appeal, which is based solely on the documents and written submissions in the case file, without conducting any witness examination hearing.

viii. Execution of the Award

Once award recognised by the court, the arbitral award acquires the same effect as a final judgment under Thai law. The Claimant may proceed with enforcement measures provided for in the Civil Procedure Code, such as seizing assets, garnishing accounts, or other compulsory measures to secure compliance. At this stage, the award is no longer treated as a foreign instrument but as part of the Thai judicial system.

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Importantly, the right to execute the judgment is not suspended by the mere filing of an appeal by the Respondent and enforcement proceedings may continue notwithstanding a pending appeal to the Supreme Court.

4. Practical Challenges in Enforcement of Arbitral Award in Thailand

While Thailand's Arbitration Act and the New York Convention provide a modern framework for arbitral enforcement, the practical landscape is more complex. Awards seated in Thailand may be challenged through applications to set aside, while foreign awards are subject to recognition and enforcement proceedings. Across both contexts, the courts' interpretation of "public order and good morals" introduces uncertainty, allowing scrutiny of both procedural compliance and, in some cases, substantive aspects of the award. This section examines these mechanisms and the practical implications for maritime arbitral awards.

i. Setting aside the Award

Where the seat of arbitration is in Thailand, even if the proceedings were conducted under foreign institutional rules such as the Singapore Chamber of Maritime Arbitration (SCMA) Rules, the award is subject to challenge by an application to set aside under Section 40 of the Arbitration Act. Such an application must be filed within ninety days of receipt of the award.[31] The grounds for setting aside include incapacity of a party, invalidity of the arbitration agreement, denial of due process, excess of authority, procedural irregularity, non-arbitrability of the subject matter, and conflict with public order or good morals. The Thai court may, if appropriate, suspend setting-aside proceedings to allow the tribunal to correct defects.

ii. Recognition and Enforcement of Award

Foreign awards, by contrast, cannot be set aside in Thailand. An award rendered in foreign countries, such as Singapore or London, may only be recognised and enforced under Section 43 of the Arbitration Act, which incorporates Article V of the New York Convention.

A court may refuse to recognise and enforce an award if the Respondent proves:

1. **Incapacity or invalid agreement** - A party to the arbitration lacked capacity, or the arbitration agreement is not legally binding, including situations where the arbitral tribunal lacked jurisdiction.
2. **Denial of due process** - The respondent was not given proper notice of the arbitration proceedings or was otherwise unable to present its case.
3. **Excess of authority** - The award addresses disputes beyond the scope of the arbitration agreement. If decisions can be separated, only the part relating to matters within the agreement may be enforced.
4. **Procedural irregularity** - The composition of the tribunal or the conduct of proceedings was not in accordance with the arbitration agreement or, in the absence of such agreement, the law of the seat of arbitration.
5. **Non-binding or set-aside award** - The award has not yet become binding, has been set aside, or is suspended at the seat of arbitration. Where proceedings to set aside or suspend are pending, the court may suspend enforcement and may, if requested, require security from the party seeking enforcement.[32]

In addition, a court may refuse to recognise and enforce an award if it finds that:

1. Subject-matter of the dispute not arbitrable; or
2. Award in conflict with public policy.[33]

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For those familiar with common law, Section 44 can be unexpected. It grants Thai courts the authority to deny enforcement of an award on two specific grounds, even if the parties involved have not invoked them. This means the court can act independently, emphasising procedural safeguards unique to Thailand's legal framework.

iii. Grounds of Public Order or Good Morals

In theory, these provisions provide a closed list of exceptions, ensuring that arbitral awards are enforced unless clear procedural or jurisdictional defects are proven and that Thai courts are not permitted to revisit the merits of the dispute. In practice, however, the statutory phrase "public order or good morals" has created a zone of uncertainty. This language, rooted in Section 40(2)(b) and Section 43(2)(b), has occasionally been interpreted broadly. Although this is a broad concept, Thai courts have previously refused enforcement on grounds of public order and good morals are where arbitrators lacked impartiality, there are duplicate arbitrations violating res judicata, or where arbitrators misapplied law or awarded interests exceeding statutory limits.

In applying this concept, Thai courts have sometimes looked behind the award to consider whether the outcome is consistent with domestic statutory protections or with what the court regards as equitable. For example, excessive contractual interest rates or damages awards perceived as punitive have faced resistance at the enforcement stage.

For instance, in Supreme Court Judgment No. 2611/2019, the Court partially refused enforcement of an international arbitral award because it included compound interest, which violated Thai statutory limits. Even though the arbitrators' procedural conduct and the contract terms were not contested under public order grounds, the Court exercised its authority ex officio to correct the award where it conflicted with public order and good morals, illustrating how Thai courts may intervene when an award contravenes domestic statutory protections.[34]

Therefore, although Thai courts are not permitted to revisit the case, Thailand's broader interpretation of the public policy stance risks in undermining confidence, as it allows courts to revisit substantive merits rather than policing only extreme violations. Subsequently, Maritime awards that appear to undermine mandatory provisions of Thai carriage law or seafarer protections may be vulnerable to public policy objections.

The voyage from arbitral award to enforcement in Thailand is thus a passage through shifting waters. The statutory framework is modern and aligned with international standards, but judicial practice, public policy considerations, translation requirements, and tactical resistance create practical challenges.

Status of SCMA Awards in Thailand

An SCMA award will be treated as a foreign arbitral award under the Arbitration Act as it is an award issued outside of Thailand. It can be recognised and enforced by submitting a motion to the Thai courts, and once recognised it has the same effect as a final Thai judgment. However, the Respondent may still object to enforcement based on the usual limited grounds available for foreign awards in Thailand, including procedural defects or public-policy objections. If no valid objection is established, the award becomes final and binding, and the Claimant may proceed with execution against the Respondent's assets in Thailand

5. Conclusion

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Enforcing maritime arbitral awards in Thailand is neither automatic nor impossible. The legal framework, anchored in the Arbitration Act and the New York Convention, generally supports enforcement, but the process demands precision. Procedural hurdles such as strict translation rules, evidentiary requirements, and the Respondent's objections can slow proceedings. More uncertain is the court's power to refuse enforcement on grounds of "public order and good morals," especially when awards conflict with Thai statutory limits on liability, interest, or seafarer protections.

For maritime parties, this means success depends on preparation. Arbitration agreements should be drafted with Thai enforcement in mind, tribunals applying Thai law must follow mandatory provisions, and Claimants must anticipate delay tactics in court. Despite these challenges, most awards are ultimately recognised, and Thailand's specialist courts play an increasingly supportive role. Enforcement, then, is best seen as a navigable channel, demanding care, but offering a reliable route to binding resolution.

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[1] Arrest of Ships Act B.E. 2534 (1991), Section 3.
[2] Ibid, Section 4.
[3] Ibid, Section 6.
[4] Ibid, Section 7-12.
[5] Ibid, Section 10.
[6], Carriage of Goods by Sea Act B.E. 2534 (1991), Section 8.
[7] Ibid, Section 51-52.
[8] Ibid, Section 12, 18–19, 26.
[9]Ibid, Section 17.
[10] Ibid, Section 58 and 60.
[11] Vessel Mortgage and Maritime Lien Act B.E. 2537 (1994*)*), Section 6.
[12] Ibid, Section 8-11.
[13] Ibid, Section 21.
[14] Ibid, Section 22.
[15] Ibid, Section 24.
[16] Act on Contribution in General Average Loss B.E. 2547 (2004), Section 6.
[17] Ibid, Section 17-18.
[18] Ibid, Section 9.
[19] Ibid, Section 10.
[20] Ibid, Section 20.
[21] Ibid, Section 21.
[22] Arbitration Act B.E. 2545 (2002), Section 41.
[23] Ibid, Section 42.
[24] Ibid, Section 9.

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[25] Ibid, Section 42(1).
[26] Ibid, Section 42(2).
[27] Civil Procedure Code B.E. 2477 (1934), as amended by B.E. 2551 (2008), Schedule I.
[28] Ibid.
[29] Arbitration Act B.E. 2545 (2002), Section 45.
[30] Civil Procedure Code B.E. 2477 (1934), as amended by B.E. 2551 (2008), Section 247.
[31] Arbitration Act B.E. 2545 (2002), Section 40.
[32] Ibid, Section 43.
[33] Ibid, Section 44.
[34] Supreme Court Judgment No. 2611/2019.

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VIETNAM

Enforceability of an SCMA Award: A View from Vietnam

Introduction

It has been nearly a quarter of a century since the enactment of Vietnam's first legislation on arbitration. Over these years, the Vietnamese legal community has undertaken consistent and sustained efforts to shape and refine arbitration law so that it would come closer to the international standards under the UNCITRAL Model Law on International Commercial Arbitration 1985 ("**Model Law**"), and the 1958 New York Convention ("**New York Convention**"). As a result, the Vietnam Lawyers Association has been assigned to oversee amending the arbitration law with high expectation to conciliate the domestic arbitration practice with international standards.

The current Vietnam maritime law is also under review initiated by the Ministry of Transportation (which is currently the Ministry of Construction after the recent government restructuring in March 2025[1]) after a decade of implementation. The authorities' major concerns are to promulgate regulations on electronic shipping documents and to execute Vietnamese international commitments in the maritime industry.

This article provides an overview of Vietnamese arbitration and maritime law and focus will be placed on the enforceability of foreign maritime arbitral awards pursuant to the recognition and enforcement regime under the current regulations.

Overview of Vietnamese Law on Arbitration

Before the Doi Moi (Renovation) policy in 1986, arbitration in Vietnam was first recorded in the forms of the State Economic Arbitration System, the Foreign Trade Arbitration Committee and the Maritime Arbitration Committee in the 1960s.

After 1986, significant changes in state policy raised awareness of arbitration in Vietnam. This came in the form of the conclusion of several bilateral investment treaties[2] and seventeen regional and bilateral free trade agreements[3], as well as the accession of Vietnam to the New York Convention on 12 September 1995, effective on 11 December 1995.[4]

In the early 2000s, the National Assembly Standing Committee issued the first legislation on arbitration called Ordinance No. 08/2003/PL-UBTVQH11 on Commercial Arbitration on 25 February 2003, effective on 1 July 2003 ("**Ordinance**").

The Ordinance created the very first foundation for the development of arbitration in Vietnam, but its vague provisions and lack of clarity fell short of international standards, leaving potential users uncertain and hesitant to adopt arbitration.

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Seven years later, after Vietnam joined the World Trade Organization in 2007, the National Assembly of Vietnam passed the current Law No. 54/2010/QH12 on Commercial Arbitration ("**LCA**") on 17 June 2010, effective from 1 January 2011.

The LCA is considered as the cornerstone of ADR in general and commercial arbitration in Vietnam in particular, and it is relatively in line with the amended 2006 UNCITRAL Model Law, with slight modifications to adapt with the situation in Vietnam. Upon its implementation over the past 15 years, the LCA did promote the resolution of disputes through negotiation, mediation, and arbitration with the positive support from the court system. The LCA does, among other things, prioritise party autonomy as one of the core principles of arbitration in Vietnam. Regarding arbitral proceedings, the LCA establishes the estoppel regime and expand arbitral tribunal's competence to collect evidence and testimonies, as well as apply interim measures.

To facilitate the implementation of the LCA, the Government issued Decree No. 63/2011/ND-CP dated 28 July 2011, and the Council of Judges of the Supreme People's Court of Vietnam issued Resolution No. 01/2014/NQ-HDTP dated 20 March 2014 ("**Resolution 01/2014**"), both of which guided certain aspects of the LCA. Resolution 01/2014 is another milestone in establishing a pro-arbitration approach in Vietnam which ensures the effectiveness of arbitral proceedings by addressing the gaps of the LCA, such as providing the legal grounds for a local court to order interim relief to support foreign arbitration seated in Vietnam, guidance on invalid and inoperable arbitration agreements, and other issues related to the principle of competence-competence and the annulment of arbitral awards.

On the contrary, the practice of implementation of the LCA has shown that there are several drawbacks that need improvement. Hence, the draft of the amendment of the Vietnam arbitration law released in 2024, accordingly, focuses on stipulating four (04) issues:
- Expansion of the arbitrability;
- Completion of arbitral proceedings;
- Expansion on arbitral tribunal's competence in arbitral proceedings; and
- Enhance the effectiveness and enforceability of arbitral awards, while reducing the setting aside of commercial arbitral awards.[5]

One of the most notable developments in this draft lies in the transition from the term "*commercial arbitration*" to the broader "*arbitration*". This linguistic and conceptual shift reflects a more expansive approach to arbitrability, whereby disputes are excluded from arbitration only if they fall within sectors expressly prohibited or restricted by specialized law governing those particular fields. However, to date, this draft bill has not yet been officially passed.

Notably, under both the effective LCA and its draft amendment, deviating from the UNCITRAL Model Law, the recognition and enforcement of foreign arbitral awards in Vietnam are not governed by the LCA but are regulated by a chapter of the 2015 Civil Procedure Code, which shall be analysed later below.

Recently, Vietnam has taken a decisive step toward developing an International Financial Center (IFC) in two biggest commercial cities through the passage of Resolution No. 222/2025/QH15 dated 27 June 2025 and the subsequent Government decrees (now in progress). These instruments introduce supplementary regulations exclusively applicable to activities conducted

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in the IFC, including arbitration.[6] Significantly, the waiver of the right to apply for the setting aside of an arbitral award has, for the first time, been introduced in Vietnamese legislation.[7]

Overview of Maritime Law in Vietnam

Maritime law in Vietnam dates to the period before 1990, when international maritime activities were governed by by-law documents issued by the Government and relevant Ministries. Nevertheless, it was not until 1990 that the first maritime code was issued, building the foundation for maritime activities under Vietnamese laws. The 1990 Maritime Code replaced most previous legislative documents on maritime activities and became a major milestone for Vietnam in the attempt to integrate with international maritime law. The legislation has internalised several provisions of generally recognised international conventions of the International Maritime Organization (IMO), Comité Maritime International (CMI), and United Nations Conference on Trade and Development (UNCITAD) on legal issues relating to the maritime industry.[8]

After 13 years of implementation, in consideration of the progress of the development and international business integration of Vietnam in general and of the maritime industry in specific, the amendment and supplementation of the Maritime Code is vital. The amendment and supplementation of the Maritime Code are based on certain principles, including: (i) to inherit and be compatible with the reality of the industry, (ii) to ensure the unification of other laws within the Vietnamese legal framework, and (iii) to ensure that the amendment and supplementation must be in line with the developing conditions of the Vietnamese maritime industry and be unified with international maritime treaties and customs. Accordingly, the National Assembly of Vietnam promulgated a new Maritime Code in 2005, effective from 1 January 2006.

Thereafter, on 27 August 2008, the National Assembly Standing Committee issued Ordinance No. 05/2008/UBTVQH12 on procedures on ship arrests, reflecting basic principles of the arrests of ship to secure maritime claims as set out in the 1952 and 1999 Conventions on Ship Arrests even though Vietnam was not a Contracting Party to any of these Conventions.

Furthermore, the first legislation on the law of the sea was passed by the National Assembly of Vietnam in June 2012 under the name of Law No. 18/2012/QH13 on the Vietnamese sea, which reflects fundamental principles of the 1982 UNCLOS. These legislative documents, together with its supplementations and guidance, formed a legal framework for the development of the maritime industry of Vietnam.

After 10 years of implementation, the 2005 Maritime Code faced certain drawbacks, one of which was the heavy reliance on the by-law documents due to its general drafting. To govern the maritime industry with significant developments in Vietnam and match with other legislative documents also stipulating certain aspects of maritime law, the National Assembly of Vietnam passed the current Maritime Code on 25 November 2015, which took effect from 1 July 2017 ("**2015 Maritime Code**").

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In addition, to integrate into the community of international maritime law, Vietnam acceded to a number of international conventions, including, amongst others:

- 1982 United Nations Convention on the Law of the Sea (1982 UNCLOS)
- 1948 Convention on the International Maritime Organization and its 1993 Amendment (IMO Convention)
- 1966 International Convention on Load lines (1966 Load Lines Convention)
- 1969 International Convention on Tonnage Measurement of Ships (1969 Tonnage Convention), 1972 International Regulations for Preventing Collisions at Sea (1972 COLREGS),
- 1974 International Convention for the Safety of Life at Sea and its 1978 Protocol (SOLAS Convention)
- 1978 International Convention on Standards of Training, Certification and Watchkeeping for seafarers (1978 SCTW Convention).

Several provisions of these conventions have been adopted into domestic legislation, which has created uniformity between the regulations applicable to foreign and domestic vessels. Vietnam, however, is not a contracting party of any international convention on carriage of goods, but several provisions of the 2015 Maritime Code are in line with the 1968 Hague-Visby Rules, the 1978 Hamburg Rules, and the 2009 Rotterdam Rules.

In 2023, the Ministry of Transportation (currently the Ministry of Construction) issued a draft Report on the Implementation of the 2015 Maritime Code as the first step towards the amendment of the code in the near future. The draft suggests five (05) matters that would be subject to amendment, including:

- Authorities' administration over maritime activities;
- Maritime vessels, crew and ship arrest;
- Sea ports;
- Sea transportation and affiliate services; and
- Maritime safety and marine environment protection.[9]

Enforceability of Foreign Awards in Vietnam

As mentioned earlier, Vietnam is a member of the New York Convention, and the regulations on the recognition and enforcement of foreign arbitral awards in Vietnam have been adopted into Vietnamese laws and are currently governed by Chapter XXXV - Part VII of Civil Procedure Code No. 92/2015/QH13 ("**2015 CPC**").

Pursuant to the latest data released by the Supreme People's Court, Vietnam has also concluded bilateral treaties on judicial assistance on civil matters with 17 countries, eight of which refer to the application of the New York Convention, and the remaining treaties stipulate specific procedures for recognition and enforcement of foreign arbitral awards in Vietnam.[10]

The 2015 CPC, within its own context, does not provide a definition for a foreign arbitral award, but instead refers to the definitions already established under the LCA.

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Accordingly, the definition of *"foreign arbitral awards"* under Vietnamese laws lies its root in the definition of *"foreign arbitration"*. Pursuant to the LCA, foreign arbitration means "*an arbitration established under foreign arbitration law as per the parties' agreement to resolve dispute either outside or inside the territory of Vietnam"*.[11] Under this definition, an arbitration seated in Vietnam but administered by the rules of a foreign arbitration institution would still be considered a foreign arbitration. Thus, foreign arbitral awards are defined as awards issued by *"foreign arbitration"* either outside or inside the territory of Vietnam.[12] Here, the "foreign" element of arbitral awards shall be determined by the "nationality" of the arbitration institution rather than the place of issuance,[13] which is deviating from the approach of the New York Convention and the UNCITRAL Model Law. The definition of the LCA, however, still complies with Article I(1) of the New York Convention.[14] There are comments on the amendment of this definition to match the international standards. Nonetheless, the draft bill amending the LCA has not proposed any change to this definition.

The prescriptive period for the application for recognition and enforcement of foreign arbitral awards in Vietnam is three years since the effective date of the award.[15] In order to seek the recognition for enforcement of foreign arbitral awards in Vietnam, award creditors must file a dossier including the application enclosing the arbitral award and arbitration agreement together with other supporting documents. The dossier should be submitted to the competent court except for the cases in which the judicial assistance treaties expressly require the submission of the dossier to the Ministry of Justice.[16] Notably, following the administrative restructuring in Vietnam effective as of 1 July 2025, jurisdiction over such applications will vest in the regional courts, rather than in the provincial courts as previously.[17]

With regard to the grounds for refusal of recognition, apart from replacing the concept of *"public policy"* in the New York Convention by the unique concept of the *"fundamental principles of the laws of the Socialist Republic of Vietnam"*, other circumstances whereby the Court might refuse to recognise and enforce a foreign arbitral award[18] are quite similar to the provisions of Article V of the New York Convention and Article 36 of the UNCITRAL Model Law. Notably, unlike its predecessor, being the 2004 Civil Procedure Code amended in 2011, the 2015 CPC clearly stipulates that the burden of proof of the grounds for refusal of recognition and enforcement of foreign arbitral awards shall be borne by the award debtors. After the award is recognised by the court, it shall be enforced by the state enforcement agency under the provisions of the 2008 Law on the Enforcement of Civil Judgements (as amended in 2014 and 2018).

In the past, the high number of foreign arbitral awards being refused recognition by the Vietnamese courts due to the non-compliance with the New York Convention[19] used to be a serious concern for foreign investors for several years.[20]
Prior to the new pro-arbitration approach of Vietnamese courts (thanks to the establishment of Resolution 01/2014 and the 2015 CPC), it was reported that 28 out of 61 applications (45.9 percent) for recognition and enforcement of foreign arbitral awards in Vietnam were dismissed.[21] Notably, the *"violation of fundamental principles of Vietnamese laws"*, while not officially guided by any legislation, used to be a frequent ground for refusal of recognition of foreign arbitral awards in Vietnam. However, international organisations and projects, such as the International Finance Corporation (IFC) under the World Bank Group, the United States Agency for International Development Governance for Inclusive Growth (USAID GIG), supported the Ministry

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of Justice and the Supreme People's Court in the holding of a number of training for the local judges on this topic. This has created positive changes about recognition and enforcement of foreign arbitral awards in Vietnam. In particular, the recent statistic on the number of refused awards has significantly decreased to around 21 percent of all applications.[22]

Prior to 2014, the ground of *"violation of fundamental principles of Vietnamese laws"* was widely interpreted by the local courts. To be specific, certain Vietnamese legislation, such as the 2015 Civil Code, the 2005 Commercial Law or the LCA, provides for specific provisions labelled as the fundamental principles of such laws. Accordingly, in theory, the local court should only invoke the above ground if there are violations of only those specific fundamental provisions. However, there were cases where the local courts invoked other normal provisions of these laws to hold that fundamental principles of Vietnamese laws had been violated and accordingly declined the recognition of foreign arbitral awards. As a result, any difference between the substantive law applicable to the dispute and the Vietnamese law could be invoked as a violation of fundamental principles of Vietnamese law. Although the CPC likewise recognizes the principle that the court shall not re-visit the merits of the case, in practice, the consideration of whether a *"violation of the fundamental principles of Vietnamese law"* exists has been sometimes treated as an exception to this principle. This has caused foreign arbitral awards to be easily denied recognition and enforcement by the Vietnamese courts. Currently, though the ground of *"violation of fundamental principles of Vietnamese laws"* is still invoked, there has been a more cautious approach of local courts since the early 2010s.[23]

Notably, in September 2020, the Ministry of Justice published a report on how Vietnamese courts handled the applications for recognition and enforcement of foreign arbitral awards calculating from 2012.[24] This illustrates a transparency of the results of the recognition and enforcement of foreign arbitral awards procedure. Currently, a resolution illuminating the procedure for recognising and enforcing foreign arbitral awards in conformity with the New York Convention and the 2015 Civil Procedure Code is being drafted by the Supreme People's Court.[25] It is expected that the issuance of the guidance from the Supreme People's Court on the recognition and enforcement of foreign arbitral awards would further improve the current situation and ease the concerns of foreign investors on the enforceability of foreign arbitral awards in Vietnam.

Institutional vs *ad hoc* Arbitration – Vietnamese perspectives

Vietnamese laws, particularly the LCA, do recognise both forms of arbitration, namely institutional arbitration and *ad hoc* arbitration.

For both institutional and ad hoc arbitration, the local courts can assist the arbitral tribunal in collecting evidence,[26] summoning witnesses,[27] and applying interim measures.[28] With regard to domestic arbitration, the involved parties or the arbitral tribunal are entitled to apply to the local court to seek their assistance on the above matters. Nevertheless, for foreign arbitration, only those seated in Vietnam may seek such assistance. Foreign arbitrations seated outside of Vietnam may only seek the Vietnamese courts' assistance by way of judicial assistance treaties but it is, in practice, not feasible. Additionally, the local courts also have the power to resolve complaints about the jurisdiction of the arbitral tribunal[29] and applications for the annulment of arbitral awards.[30]

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Pursuant to the LCA, a domestic institutional arbitration is defined as a form of dispute settlement at an arbitration centre under the LCA and the rules of proceedings of such arbitration centre. Similar to international law and practice, the arbitral procedure of institutional arbitration shall follow the arbitration rules of the arbitration centre. After the issuance of the institutional arbitral award, if the award debtor does not perform the award within the period as specified, and there is no application for the annulment of such award, the award creditor can directly apply to request the Civil Judgement Enforcement Agency to coerce the award debtor to perform the award.[31] Foreign institutional arbitral awards must however be recognised under the 2015 CPC before its enforcement within the territory of Vietnam.

Domestic *ad hoc* arbitration is defined as a form of dispute settlement under the LCA in which the procedure shall be governed by the regulations of the LCA and approved by the parties.[32] Indeed, the LCA respects and prioritises parties' agreement on the ad hoc arbitral procedure save for the case where the agreed procedure is contrary to the provisions in the LCA.[33] If the parties do not agree on the arbitral proceeding, the LCA promulgates certain provisions to assist and supervise the dispute settlement via ad hoc arbitration.

For example, regarding the establishment of an *ad hoc* arbitral tribunal, the local courts are entitled to appoint (i) an arbitrator for the respondent, (ii) a presiding arbitrator, or (iii) a sole arbitrator per the request of the parties, whenever there is no agreement or appointment from the involved parties or party nominated arbitrators.[34] Unless otherwise agreed by the parties, the commencement date of *ad hoc* arbitration shall start from the receipt date of the request for arbitration by the respondent.[35] The statement of defence and counterclaim of the respondent shall be submitted within 30 days from the receipt of the request.[36]

In order to apply for the enforcement of a domestic *ad hoc* arbitration award, the award creditor must register the award at the court where the arbitral tribunal has issued the award, even though this registration requirement does not affect the validity of the award.[37] However, it should be noted that the requirement of registration of an *ad hoc* arbitral award is only applicable for domestic arbitral awards and the laws are silent on foreign arbitral awards.

In terms of institutional arbitral awards, according to the report of the Ministry of Justice,[38] from 1 January 2012 to 30 September 2019, there were 14 applications to recognise and enforce SIAC arbitral awards in Vietnam and only four of which were dismissed. While the full texts of the court decisions are not published, certain reasons behind the dismissals have been reported.

In particular, one application was dismissed on the ground of violation of fundamental principles of Vietnamese laws, while another was for the violation of SIAC Arbitration Rules. Also, subject to the full reasons of the court, there were dismissals in 2014 and 2015 on the controversial ground relating to the validity of contract which affected the existence of arbitration agreement. However, it can be seen from the statistics that eight SIAC awards were recognised since the establishment of the LCA as a sign of the pro-arbitration approach taken by local courts in Vietnam.[39]

As *ad hoc* arbitration is generally unreported, there is not much information or statistics on the number of *ad hoc* arbitrations in Vietnam. An LMAA arbitral award recently recognised by Vietnamese local Court is worth mentioning. The dispute arose from a charterparty, in which the

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shipowner filed a lawsuit against the charterer under the LMAA Rules. The fact of the case was unique as the defendant charterer was not initially named in the principal charterparty but later named in its appendix. The appendix then refers to the principal charterparty which contains the arbitration agreement. In the first-instance proceedings, the inferior Court did not accept the existence of the arbitration agreement on the ground that the defendant charterer, who was named in the Appendix only, did not agree with the principal charterparty. To support the holding, the Court further noted that there was a Letter of Undertaking issued by the original charterer at the time the Appendix was concluded. However, the appellate Court recognised the existence of the arbitration agreement by way of reference to a written document. Additionally, the Letter of Undertaking was considered irrelevant as the shipowners were not a party to this agreement. As such, the appellate Court reversed the decision of its inferior Court and recognised the LMAA arbitral award.[40]

Status of SCMA Awards in Vietnam

As the court database has only been available in recent years and there has not been any compulsory requirement to report cases on the recognition and enforcement of foreign arbitral awards, there is a lack of information on the number of SCMA awards that have been recognised in Vietnam. To the best of our knowledge to date, there were two (02) reported court decisions relating to the recognition and enforcement of SCMA Award in Vietnam publicly available.

First, attention should be made to Decision No. 27/2015/QDPT-KDTM dated 19 August 2015 of the High People's Court of Ho Chi Minh City. In this matter, a Singapore arbitral award was not recognised for the reason, amongst other things, that the award was not yet legally binding on the parties as the award creditor failed to prove the registration of the *ad hoc* arbitral award in Singapore. The Vietnamese court, with a local mindset, found that the registration was a basic requirement for the validity of the arbitral award. Though the LCA requires that adhoc award must be registered to the court in order to be enforced, it is expressly stipulated that the registration shall not affect the validity of the award itself. Hence, this decision should arguably be considered as an exception.[41]

Second, in early 2022, the People's Court of Dong Nai Province did recognise an SCMA award under Decision No. 01/2022/QDST-KDTM. In that case, the dispute was initiated by the shipowner against the charterer under an arbitration agreement provided in fixture note. The arbitration proceedings were conducted under the 2015 SCMA Arbitration Rules. During the arbitral proceedings in Singapore and the recognition proceedings in Vietnam, the charterer failed to attend despite having been duly notified. The local Court, amongst other reasons, reasoned that the arbitral award was not set aside by the court where the arbitral award was issued or under the law applicable to the award and accordingly, shall be recognised and enforced in Vietnam. Another noteworthy point in this case is that the local court considered that due to the lack of power to reconsider the merit of the case, the court refrained from explaining or further elaborating on any direction of the arbitral tribunal under the arbitral award regardless of the request from the award debtor. This is the first public court decision that recognised an SCMA arbitral award and set a milestone towards the pro-arbitration approach by local Courts towards foreign *ad hoc* arbitral awards.[42]

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Conclusion

Vietnam has been improving the pro-arbitration approach of local courts since the passing of the LCA in 2010.

Vietnamese arbitration law, in line with the UNCITRAL Model Law and the New York Convention, does recognise a distinction between institutional arbitration and ad hoc arbitration, with court registration for ad hoc domestic arbitral awards being an additional requirement. However, under the 2015 CPC, there is no longer any explicit distinction between foreign institutional arbitral awards and foreign ad hoc arbitral awards, meaning that the same regime of recognition, as stipulated by the provisions of the 2015 CPC, shall be applied to all foreign arbitral awards that sought for enforcement in Vietnam.

With the further development of the shipping industry and the increase in the number of maritime-related transactions concluded between Vietnamese and foreign parties, we can anticipate the increase of SCMA awards to be sought for recognition and enforcement in Vietnam soon.

It is expected that the upcoming reform of the Vietnam arbitration law and maritime code could provide additional guidelines and support towards the recognition and enforcement of foreign arbitral award in general, and particularly SCMA arbitral awards in Vietnam.

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[12] Article 3.12 of the 2010 Law on Commercial Arbitration.
[13] Decision No. 142/2005/QDPT dated 12 July 2005 of the Supreme People's Court of Hanoi.
[14] Article 1.1 of the New York Convention reads as follows: "This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, … It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought".
[15] Article 451.1 of the 2015 Civil Procedure Code.
[16] Article 452.2, 453.2 of the 2015 Civil Procedure Code.

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[26] Article 46 of the 2010 Law on Commercial Arbitration, Article 11 of Resolution No. 01/2014/NQ-HDTP.
[27] Article 47 of the 2010 Law on Commercial Arbitration, Article 11 of Resolution No. 01/2014/NQ-HDTP.
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[29] Article 44 of the 2010 Law on Commercial Arbitration, Article 10 of Resolution No. 01/2014/NQ-HDTP.
[30] Chapter XI of the 2010 Law on Commercial Arbitration.
[31] Article 66 of the 2010 Law on Commercial Arbitration.
[32] Article 3.6, 3.7 of the 2010 Law on Commercial Arbitration.
[33] Article 68.2(b) of the 2010 Law on Commercial Arbitration.
[34] Article 41 of the 2010 Law on Commercial Arbitration, Article 8 of Resolution No. 01/2014/NQ-HDTP.
[35] Article 31.2 of the 2010 Law on Commercial Arbitration.
[36] Article 35.3, 36.2 of the 2010 Law on Commercial Arbitration.
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