

# Enforcement of Arbitration Awards in Singapore

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# The Singapore Regime

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# The New York Arbitration Convention

- Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- Article III of New York Arbitration Convention
- “Each Contracting State shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in [the subsequent Articles of the New York Arbitration Convention]...”

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# Enforcement - Singapore Arbitration

- Section 19 of the IAA:

*“An award on an arbitration agreement may, by leave of the High Court or a Judge thereof be enforced in the same manner as a judgment or an order to the same effect and, where leave is so given, judgment may be entered in terms of the award”*

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# Enforcement - Foreign Arbitration: New York Convention Awards

- Section 29 of the IAA
- *“... 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.”*

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# The Process

## Procedure, Requirements and Effect

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# Process - Singapore International Arbitration

- Application to be made via originating process supported by affidavit
- May be made ex parte
- Arbitration agreement
- Duly authenticated original award
- Name and last known address of the parties
- The extent to which the award has not been complied with.

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# Process - Foreign Arbitration: New York Convention Awards

- Similar to enforcement of Singapore International Arbitration Award

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# Effect

- Once leave is granted, 14 days after service to apply to set aside award
- Same effect as Singapore judgment
- Examination of judgment debtor
- Writ of Seizure & Sale
- Garnishee proceedings
- Winding up proceedings

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# Challenges to arbitration awards

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# Challenging an Arbitration Award

- Proactive approach: Application to set aside the award
- Defensive approach: Steps to resist enforcement when application to recognize award is put in

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# The approach of the Singapore Courts

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# Setting Aside under IAA & Model Law

Section 24 IAA (in addition to grounds in Art 34(2) ML)	Article 34(2) Model Law
<ul style="list-style-type: none"><li>• Award tainted with fraud or corruption</li><li>• Breach of rules of natural justice</li></ul>	<ul style="list-style-type: none"><li>• Incapacity of party or invalid agreement</li><li>• No proper notice of arbitrator's appointment or of arbitral proceedings, or party was unable to present case</li><li>• Award is outside the scope of arbitration agreement</li><li>• Composition of tribunal not in accordance with agreement of parties</li><li>• Subject-matter of dispute incapable of settlement by arbitration (under the law of place of arbitration)</li><li>• Conflicts with public policy</li></ul>

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# Steps to Resist Enforcement of Award

Section 31(2) & (4) IAA	Art 36 of the Model Law
<ul style="list-style-type: none"><li>• Incapacity of parties or invalid agreement</li><li>• No proper notice of arbitrator's appointment or of arbitral proceedings, or party was unable to present case</li><li>• Award is outside the scope of arbitration agreement</li><li>• Composition of tribunal or arbitral procedure not in accordance with agreement</li><li>• Award not yet binding or has been set aside in the country where award was made</li><li>• Subject-matter not capable of arbitration</li><li>• Enforcement is against public policy</li></ul>	<ul style="list-style-type: none"><li>• Similar to S 31 of the IAA</li></ul>

# Differences between Setting Aside and Refusal to Enforce

- An application to set aside can only be taken at the seat of arbitration where the award was made (*PT Garuda Indonesia v Birgen Air*)
- Effect of setting aside is that the award ceases to have legal effect in the relevant jurisdiction (*AKN & Another v ALC and others and other appeal*)
  - In that regard, the court will refuse to enforce the award (s 31(2)(f) IAA & Art 36(1)(a)(v) ML)

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# Statistics

- 7 reported decisions in 2015 to set aside arbitral award
- 1 successful application
- 6 unsuccessful applications

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# AKN v ALC and Ors [2015] 3 SLR 488

- Common challenges
  - Tribunal misunderstood the case presented and therefore did not apply its mind to the actual case of the aggrieved party.
  - Tribunal did not mention the arguments raised by the aggrieved party and so must have failed to consider the latter's actual case.
  - Tribunal must have overlooked a party of the aggrieved party's case because it did not engage with the merits of that part of the latter's case.

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# AKN v ALC and Ors [2015] 3 SLR 488

- Court's view on relationship between arbitration and the courts
  - Critical foundational principle is party autonomy
  - The courts do not and must not interfere in the merits of an arbitral award, and in the process, bail out parties or offer parties a second bite at the cherry.
  - Courts have adopted a policy of minimal curial intervention in arbitral proceedings, and this is a mainstay of the Model Law and the IAA.”

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# AKN v ALC and Ors [2015] 3 SLR 488

- Court's view on relationship between arbitration and the courts
  - Grounds for curial intervention are narrowly circumscribed
  - Parties to an arbitration do not have a right to a “correct” decision from the arbitral tribunal that can be vindicated by the courts.
  - Parties only have a right to a decision that is within the ambit of their consent to have their dispute arbitrated, and that is arrived at following a fair process

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# AKN v ALC and Ors [2015] 3 SLR 488

- Rare instance where a “breach of natural justice” type application has succeeded
- The Court of Appeal’s setting aside only the affected portion of the award is a reminder that a successful “breach of natural justice” challenge does not necessarily negate the entire award.

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# Enforcement: Vessel arrest

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# Enforcement: Arrest

- Can a ship be arrested to enforce an arbitration award?

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# Enforcement: Arrest

- *Alexander G Tsavliris Sons Maritime Co v Keppel Corp Ltd* [1995] 1 SLR(R) 701
- “any claim in the nature of salvage”

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# Enforcement: Arrest

**3.—**(1) The admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims:

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;
- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) any claim for damage done by a ship;

...

- (g) any claim for loss of or damage to goods carried in a ship;
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;**
- (i) subject to section 168 of the Merchant Shipping Act (Cap. 179) (which requires salvage disputes to be determined summarily by a District Court in certain cases), any claim in the nature of salvage**

...

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# Enforcement: Arrest

- *Alexander G Tsavliris Sons Maritime Co v Keppel Corp Ltd* [1995] 1 SLR(R) 701

“If it is right that the words “in the nature of salvage” in s 3(1)(i) of the Act ought to be read as “arising out of salvage”, and in our judgment it is right, then applying the judgment in *The Saint Anna*, with which judgment we are in entire agreement, there is no doubt that this action which was brought to enforce the award is within the admiralty in rem jurisdiction and has been properly brought against the *Atlas Pride*. The agreement to refer to arbitration in London the assessment of the salvage reward or remuneration payable to the salvors arose out of the salvage of the *Atlas Pride* and the award of the arbitrator was the result of that reference.”

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# Enforcement: Arrest

- Section 3(1)(h) - any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship
- *The Bumbesti* [1999] 2 Lloyd's Rep 481

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