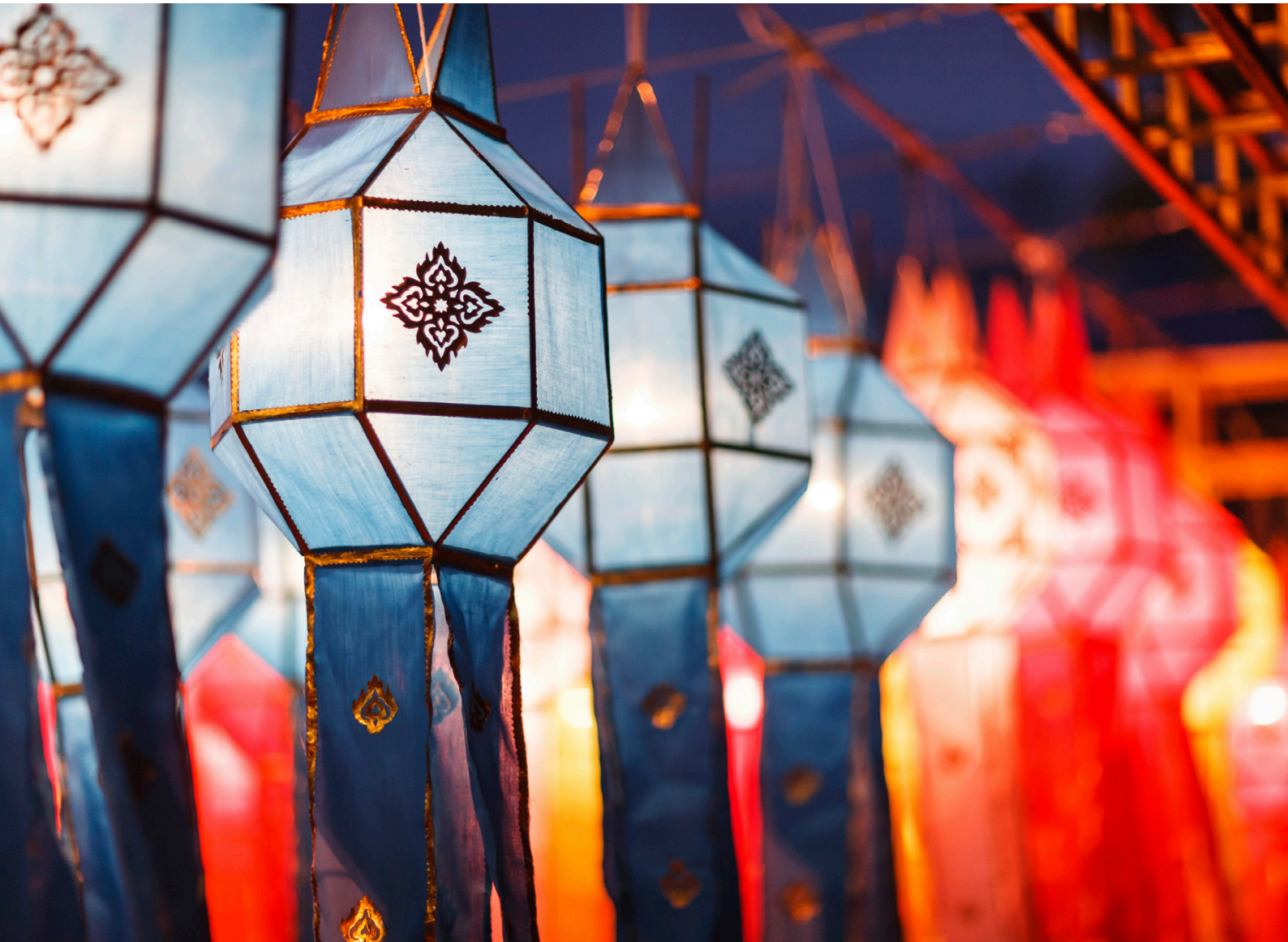
Morgan Lewis
Stamford

AN INTRODUCTORY

GUIDE TO ARBITRATION IN ASIA



Morgan Lewis
Stamford

AN INTRODUCTORY GUIDE TO ARBITRATION IN ASIA

CONTACTS

Kelvin Aw, Partner
+65.6389.3062
kelvin.aw@stamfordlaw.com.sg

Justyn Jagger, Partner
+65.6389.3019
justyn.jagger@stamfordlaw.com.sg

Lynette Chew, Partner
+65.6389.3067
lynette.chew@stamfordlaw.com.sg

Wendy Tan, Partner
+65.6389.3078
wendy.tan@stamfordlaw.com.sg

Timothy Cooke, Partner
+65.6389.3072
timothy.cooke@stamfordlaw.com.sg

TABLE OF CONTENTS

INTRODUCTION

International arbitration in Asia has seen a dramatic surge in popularity in recent times. It has grown up alongside an increase in cross-border investment within and from outside Asia. There are three key reasons for this parallel growth. First, arbitration in a neutral venue removes the perception or the risk of one party having a 'home advantage' in their domestic court; second, an award made in almost any country in Asia is enforceable in other Asian countries and most other countries in the world by reason of the *New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958*; and third, commercial parties value the confidentiality of the arbitral process to keep their disputes—and their commercial secrets—out of the public arena. And so confidence in the international arbitration process has played no small part in facilitating substantial investment into the region.

One of the most important decisions to take when drafting an arbitration agreement is the choice of the 'seat', or juridical root, of the arbitration. This determines which national court will be able to intervene in the arbitral process and when such intervention may take place. Mature arbitration jurisdictions tend to limit the supervisory powers of the court to those that promote the arbitral process and protect its integrity. This approach forms the core of the *Model Law on International Commercial Arbitration* drafted by the United Nations Commission on International Trade Law (UNCITRAL). Many countries have updated their arbitration laws to adopt this model legislation which, as a result, has been instrumental in harmonising international arbitration laws and practice.

This Guide provides an introduction to the arbitration law and practice of 14 Asian countries which have witnessed significant investment activity in recent times. Whilst not a substitute for legal advice, this Guide is intended to provide readers with answers to the most common questions concerning these countries, both as a seat of arbitration and as a jurisdiction where enforcement of a foreign award may be contemplated. This Guide is divided into chapters, one for each country covered: Cambodia, China, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Myanmar, Philippines, Singapore, Taiwan, Thailand and Vietnam.

Each chapter follows the same format. It begins with a table setting out whether the country in question is a Model Law country and whether it has ratified the New York Convention. We provide the details of the most popular arbitral institutions in use in that country, together with their current model arbitration clause. Parties can include such a clause in their contracts. Parties are, of course, not bound to use the institution listed when choosing to arbitrate in a particular country (subject to one narrow exception for Philippines construction disputes). The remainder of the chapter provides answers to the following fixed list of questions.

1. What legislation governs domestic and international arbitration?
2. What matters are considered arbitrable?
3. In what circumstances will the court stay proceedings in favour of arbitration?
4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?
5. How are appointments and challenges to the appointment of arbitrators made?
6. Who appoints the arbitral tribunal if the arbitration agreement does not provide for it?
7. What is the extent and nature of court supervision of arbitration?
8. Can an arbitral tribunal grant interim orders or relief?
9. Can an arbitral tribunal award interest?

10. Are arbitration proceedings confidential?
11. Are there any restrictions on who may represent parties in arbitration?
12. How are domestic arbitral awards enforced?
13. How and when may parties challenge arbitral awards?
14. Can foreign arbitral awards be enforced?
15. When can the courts refuse enforcement of foreign arbitral awards?

Throughout this Guide, we have referred to the UNCITRAL Model Law on International Commercial Arbitration as 'the Model Law' and the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards as the 'New York Convention'.

We hope that this Guide serves as a useful resource when you are considering whether to include an arbitration clause in your contract, where the arbitration may be seated and where enforcement of an award may ultimately take place.

Timothy Cooke
Singapore, 2015

We wish to express our thanks to the following firms who provided valuable input on some areas of local law and practice during the preparation of this Guide:

Budidjaja & Associates
The Landmark Tower B Lantai 8
No.1, Jl. Jend. Sudirman
Kota Jakarta Selatan
Daerah Khusus Ibukota
Jakarta 12910
Indonesia

Chiang & Lee Attorneys at Law
7-11F., No. 188, Sec. 5, Nanjing E. Rd.
Taipei 10571
Taiwan

DFDL
33, Street 294 (Corner Street 29)
Sangkat Tonle Bassac
Khan Chamkarmon (PO Box 7)
Phnom Penh
Cambodia

Lee & Ko
Hanjin Building
63 Namdaemun-ro
Jung-gu
Seoul 04532
Korea

Nishith Desai Associates
C-5 Defence Colony
New Delhi 110024
India

Romulo Mabanta Buenaventura Sayoc & de los Angeles
21st Floor, Philamlife Tower
8767 Paseo De Roxas
Makati City 1226, Philippines

Shearn Delamore & Co
7th Floor, Wisma Hamzah-Kwong Hing
No.1 Leboh Ampang
50100 Kuala Lumpur
Malaysia

1. CAMBODIA

Model Law	Yes
New York Convention	Yes
Arbitral institution	**National Commercial Arbitration Center** Building 65-67-69 St. 136, Sangkat Phsar Kandal I Khan Daun Penh Phnom Penh Kingdom of Cambodia
Rules	Current edition: July 2014
Model clause	'*Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity, performance or termination, shall be referred to and finally resolved by arbitration in the Kingdom of Cambodia in accordance with the Arbitration Rules of the National Commercial Arbitration Center (NCAC) being in force at the time of commencement of arbitration and by reference in this clause the NCAC Rules are deemed to be incorporated as part of this contract.* *The Tribunal shall consist of _____ * arbitrator(s).* **State an odd number.* *The language of the arbitration shall be _____.'*

1. What legislation governs domestic and international arbitration in Cambodia?

Arbitration is governed by the Law on Commercial Arbitration, passed in March 2006 ('**Law on Commercial Arbitration**'). The arbitration law is based on the Model Law. The law applies to both domestic and international arbitration. In addition, *Sub-Decree No 124 on the Organization and Functioning of the National Commercial Arbitration Center* was passed in August 2009. The sub-decree makes provision for the creation of the National Commercial Arbitration Centre ('**NCAC**'), mechanisms for the NCAC to regulate private arbitration, and the procedure for the admission of arbitrators.

2. What matters are considered arbitrable in Cambodia?

The Law on Commercial Arbitration relates to commercial disputes. The definition of commercial is derived from the Model Law and is intended to cover the widest possible range of subject matter.

3. In what circumstances will the court stay proceedings in favour of arbitration?

Article 8 of the Law on Commercial Arbitration provides that the court must stay court proceedings in favour of arbitration save where it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. In practice, there may be some variance in the application of this article as the courts develop a body of arbitration jurisprudence.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

Yes. The parties are free to choose the rules of arbitration to govern their dispute.

5. How are appointments and challenges to the appointment of arbitrators made?

The rules dealing with appointments and challenges of the arbitrators are contained in Chapter 4 of the Law on Commercial Arbitration. The parties are free to determine the number of arbitrators, so long as it is an odd number. In the absence of an agreement on the number of arbitrators, the default number of arbitrators is three. The parties are also free to determine the procedure for appointing the arbitrators. Otherwise, each party shall appoint an arbitrator and the two arbitrators so appointed shall appoint the third one.

An arbitrator may be challenged only if circumstances give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not possess the qualifications agreed to by the parties.

There are no restrictions on the qualifications or nationality of arbitrators.

6. Who appoints the arbitral tribunal if the arbitration agreement does not provide for it?

Article 19(3) of the Law on Commercial Arbitration provides a default appointment process for circumstances where the parties have not so agreed. For a tribunal with three arbitrators, each party shall appoint an arbitrator, and the third arbitrator shall be appointed by the two party-appointed arbitrators. Where a party fails to appoint an arbitrator within 30 days of a request to do so, or where the third arbitrator is not appointed by the co-arbitrators within 30 days, the appropriate court (commercial, appeal, or supreme) or NCAC shall make the appointment. For a tribunal with a sole arbitrator, the parties shall seek to agree an arbitrator, failing which the court or NCAC will make the appointment.

7. What is the extent and nature of court supervision of arbitration?

The supervisory jurisdiction of the courts is prescribed to certain narrow instances as follows. First, where a stay of court proceedings is sought on the basis that there exists an arbitration agreement between the parties encompassing the dispute that has arisen. The court may also intervene where the parties have failed to appoint one or more arbitrators, or where a party files a motion to challenge an arbitrator. The court may also assist in the taking of evidence where the arbitral tribunal, or a party with the approval of the arbitral tribunal, so requests.

8. Can an arbitral tribunal grant interim orders or relief?

Yes article 25 of the Law on Commercial Arbitration empowers an arbitral tribunal (unless the parties have provided otherwise) to order any party to take such interim measure of protection as the tribunal may consider necessary, including the provision of security.

9. Can an arbitral tribunal award interest?

Yes, although the Law on Commercial Arbitration does not make express provision for awards of interest.

10. Are arbitration proceedings confidential?

The Law on Commercial Arbitration does not expressly provide for confidentiality. However, the NCAC Rules provide that, unless otherwise agreed by the parties, all the meetings and hearings shall take place in private and shall remain confidential, and all persons involved directly or indirectly in the arbitration are bound by secrecy and cannot disclose matters excepts in exceptional circumstances.

11. Are there any restrictions on who may represent parties in arbitration?

No. Article 26 of the Law on Commercial Arbitration provides that the parties are free to choose their representatives.

12. How are domestic arbitral awards enforced in Cambodia?

Article 353 of the Code of Civil Procedures provides that an arbitration award may be enforced by making an application to the appropriate court together with supporting documentation, namely, a duly authenticated original or copy of the award and the original arbitration agreement or a duly certified copy thereof. Where the award or arbitration agreement which gave rise to the award was not made in Khmer, duly certified translations must be provided.

13. How and when may parties challenge arbitral awards made in Cambodia?

A party may apply to the court to set aside an award made in Cambodia. There is no right of appeal from the substance of the dispute. The grounds for setting an award are found in Article 44 of the Law on Commercial Arbitration. They replicate the grounds for setting aside awards in Article 34 of the Model Law.

A party has 30 days from the date of receipt of the final award to make an application to set aside an award. This is considerably shorter than the three months provided under the Model Law.

14. Can foreign arbitral awards be enforced in Cambodia?

Yes. Cambodia is a signatory to the New York Convention.

15. When can the Cambodian courts refuse enforcement of foreign arbitral awards?

The grounds on which the court may refuse recognition and enforcement of an award are set out in Article 46 of the Law on Commercial Arbitration. These grounds reflect those set out in Article 36 of the Model Law. They are as follows:

- a party to the arbitration agreement was under some incapacity;
- the arbitration agreement is not valid under the law to which the parties have subjected it or, failing, any indication by the parties, under the law of the Kingdom of Cambodia;
- the party making the application was not given proper notice of the appointment of an arbitrator(s) or of the arbitral proceedings, or was otherwise unable effectively present his case;
- the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;
- the composition of the arbitral panel 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 where the arbitration took place;
- the award has not yet become binding on the parties in the country in which, or under the law of which, that award was made, or the award has been set aside or suspended by a court in the country which the award was made;
- the subject matter of the dispute is not capable of settlement by arbitration under the law of the Kingdom of Cambodia; or
- the recognition of the award would be contrary to public policy of the Kingdom of Cambodia.

2. CHINA

Model Law	No
New York Convention	Yes
Arbitral institution	**China International Economic and Trade Arbitration Commission (CIETAC)** 6/F, CCOIC Building, No. 2 Huapichang Hutong Xicheng District Beijing, 100035 People's Republic of China Tel: +86 10 8221 7788 Fax: +86 10 6464 3500 / +86 10 82217766 Email: info@cietac.org Website: http://www.cietac.org
Current rules	CIETAC Rules 2015, which came into effect on 1 January 2015
Model clause	Option 1 *'Any dispute arising from or in connection with this Contract shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC) for arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.'* Option 2 *'Any dispute arising from or in connection with this Contract shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC)_____Sub-Commission (Arbitration Center) for arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.'*
Arbitral institution	**Shanghai International Economic and Trade Arbitration Commission/Shanghai International Arbitration Center (SHIAC)** 7/F, Jin Ling Mansion 28 Jin Ling Road (W) Shanghai 200021, People's Republic of China Tel：+86 21 6387 5588 Fax：+86 21 6387 7070 Email：info@shiac.org Website：www.shiac.org

Current rules	SHIAC Rules 2015, which came into effect on 1 January 2015
Model clause	*'Any dispute arising from or in connection with this Contract shall be submitted to Shanghai International Economic and Trade Arbitration Commission/Shanghai International Arbitration Center for Arbitration.'*
Sub-commission of SHIAC	**China (Shanghai) Pilot Free Trade Zone Court of Arbitration (FTZ Court of Arbitration)** Suite 1102-1105, Waigaoqiao Mansion 6 Jilong Road Shanghai 200131 People's Republic of China Tel: +86 21 68961702 Fax: +86 21 68961703 Email: infoftz@shiac.org
Current rules	FTZ Court of Arbitration Rules 2015, which came into effect on 1 January 2015
Model clause	*'Any dispute arising from or in connection with this Contract shall be submitted to Shanghai International Economic and Trade Arbitration Commission/Shanghai International Arbitration Center for arbitration. The arbitration shall be held in The China (Shanghai) Pilot Free Trade Zone Court of Arbitration.'*
Arbitral institution	**South China International Economic and Trade Arbitration Commission/Shenzhen Court of International Arbitration (SCIA)** 19/F, Block B, Zhongyin Building 5015 Caitian Road Futian District, Shenzhen 518026 People's Republic of China Tel：+86-755-83501700 Fax: +86-755-82468591 Email: info@scia.com.cn Website: www.scia.com.cn
Current rules	SCIA Rules 2012, which came into effect on 1 December 2012
Model clause	Option 1 *'Any dispute arising from or in connection with this contract shall be submitted to South China International Economic and Trade Arbitration Commission (SCIETAC) for arbitration.'* Option 2 *'Any dispute arising from or in connection with this contract shall be submitted to Shenzhen Court of International Arbitration (SCIA) for arbitration.'*

Arbitral institution	**Beijing International Arbitration Center/Beijing Arbitration Commission** 16/F, China Merchants Tower No.118 Jianguo Road Chaoyang District, Beijing 100022 People's Republic of China Tel: +86 10 6566 9856 Fax: +86 10 6566 8078 Email: bjac@bjac.org.cn Website: http://www.bjac.org.cn
Current rules	Beijing Arbitration Commission Arbitration Rules, which came into effect on 1 April 2015
Model clause	*'All disputes arising from or in connection with this contract shall be submitted to Beijing Arbitration Commission for arbitration in accordance with its rules of arbitration in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.'*

1. What legislation governs domestic and international arbitration in China?

The People's Republic of China Arbitration Law revised and effective as of 27 August 2009 ('**Arbitration Law**'), the People's Republic of China Civil Procedure Law revised and effective as of 31 August 2012 ('**Civil Procedure Law**') and their respective judicial interpretations apply to arbitration conducted in the mainland of the People's Republic of China (excluding the Special Administrative Regions of Hong Kong and Macau, and Taiwan). The laws and judicial interpretations apply to both domestic and international arbitration.

2. What matters are considered arbitrable in China?

The Arbitration Law states that contractual disputes and other disputes over property rights and interests may be arbitrated. Certain matters are considered not to be capable of resolution by arbitration, such as marriage, adoption of children, guardianship of minors, support and succession disputes, and administrative disputes that must be determined by administrative bodies as prescribed by law.

3. In what circumstances will the court stay proceedings in favour of arbitration?

Article 271 of the Civil Procedure Law provides that parties who have signed an arbitration agreement waive their right to bring an action in a people's court in relation to disputes covered by the arbitration agreement. Article 5 of the Arbitration Law provides that where a party to an arbitration agreement institutes an action in a people's court, jurisdiction is to be declined unless the arbitration agreement is null and void.

Article 16 of the Arbitration Law also provides that an arbitration agreement must contain an intention to arbitrate, must define the scope of disputes that are to be arbitrated, and must identify the arbitration commission chosen by the parties to administer the arbitration.

Validity of an arbitration agreement can be reviewed and determined by either the parties' chosen arbitration commission or the competent People's Court. Where one party submits the question of validity to the chosen arbitration commission and the other party submits the question to the People's Court, the latter has the prevailing right to make such determination.

Article 17 of the Arbitration Law provides that an arbitration agreement shall be declared null and void if any of the following tests is satisfied:

- the disputes concerned are non-arbitrable under the Arbitration Law;
- the arbitration agreement was signed by a party or parties suffering under an incapacity; or
- a party was coerced to sign the arbitration agreement.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

Article 16 of the Arbitration Law provides that an arbitration agreement must contain the parties' choice of arbitration commission. As a consequence, ad hoc arbitrations conducted in China may result in an award that is unenforceable in China. Enforcement may be refused on the basis that the arbitration agreement is invalid, as prescribed by Article 58 of the Arbitration Law.

It is generally recognised by arbitration commissions in China that the arbitration rules of the administering arbitration commission shall be applicable unless otherwise stipulated. It is also recognised by many commissions such as CIETAC, SHIAC and SCIC in their rules and by the Chinese courts that an institution may administer an arbitration pursuant to the UNCITRAL Arbitration Rules, rather than their own institutional rules.

5. How are appointments and challenges to the appointment of arbitrators made?

Articles 31 and 32 of the Arbitration Law make provision for the appointment of the arbitral tribunal. Where the parties have agreed to form a three-person tribunal, each party is to appoint one arbitrator, or to authorize the chairmen of the arbitration commission administering the arbitration to appoint one arbitrator. The third arbitrator, who is to be a presiding arbitrator, is to be appointed by the parties jointly or nominated by the chairman of the arbitration commission. Where parties have agreed to appoint a sole arbitrator, the arbitrator shall be appointed jointly, or by the chairman of the arbitration commission.

Where parties fail to agree on the manner of constituting the tribunal or fail to appoint the tribunal within the prescribed time limit set out in the applicable arbitration rules, the chairman of the arbitration commission is to make the appointment.

In any of the following circumstances, an arbitrator must withdraw from the arbitration, and the parties shall have the right to apply for his or her withdrawal if he or she:

Article 34 of the Arbitration Law provides that a party may apply to the chairman of the arbitration commission administering the case for the withdrawal of an arbitrator in four instances, namely where he or she:

Article 34 of the Arbitration Law provides that an arbitrator must withdraw from an arbitration in the circumstances set out below. The parties shall also have the right to apply to the chairman of the arbitration commission administering the case for the withdrawal of any arbitrator in these circumstances:

- the arbitrator is a party or a close relative of a party or of a party's representative;
- the arbitrator is involved in the case;

- the arbitrator is otherwise related to a party in the case, or to a party's agent, which could possibly affect the impartiality of the arbitration;
- the arbitrator meets a party or his or her agent in private, accepts an invitation for dinner by a party or his or her representative, or accepts gifts presented by any of them.

6. Who appoints the tribunal if the arbitration agreement does not provide for it?

Article 32 of the Arbitration Law provides that where the parties fail to decide on the composition of the arbitral tribunal, or fail to choose arbitrators within the time limit prescribed in the arbitration rules, the chairman of the relevant arbitration commission shall take the respective decision.

7. What is the extent and nature of court supervision of arbitration?

There are three areas where the Chinese courts exercise their supervisory jurisdiction over arbitration. First, they may intervene to make a ruling on the validity of an arbitration agreement when considering whether it has jurisdiction over a dispute. Second, the Chinese courts may make orders for interim measures such as the preservation of property and evidence. Finally, they may consider whether to refuse enforcement of an award.

8. Can an arbitral tribunal grant interim orders or relief?

No. The Civil Procedure Law and the Arbitration Law provide that only the Chinese courts have the power to grant interim orders including preservation of property and evidence.

9. Can an arbitral tribunal award interest?

Yes. The Arbitration Law does not preclude a tribunal from awarding interest, or any other remedies that the parties apply for, so long as these remedies are available under the substantive law of the dispute.

10. Are arbitration proceedings confidential?

Yes. Article 40 of the Arbitration Law provides that arbitrations shall be conducted in private unless the parties agree otherwise. All documents referred to or produced in the course of arbitration are deemed confidential unless otherwise agreed by the parties. Chinese law further provides that representatives maintain confidentiality relating to matters of commercial secrecy, national security, and personal privacy.

11. Are there any restrictions on who may represent parties in arbitration?

Article 29 of the Arbitration Law provides that parties may appoint lawyers or other agents to handle matters in relation to the arbitration. Although there is no apparent restriction on the appointment of representatives, and arbitration rules of certain arbitration commissions (e.g. SCIC) have explicitly permitted the appointment of foreign lawyers as representatives in

an arbitration, foreign lawyers and foreign law firms are generally prohibited from advising on Chinese law. Thus, where an arbitration concerns Chinese law, it would be prudent for Chinese counsel to be retained to work with foreign counsel to minimise the risk that an objection be taken at the enforcement of an award.

12. How are domestic arbitral awards enforced in China?

The Arbitration Law states that parties shall execute the arbitral award. If one of the parties refuses to execute the arbitral award, the other party may apply for enforcement with the People's Court according to the relevant provisions of the Civil Procedure Law.

The time limit to apply for enforcement of an award is two years. The application must be made in writing to the Intermediate People's Court either where the person against whom the application is made is located, or where the award debtor's assets are located.

Foreign awards may be enforced in accordance with the provisions of the New York Convention and the Civil Procedure Law.

13. How and when may parties challenge arbitral awards made in China?

The substance of an arbitration award may not be appealed to the Chinese courts. The courts may, however, consider whether to set aside an award or refuse enforcement of an award.

Chinese law recognises three types of arbitration awards: foreign, domestic, and foreign-related. The latter type is a domestic arbitration that takes place in China but involves a foreign element, namely, where one of the parties is foreign; where the subject matter of the contract is partly or wholly foreign (for example, it concerns sale of property outside China); or where there exist other facts relating to civil rights and obligations that occurred outside China. Domestic and foreign-related awards may be set aside by the Chinese courts. For domestic awards, an application must be made to the Intermediate People's Court at the place where the arbitration commission is based. For foreign-related awards, the application is made to the relevant People's Court where the commission is based.

An application to set aside an arbitral award must be filed within six months of the receipt of the award. The court will determine the application within two months of accepting the case.

Article 58 of the Arbitration Law sets out the grounds on which a domestic award may be set aside. The grounds are as follows:

- There is no arbitration agreement between the parties;
- The matters determined in the award fall outside the scope of the arbitration agreement or outside the jurisdiction of the arbitration commission;
- The composition of the arbitration tribunal or the arbitration procedure is not in accordance with the law;
- The evidence on which the award is based is found to have been falsified;
- The other party concealed evidence which is sufficient to affect the impartiality of the award;
- The arbitral tribunal demanded or accepted bribes, committed graft, or perverted the law in making the arbitral award;
- The award is contrary to social and public interests.

For foreign-related awards, the grounds are found in Article 70 of the Arbitration Law and Article 274 of the Civil Procedure Law, including:

- There is no arbitration agreement between the parties;

- The defendant is not duly notified of the appointment of the arbitrators or the arbitration proceeding, or the defendant fails to express his defence due to reasons for which he is not held responsible;
- The matters determined in the award fall outside the scope of the arbitration agreement or outside the jurisdiction of the arbitration commission;
- The composition of the arbitration tribunal or the arbitration procedure is not in accordance with the arbitration rules;
- The award is contrary to social and public interests.

14. Can foreign arbitral awards be enforced in China?

Yes. China acceded to the New York Convention in 1987, permitting enforcement of awards from any other New York Convention state. If the award is rendered in a state that is not party to the New York Convention, the competent People's Court will resort to the principle of reciprocity. In practice, this restricts the chances of enforcement of the foreign award. If the award is rendered in a country that has entered into a bilateral investment treaty with China which contains a specific enforcement mechanism, that mechanism will be followed. If the award is rendered in Hong Kong, Macau, or Taiwan, the People's Court will rely on, respectively, the rules regarding mutual recognition and enforcement of arbitral awards promulgated by the Supreme People's Court to review and decide whether to enforce an arbitral award.

15. When can the Chinese courts refuse enforcement of foreign arbitral awards?

Pursuant to the principle of reciprocity, only those awards rendered in another New York Convention state or in countries with which China has a bilateral treaty can be recognised and enforced.

The Chinese courts may refuse an application for enforcement of arbitration awards on any of the grounds for non-enforcement contained in Article V of the New York Convention.

3. HONG KONG

Model Law	Yes
New York Convention	Yes
Arbitral institution	**Hong Kong International Arbitration Centre (HKIAC)** 38th Floor Two Exchange Square 8 Connaught Place Hong Kong S.A.R. China Tel: +852 2525-2381 Fax: +852 2524-2171 Email: sg@hkiac.org
Current rules	HKIAC Administered Arbitration Rules
Model clause	*'Any dispute, controversy, difference or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted.* **The law of this arbitration clause shall be ... (Hong Kong law).* *The seat of arbitration shall be ...(Hong Kong).* ***The number of arbitrators shall be ... (one or three). The arbitration proceedings shall be conducted in ...(insert language).'* <u>Note:</u> *Optional. This provision should be included particularly where the law of the substantive contract and the law of the seat are different. The law of the arbitration clause potentially governs matters including the formation, existence, scope, validity, legality, interpretation, termination, effects and enforceability of the arbitration clause and identities of the parties to the arbitration clause. It does not replace the law governing the substantive contract. **Optional

1. What legislation governs domestic and international arbitration in Hong Kong?

Arbitration in Hong Kong is governed by the Hong Kong Arbitration Ordinance (Cap. 609) ('**Arbitration Ordinance**'), which came into effect on 1 June 2011. The Arbitration Ordinance prescribes a single regime for both foreign and domestic arbitration based on the Model Law.

2. What matters are considered arbitrable in Hong Kong?

Hong Kong law provides that any dispute or difference in respect of a defined legal relationship may be referred to arbitration, such as those arising from contracts, torts, or other forms of legal relationship. Some matters are considered non-arbitrable, such as those involving criminal offences, intellectual property disputes, competition, and anti-trust cases and family law-related matters.

3. In what circumstances will the court stay proceedings in favour of arbitration?

Section 20 of the Arbitration Ordinance adopts Article 8 of the Model Law and provides that the court shall order a stay of court proceedings which have been commenced concerning a dispute that parties have agreed to resolve by arbitration unless the arbitration agreement is found to be null and void, inoperative, or incapable of being performed.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

Yes. Parties are free to arbitrate on an ad hoc basis pursuant to rules such as the UNCITRAL Arbitration Rules. Where the parties have not identified any procedural rules to govern the arbitration, the arbitral tribunal will proceed on the basis of the default procedural rules set out in the Arbitration Ordinance.

5. How are appointments and challenges to the appointment of arbitrators made?

There are no restrictions on the parties' freedom to choose arbitrators. Parties are free to choose the number of arbitrators. Arbitrators are not required to hold any minimum qualifications, unless the parties have agreed otherwise.

An arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to the arbitrator's impartiality and independence, or if he or she does not possess the qualifications agreed upon by the parties.

Section 26(1) of the Arbitration Ordinance provides that the parties are free to agree on a procedure for challenging an arbitrator. Where the parties have not made such an agreement, the arbitral tribunal shall decide on the challenge. Where the tribunal rejects the challenge, the challenging party may apply to the Court of First Instance to rule on the challenge.

6. Who appoints the tribunal if the arbitration agreement does not provide for it?

In the absence of agreement by the parties, the Hong Kong International Arbitration Centre will appoint the arbitral tribunal.

7. What is the extent and nature of court supervision of arbitration?

Hong Kong adopts a policy of minimal curial intervention. The courts will intervene to assist the arbitral process in limited circumstances, such as to stay court proceedings in favour of arbitration, to determine certain challenges of arbitrators, to terminate an arbitrator's mandate where the arbitrator is unable to perform his or her functions, to determine the jurisdiction of the tribunal, and to set aside awards.

8. Can an arbitral tribunal grant interim orders or relief?

Yes. Section 35 of the Arbitration Ordinance empowers a tribunal to grant a wide range of interim measures. Section 61 of the Arbitration Ordinance provides that interim measures ordered by an arbitral tribunal (whether it is made in or outside Hong Kong) are, with leave of the court, enforceable in the same manner as an order or direction of the court that has the same effect.

9. Can an arbitral tribunal award interest?

Yes. Under the Arbitration Ordinance, an arbitral tribunal can award any remedy or relief that could have been ordered in civil proceedings by the Hong Kong courts, including interest.

10. Are arbitration proceedings confidential?

Yes. Section 18(1) of the Arbitration Ordinance provides that '*unless otherwise agreed by the parties, no party may publish, disclose or communicate any information relating to the arbitral proceedings under the arbitration agreement or an award made in those arbitral proceedings*'. Some exceptions to this principle of confidentiality have been developed by the courts such as when a party is obliged by the law to disclose information.

11. Are there any restrictions on who may represent parties in arbitration?

No. Parties are free to choose any representatives to act for them in arbitration. Section 63 of the Arbitration Ordinance expressly provides that certain provisions of the Legal Practitioners Ordinance concerning lawful practice in Hong Kong as a barrister or solicitor do not apply to arbitration proceedings and any related advice and preparation of documents.

12. How are domestic arbitral awards enforced in Hong Kong?

Section 84 of the Arbitration Ordinance provides that domestic and foreign arbitral awards are enforceable in the same manner as a judgment of the Court of First Instance, provided that leave is granted by the court. If leave is granted, the Court of First Instance may render a judgment in terms of the award.

13. How and when may parties challenge arbitral awards made in Hong Kong?

Arbitral awards are final and binding, and may not be appealed to court. A party may, however, set aside an award on an application to court, if one of a limited and exhaustive set of grounds is made out. These grounds mirror those found in Article V of the New York Convention, set out in the answer to Question 15 below.

14. Can foreign arbitral awards be enforced in Hong Kong?

Yes. Hong Kong is party to the New York Convention permitting enforcement of awards made in other states that are also signatories to the Convention. In the case of an award made in a state that is not a signatory to the New York Convention, the courts have wider grounds to refuse enforcement.

Awards made in mainland China are enforceable pursuant to the *Arrangement Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and the Hong Kong Special Administrative Region* (21 June 1999). The grounds in this arrangement mirror those in the New York Convention save that Hong Kong may not enforce an award made in mainland China if an application for enforcement of the award has been made in mainland China.

15. When can the Hong Kong courts refuse enforcement of foreign arbitral awards?

Recognition and enforcement of foreign awards may only be refused when one of the grounds set out in Article V of the New York Convention is made out. Thus, enforcement may be refused in the following circumstances:

- The parties to the arbitration agreement did not have the capacity to sign the agreement in accordance with the applicable law of each party;
- The arbitration agreement is unenforceable or invalid in accordance with the governing law, or the laws of the country in which the award was made if the arbitration agreement does not stipulate the governing law;
- The individual, body, or organisation against which enforcement is sought was not properly notified of the appointment of the arbitrator or the procedures for resolving the dispute by foreign arbitration, or had reasonable cause for failing to exercise his, her, or its right to participate in the proceedings;
- The foreign arbitral award was issued in respect of a dispute which was not referred to arbitration by the parties, or exceeds the scope of the request of the parties. If it is possible to sever the arbitration award, that portion which was correctly referred to arbitration by the parties should, however, be recognised and enforced in Hong Kong;
- The composition of the foreign arbitration tribunal, or the foreign arbitration procedure, was inconsistent with the arbitration agreement or the laws of the country in which the

foreign arbitral award was made, in cases where such matters are not stipulated in the arbitration agreement;

- The foreign arbitral award is not yet enforceable or binding on the parties;
- The foreign arbitral award has been set aside or suspended by a competent body of the country in which the foreign arbitral award was made, or of the country whose law governs the arbitration agreement; or
- The court concludes that the relevant dispute cannot be resolved by arbitration in accordance with the laws of Hong Kong; or the recognition and enforcement of the foreign arbitral award is contrary to the fundamental principles of the laws of Hong Kong.

4. INDIA

Model Law	Yes
New York Convention	Yes
Arbitral institution	**LCIA India** 301-A World Trade Tower Barakhamba Lane New Delhi 110001 Telephone: +91 11 4536 2222 Facsimile: +91 11 4536 2299 Email: info@lcia-india.org Web: www.lcia-india.org
Current rules	LCIA India Arbitration Rules (in effect from 17 April 2010)
Model clause	*'Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA India Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause.* *The number of arbitrators shall be [one/three].* *The seat, or legal place, of arbitration shall be [City and/or Country].* *The language to be used in the arbitration shall be [ ].* *The governing law of the contract shall be the substantive law of [ ].'*
Arbitral institution	**Singapore International Arbitration Centre, India Office** 1008, The Hub One Indiabulls Centre 10th Floor, Tower 2B Senapati Bapat Marg Elphinstone Road Mumbai 400 013 India

	Tel: +91 22 6189 9806 (Main) Tel: +91 22 6189 9841 (Direct) Fax: +91 22 4332 7600 Email: corpcomms@siac.org.sg
Current rules	Arbitration Rules of the Singapore International Arbitration Centre (Fifth Edition, 1 April 2013)
Model clause	*'Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ('SIAC') in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ('SIAC Rules') for the time being in force, which rules are deemed to be incorporated by reference in this clause.* *The seat of the arbitration shall be [Singapore].** *The Tribunal shall consist of _____** arbitrator(s).* *The language of the arbitration shall be _____.* *Parties should specify the seat of arbitration of their choice. If parties wish to select an alternative seat to Singapore, please replace [Singapore] with the city and country of choice. **State an odd number, either state one or state three.'

1. What legislation governs domestic and international arbitration in India?

Arbitration in India is governed by the Arbitration and Conciliation Act, 1996 ('**Arbitration Act**'). It is based largely on the Model Law. Part I of the Arbitration Act applies to domestic arbitrations seated in India and Part II relates to the enforcement of certain foreign awards, such as awards under the New York Convention—to which India is a party—and the Convention on the Execution of Foreign Awards, 1923 ('**Geneva Convention**').

2. Does Indian law consider all matters to be arbitrable?

The Arbitration Act does not specifically exclude any category of dispute as being non-arbitrable. However, an award will be set aside if the court finds that the subject matter of the dispute is not capable of settlement by arbitration under the laws currently in force, or if the award conflicts with Indian public policy.

Where a dispute is non-arbitrable, the court where a suit is pending will refuse to refer the parties to arbitration, even if the parties have agreed upon arbitration as the forum for settlement of that dispute. Disputes that are non-arbitrable include:

- disputes relating to rights and liabilities which give rise to, or arise out of, criminal offences;
- matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights and child custody;
- guardianship matters;
- insolvency and winding up matters;
- testamentary matters (grant of probate, letters of administration and succession certificate); and
- eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and where specified courts are conferred jurisdiction to grant an eviction or decide such matters.

3. In what circumstances will the court stay proceedings in favour of arbitration?

The courts will stay proceedings pending before it in favour of arbitration upon an application filed under Sections 8 and 45 of the Arbitration Act (both domestic and international commercial arbitrations) if there exists a valid arbitration agreement between the parties, if the dispute falls within the scope of the arbitration agreement, and if the arbitrator is competent or empowered to decide it.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

The courts will uphold an arbitration agreement, including those providing for ad hoc rather than administered proceedings, so long as it evidences an intention by the parties to resolve their dispute by arbitration. The Arbitration Act supplies a default procedure where the parties have not indicated what procedural rules are to apply.

5. How are appointments and challenges to the appointment of arbitrators made?

Chapter III of Part I of the Act relates to the composition of the arbitral tribunal. The parties to a dispute are free to determine the number of arbitrators, as long as it is not an even number. If the parties do not specify the number, the arbitration will be conducted by a sole arbitrator. The parties are free to agree on the procedure to appoint an arbitrator.

An arbitrator can be challenged if justifiable doubts arise as to his or her independence or impartiality or if they do not possess the qualifications agreed to by the parties. A party can only challenge an appointment it has made (or in which it participated) if it becomes aware of these grounds after the appointment was made.

The parties may agree on a procedure for challenging the appointment of an arbitrator. In the absence of such a procedure, a party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances giving rise to the challenge, send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the arbitrator challenged withdraws from his or her office or the other party agrees to the challenge, the arbitral tribunal shall decide on the

challenge. If the challenge is not successful, the arbitration will continue and the tribunal will make an award. Where an award is made, the party challenging the arbitrator may make an application to set aside such an award in accordance with and in the manner provided in the Act.

6. Who appoints the tribunal if the arbitration agreement does not provide for it?

In the absence of an agreement by the parties, the following procedure shall be adopted. If a sole arbitrator is to be appointed and the parties are unable to agree on the appointment, the arbitrator shall, in international commercial arbitrations, be appointed by the Chief Justice of India or, in domestic arbitrations, the High Court, or any person or institution designated by him.

If three arbitrators are to be appointed, each party shall appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator. If a party fails to appoint an arbitrator within 30 days, the appointment of the arbitrator shall be made by the Chief Justice of India or the High Court, or any person or institution designated by him.

7. What is the extent and nature of court supervision of arbitration?

For arbitrations seated in India, under the Arbitration Act, a court may not intervene in an arbitration proceeding except on application by either of the parties under the following circumstances:

- Application for dispute to be referred to arbitration under Sections 8 and 45;
- Application for interim measures under Section 9;
- Application for court to appoint arbitrator under Section 10;
- Application challenging the appointment of an arbitrator under Section 13;
- Application to determine the termination of mandate of an arbitrator under Section 14;
- Application for assistance in taking evidence under Section 27;
- Application to set aside an arbitral award under Section 34;
- Enforcement of an award under Section 36;
- Appeals from certain orders of a court under Section 37;
- Application to order the tribunal to deliver an award to an applicant on payment to the court under Section 39;
- Application for a determination of jurisdiction under Section 42;
- Extension of time periods under Section 43.

8. Can an arbitral tribunal grant interim orders or relief?

Yes. Section 17 of the Arbitration Act provides that, unless otherwise agreed by the parties, the arbitral tribunal may order interim measures of protection as it considers necessary in respect of the subject matter of the dispute. The arbitral tribunal may also require a party to provide appropriate security in connection with any interim measure ordered. However, it should be noted that the court has no power to enforce such interim orders.

9. Can an arbitral tribunal award interest?

Yes. Section 31(7) of the Arbitration Act empowers an arbitral tribunal to award interest at such rate as it deems reasonable, unless otherwise agreed by the parties. The principal sum awarded in a final award will carry interest at 18 per cent per annum from the date of award to the date of payment.

10. Are arbitration proceedings confidential?

Under the Arbitration Act, there is no express or implied obligation to treat an arbitration agreement, any proceedings arising from it, or the award as confidential.

11. Are there any restrictions on who may represent parties in arbitration?

The Arbitration Act does not impose any restrictions on the representation of parties in arbitration proceedings.

12. How are domestic arbitral awards enforced in India?

Domestic awards shall be enforced under the Code of Civil Procedure in the same manner as if the award were a decree of the court. Such enforcement can only be refused on the grounds specified in the code.

Foreign awards may be enforced in the same manner as a decree of the court. The party applying for enforcement must produce the original award or an authenticated copy, the original agreement or an authenticated copy, and evidence necessary to prove that it is a foreign award. If the award is in a foreign language, the party must produce a certified English translation.

13. How and when may parties challenge arbitral awards made in India?

There is no appeal from arbitral awards made in India. A domestic award may only be set aside by the courts upon application by a party. Any such application must be made within three months from the date on which the party making that application had received the arbitral award. The grounds for a court to set aside an award are as follows:

- The parties were under some incapacity or the agreement was not valid under the law of the country where the award was made or that the agreement was subject to;
- The party against whom the award is invoked was not given proper notice as required;
- The award deals with a difference not contemplated by the submission to arbitration;
- The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties;
- The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country under the law of which that award was made;
- The subject matter of the dispute is not capable of being settled under the laws of India;
- The enforcement of the award would be contrary to the public policy of India.

14. Can foreign arbitral awards be enforced in India?

Yes. The procedure governing the enforcement of New York Convention awards is set out in Chapter I Part II of the Arbitration Act.

15. When can the Indian courts refuse enforcement of foreign arbitral awards?

Under Section 48, the enforcement of a foreign award may be refused on the following grounds:

- The parties were under some incapacity or the agreement was not valid under the law of the country where the award was made or that the agreement was subject to;
- The party against whom the award is invoked was not given proper notice as required;
- The award deals with a difference not contemplated by the submission to arbitration;
- The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties;
- The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country under the law of which that award was made;
- The subject matter of the dispute is not capable of being settled under the laws of India;
- The enforcement of the award would be contrary to the public policy of India.

5. INDONESIA

Model Law	No
New York Convention	Yes
Arbitral institution	**Badan Arbitrase Nasional Indonesia (BANI)** Jakarta Office Wahana Graha Lt. 1&2, Jl. Mampang Prapatan No. 2, Jakarta 12760 Email: bani-arb@indo.net.id Website: www.baniarbitration.org
Model clause	*'All disputes arising from this contract shall be binding and be finally settled under the administrative and procedural Rules of Arbitration of Badan Arbitrase Nasional Indonesia (BANI) by arbitrators appointed in accordance with said rules'.*
Arbitral institution	**Badan Arbitrase Pasar Modal Indonesia (BAPMI)** Indonesia Stock Exchange Building, Tower 1, 28th Floor, Suite 2805, Jl. Jend. Sudirman kavling 52-53 Jakarta, Indonesia Email: sekretariat@scbd.net.id Website: http://www.bapmi.org Tel: +62-21 515 0480, Fax: +62-21 515 0429
Model clause	*'Any dispute arising out of and/or in connection with this Agreement and/or performance of this Agreement, regarding either a breach or tort, including termination and/or validity of this Agreement, shall be resolved and decided through BAPMI's Arbitration in Jakarta, in an Arbitral Tribunal consisting of three (3) Arbitrators, based on BAPMI's Rules, and final and binding Arbitration Award.'*
Arbitral institution	**Badan Arbitrase Syariah Nasional Basyarnas (BASYARNAS)** A copy of the BASYARNAS arbitration rules may be obtained by sending an email request to basyarnas-pusat@commerce.net.id.

1. What legislation governs domestic and international arbitration in Indonesia?

Law No. 30/1999 on Arbitration and Alternative Dispute Resolution ('**Arbitration Law**') governs arbitration in Indonesia. This law does not adopt the Model Law. The Arbitration Law defines an international arbitral award as an award rendered by an arbitral institution or an individual arbitrator outside the jurisdiction of the Republic of Indonesia, or an award that, under the provisions of the law of the Republic of Indonesia, is considered an international arbitral award. To date there is no other provision of Indonesian law that expands on the definition of 'international arbitral award'.

Indonesia is a signatory to the New York Convention and has exercised the reciprocity and commerciality reservations.

2. What matters are considered arbitrable in Indonesia?

Only disputes of a commercial nature and those concerning rights which, under the law and regulations, fall within the full legal authority of the disputing parties may be settled through arbitration. It is generally accepted that disputes in the following sectors are commercial: commerce, banking, finance, capital investment, industry, and intellectual property. Disputes which may not be resolved by arbitration are disputes where, according to regulations having the force of law, no amicable settlement is possible.

3. In what circumstances will the court stay proceedings in favour of arbitration?

Articles 3 and 11 of the Arbitration Law provide that the courts have no jurisdiction to determine a dispute where the parties have agreed to settle the dispute by arbitration. Where a party seeks to resolve such a dispute in court, the court must refrain from hearing the case.

A party may apply to court where it challenges or seeks the appointment of an arbitrator.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

Yes. The parties may refer their dispute to ad hoc arbitration. In the absence of a procedural set of rules, the default rules set out in the Arbitration Law will apply.

5. How are appointments and challenges to the appointment of arbitrators made?

There are statutory limitations to the parties' autonomy to select arbitrators. Pursuant to Article 12 of the Arbitration Law:

"(1) The parties who may be appointed or designated as arbitrators must meet the following requirements:

Being authorized or competent to perform legal actions;

Being at least 35 years of age;

Having no family relationship by blood or marriage, to the third degree, with either of the disputing parties;

Having no financial or other interest in the arbitration award; and

Having at least 15 years experience and active mastery in the field.

(2) Judges, prosecutors, clerks of courts, and other government or court officials may not be appointed or designated as arbitrators.'

Article 22 of the Arbitration Law provides that a party may challenge an arbitrator if there is sufficient cause and evidence to give rise to doubt the arbitrator's independence or that he or she will be biased in rendering an award. An arbitrator may also be challenged if it is proven that the arbitrator has any familial, financial, or employment relationship with one of the parties or their legal representatives. A party's challenge of an arbitral appointment shall be made to the tribunal, save where the arbitrator was appointed by the President of a District Court in which the application is to be made to the District Court in question. Where a challenge is rejected, the party making the application may submit its challenge to the Chief Judge of the District Court, whose decision shall be final.

6. Who appoints the tribunal if the arbitration agreement does not provide for it?

Article 13 of the Arbitration Law provides that in the absence of agreement for the process of appointment in the arbitration agreement or institutional rules, any party may apply to court to make the appointment.

7. What is the extent and nature of court supervision of arbitration?

The courts have limited supervisory jurisdiction over arbitrations held in Indonesia. They may be involved at a number of stages. First, where the parties have agreed to arbitrate their dispute but one of them seeks to commence proceedings in court, the court must enforce the arbitration agreement and refuse jurisdiction to hear the case. Second, it remains unclear whether courts may enforce orders of a tribunal that are not final awards, such as orders for interim relief. The prevailing view is that the court will not enforce such orders. Finally, the court may enforce or annul a final award made by an arbitral tribunal.

8. Can an arbitral tribunal grant interim orders or relief?

Yes. Article 32 of the Arbitration Law provides that at the request of one of the parties, the arbitrator or arbitration tribunal may make a provisional award or other interlocutory decision to regulate the manner of running the examination of the dispute, including decreeing a security attachment or ordering the deposit of goods with third parties, or the sale of perishable goods.

Although a tribunal can grant such relief, it has no power to execute such orders. Furthermore, the courts are empowered by article 64 of the Arbitration Law only to enforce judgments and awards that are final and binding.

9. Can an arbitral tribunal award interest?

Yes. Interest may be awarded if it is provided for in the underlying contract, or if mandated by the governing law if such law is not Indonesian law. If interest is payable but no interest rate has been agreed upon or so mandated, the statutory rate of six per cent per annum (not compounded) will be applied. If no interest has been agreed upon by the parties, the tribunal may award interest at the statutory rate for the duration between the time the award is ordered to be satisfied until actual payment.

10. Are arbitration proceedings confidential?

Although confidentiality of arbitration is not expressly prescribed in the Arbitration Law, its elucidation provides that, since awards are not published, the confidentiality that confers is an advantage of arbitration. Further, under the Arbitration Law, all dispute examinations by the arbitral tribunal are carried out in a session closed to the public to ensure confidentiality.

The BANI Arbitration Rules expressly provide that all proceedings must be closed to the public and that all matters related to the arbitration, including documents, reports or notes sessions, the testimony of witnesses, and awards, are to be kept in strict confidence among the parties, the arbitrators, and BANI, except to the extent required by law or as otherwise agreed by all parties to the dispute.

11. Are there any restrictions on who may represent parties in arbitration?

No. Any person may represent a party in arbitration so long as they are authorised by a power of attorney. Foreign counsel may therefore appear on behalf of any party.

It should be noted that the arbitration rules of BANI require that Indonesian counsel must accompany any foreign counsel if Indonesian law governs the merits of the dispute. This is not a requirement of Indonesia's arbitration law.

12. How are domestic arbitral awards enforced in Indonesia?

Before a party can enforce an award, it must register the award with the court. The arbitrators or their duly authorised representatives must register the award. This is typically done by the tribunal providing a power of attorney to the parties to register the award on its behalf.

When seeking to execute an award, the successful party must demonstrate that the nature of the dispute and the agreement to arbitrate meet certain requirements set out in the Arbitration Law. The dispute must be of a commercial nature and fall within the authority of the parties to settle. The arbitration clause must be in writing and signed by the parties. Finally, the award itself must not be contrary to public morality and order.

13. How and when may parties challenge arbitral awards made in Indonesia?

There is no appeal to the courts in relation to the substance of an arbitration award. However, an award may be annulled on limited grounds, namely where a party finds subsequently that letters or documents submitted in the arbitration are false (or they are declared to be false); where it is subsequently discovered that the other party concealed decisive documents; or where the award is issued as a result of fraud by one of the parties.

Any application for annulment must be submitted within 30 days of registration of the award. The court will render its decision within 30 days of filing. The court's decision may be appealed to the Supreme Court.

14. Can foreign arbitral awards be enforced in Indonesia?

Yes. International awards may be enforced in the same manner as domestic awards. The award must be registered by the tribunal, or its duly authorised representative, at the Central Jakarta District Court. There is no time limit for registration of international awards. The party

seeking to enforce an award must then make an application for exequatur to give the award the same status as a court judgment.

The successful party may then apply for a writ of execution in the court of the district where the losing party is domiciled. Once a writ is obtained, the losing party's assets may be sold to recover the amount owing to the successful party under the award.

15. When can the Indonesian courts refuse enforcement of foreign arbitral awards?

The grounds for refusing enforcement are limited. International awards are enforceable in Indonesia unless (i) the award is rendered in a state which is not bound by a bilateral or multilateral convention or treaty on the recognition and enforcement of foreign arbitral awards under which Indonesia is bound; (ii) the legal relationship on which the award was based cannot be considered to be commercial under Indonesian law; or (iii) the recognition or enforcement of the award would be contrary to public policy.

6. JAPAN

Model Law	Yes
New York Convention	Yes
Arbitral institution	**Japan Commercial Arbitration Association (JCAA)** 3rd Floor, Hirose Building, 3-17, Kanda Nishiki-cho, Chiyoda-ku, Tokyo 101-0054 Japan Tel: +03 5280 5161 Fax: +03 5280 5160
Current rules	JCAA Commercial Arbitration Rules (1 February 2014)
Model clause	*'All disputes, controversies or differences which may arise between the parties hereto, out of or in relation to or in connection with this Agreement shall be finally settled by arbitration in (name of city) in accordance with the Commercial Arbitration Rules of the Japan Commercial Arbitration Association.'*

1. What legislation governs domestic and international arbitration in Japan?

The Japanese Arbitration Act ('**Arbitration Act**') applies to all arbitrations in Japan. It is based on the Model Law but departs from it in a number of instances to cater for all types of arbitration and not just commercial arbitration. Japan has not adopted the 2006 Amendments to the Model Law as they relate to interim measures.

The Arbitration Act applies to all arbitrations seated in Japan. It does not differentiate between domestic and international arbitrations.

2. What matters are considered arbitrable in Japan?

Article 13(1) of the Arbitration Act provides that only civil disputes (excluding divorce and separation) may be settled through arbitration. Separate specific provisions are made for labour law and consumer law.

3. In what circumstances will the court stay proceedings in favour of arbitration?

The Japanese national courts will dismiss a claim where it is covered by a valid arbitration agreement. However, Article 14(1) of the Arbitration Act provides that this rule does not apply

(i) where the arbitration agreement is null and void, cancelled, or for other reasons deemed invalid; (ii) when arbitration proceedings are inoperative or incapable of being performed; or (iii) when the request for dismissal is made by the defendant after presentation of its case or in the preparations for argument in the proceedings on the substance of the dispute.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

Yes. Article 26(1) of the Arbitration Act provides that there are no restrictions on the arbitral procedure that the parties may adopt, save that those procedures must not violate public policy.

5. How are appointments and challenges to the appointment of arbitrators made?

Article 16 of the Arbitration Act concerns the appointment of the tribunal. The parties are free to determine the number of arbitrators and the procedure for their appointment. The parties may also, if they wish, specify certain qualifications that an arbitrator must possess. The default number of arbitrators is three, save that where there are more than two parties, any party may apply to court for an order specifying the number of arbitrators.

Article 18 of the Arbitration Act sets out the grounds for challenging an arbitrator, namely, where the arbitrator does not possess the qualifications agreed upon by the parties, or circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

Unless the parties have agreed otherwise, the party challenging an arbitrator must submit its application to the tribunal itself. If the tribunal rejects the application, the party may file a petition in court to remove the arbitrator. A party may also apply to court directly to challenge an arbitrator where it is alleged that the arbitrator is unable to perform his or her duties or where he or she has delayed conducting the arbitration.

6. Who appoints the tribunal if the arbitration agreement does not provide for it?

In the absence of agreement by the parties, the provisions in Article 17 of the Arbitration Act apply. In the event of a sole arbitrator, the appointment shall be made by the court. Where the tribunal is to consist of three persons, each party shall appoint one arbitrator and the two so appointed are to appoint the third. If one party fails to name an arbitrator within 30 days from a request by the other party, or if both arbitrators named by the parties do not agree on the third arbitrator within 30 days from their designation, the court shall appoint the third arbitrator.

Where the court appoints an arbitrator, it will have regard to any qualifications stipulated by the parties in the arbitration agreement, the impartiality and independence of the appointees and, in the case of a sole arbitrator (or where the two arbitrators appointed by the parties are to appoint the third arbitrator), whether it would be appropriate to appoint an arbitrator of a nationality other than those of the parties.

7. What is the extent and nature of court supervision of arbitration?

Save where expressly provided in the Arbitration Act, the courts are not permitted to intervene in arbitration proceedings. The key exceptions relate to the appointment of arbitrators,

challenge or removal of an arbitrator, a determination on the jurisdiction of the arbitral tribunal, the taking of evidence, and the setting aside and enforcement of awards.

8. Can an arbitral tribunal grant interim orders or relief?

Yes. Article 24 of the Arbitration Act provides that a tribunal may order a party to take interim measures of protection and provide sufficient security, unless otherwise agreed by the parties. This power does not preclude a party's right to apply to court for interim measures, which right is preserved by Article 15 of the Arbitration Act.

9. Can an arbitral tribunal award interest?

Yes. Interest may be awarded if it is provided for in the underlying contract or if mandated by the governing law, unless it is in violation of public policy.

10. Are arbitration proceedings confidential?

Japanese law does not expressly provide for confidentiality of arbitration proceedings. However, many institutional rules impose duties of confidentiality upon the parties.

11. Are there any restrictions on who may represent parties in arbitration?

No. There is no restriction on foreign lawyers acting for parties in arbitration proceedings in Japan. Further, foreign lawyers who are admitted to practice in Japan are permitted to represent parties in arbitration proceedings.

12. How are domestic arbitral awards enforced in Japan?

A party applying to enforce an arbitration award must provide with its application a certified copy of the award and a Japanese translation if the award is in a language other than Japanese.

13. How and when may parties challenge arbitral awards made in Japan?

An arbitral award is final and binding upon the parties and may not be appealed. A party's only recourse against an award is to apply to set it aside or resist its enforcement. The application must be made within three months from receipt of the award.

The grounds for setting aside an award are set out in Article 44 of the Arbitration Act. They mirror the grounds set out in Article 45 on which a court may refuse to enforce an award, which are as follows:

- The arbitration agreement is not valid due to limits to a party's capacity, or for some other reason under the law to which the parties have subjected it (or failing any indication thereof, under Japanese law).
- The party making the application was not given notice of the appointment of the arbitral tribunal or of the proceedings as required by Japanese law or as agreed by the parties (save where such agreement conflicts with public policy).
- The party making the application was unable to present its case in the arbitration.

- The arbitral award contains decisions on matters beyond the scope of the arbitration agreement or the claims in the arbitral proceedings.
- The composition of the arbitral tribunal or the conduct of the arbitral proceedings was not in accordance with Japanese law or as agreed by the parties (save where such agreement conflicts with public policy).
- The claims in the arbitration are not capable of settlement by arbitration under Japanese law.
- The award is in conflict with the public policy or good morals of Japan.

14. Can foreign arbitral awards be enforced in Japan?

Yes. Japan is a signatory to the New York Convention. As such, a foreign award rendered in a New York Convention signatory state may be enforced in Japan.

15. When can the Japanese courts refuse enforcement of foreign arbitral awards?

The party against whom enforcement is sought may resist enforcement on any of the grounds set out in Article 45 of the Arbitration Act, as set out above in response to Question 12. These grounds are taken from the New York Convention.

7. SOUTH KOREA

Model Law	Yes
New York Convention	Yes
Arbitral institution	**Korean Commercial Arbitration Board (KCAB)** Samseong-dong, Trade Tower 43rd Floor, 511, Yeongdong-daero Gangnam-gu, Seoul 06164 Republic of Korea Tel : +82-2-551-2021 Fax : +82-2-551-2020 Email: mhlee@kcab.or.kr
Current rules	Rules of International Arbitration of the Korean Commercial Arbitration Board 2011
Model clause	*'Any disputes arising out of or in connection with this contract shall be finally settled by arbitration in Seoul in accordance with the International Arbitration Rules of the Korean Commercial Arbitration Board.* *The number of arbitrators shall be [one / three]. The seat, or legal place, of arbitral proceedings shall be [city / country]. The language to be used in the arbitral proceedings shall be [language].'*

1. What legislation governs domestic and international arbitration in Korea?

The Korean Arbitration Act ('**Arbitration Act**') governs domestic and international arbitration seated in Korea. It applies to both institutional and ad hoc arbitrations in Korea. The arbitration regime in Korea is based on the 1985 version of the Model Law. Korea has not yet adopted the 2006 Model Law amendments, but the Ministry of Justice is currently considering changes to the Arbitration Act to bring it in line with the 2006 Model Law amendments. Korea acceded to the New York Convention in 1973.

2. What matters are considered arbitrable in Korea?

Although the Arbitration Act does not expressly list any criteria for determining subject matter arbitrability, Article 3(1) of the Arbitration Act limits arbitration to '*any dispute under private law*'. This broad definition is understood to include commercial disputes, but to exclude disputes relating to criminal, constitutional, or administrative matters.

It is not clear whether matters related to anti-trust, intellectual property, or securities regulations are arbitrable in Korea. In scholarly circles, arbitrability is likely to be interpreted broadly and is considered to include infringement of intellectual property and a breach of license claim, provided that the subject matter of the dispute does not question the validity of the underlying intellectual property rights. However, one Korean court has held that an infringement of copyright claim does not fall into the scope of the arbitration agreement in a license agreement because the arbitration agreement only covered disputes arising out of or in relation to '*this Agreement*' (*see* Seoul Central District Court Case no. 2005GaHap65093 dated 17 January 2007).

3. In what circumstances will the court stay proceedings in favour of arbitration?

Pursuant to Article 9 of the Arbitration Act, the courts must dismiss a case if a party pleads the existence of an arbitration agreement, provided that the agreement is not null and void, inoperative or incapable of being performed. The courts do not have authority to dismiss a case ex officio in favour of arbitration.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

There is no requirement in the Arbitration Act requiring parties to designate a particular arbitral institution or any particular institutional rules. Both institutional and ad hoc arbitrations are common in Korea.

5. How are appointments and challenges to the appointment of arbitrators made?

Article 12 of the Arbitration Act provides that parties may agree on a procedure for appointing arbitrators. In the absence of any agreement, Article 12 provides a default procedure for appointment of arbitrators as detailed in Section 6 below.

Both the Arbitration Act and the 2011 Rules of International Arbitration of the KCAB ('**KCAB International Rules**') provide that an arbitrator's appointment may only be challenged where there are circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence (Article 13(2) of the Arbitration Act and Article 13 of the KCAB International Rules). In addition, an arbitrator may also be challenged if he or she does not have qualifications that are required by party agreement (Article 13(2) of the Arbitration Act). Also, Article 14.2 of the KCAB International Rules provides that the secretariat may remove any arbitrator who fails to perform his or her duties or unduly delays the performance of his or her duties, or is legally or actually unable to perform his or her duties.

6. Who appoints the tribunal if the arbitration agreement does not provide for it?

Article 12 of the Arbitration Act provides that in an arbitration with a sole arbitrator, the competent court (a specific local court designated under Article 7 of the Arbitration Act) shall appoint the arbitrator upon request of any party. For an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators so appointed will appoint the third arbitrator. If the two party-appointed arbitrators fail to agree upon the appointment of the third arbitrator, the competent court will appoint the third arbitrator upon request of any party.

Pursuant to Article 12 of the KCAB International Rules, in a case with a sole arbitrator, the KCAB secretariat will appoint the arbitrator. For a case with three arbitrators, one arbitrator is appointed in each of the request for arbitration and the answer. Where the secretariat decides to refer the case to three arbitrators absent the parties' agreement, each party has an opportunity to appoint an arbitrator. In either event, if the two party-appointed arbitrators fail to agree on the third arbitrator (to act as the chairman of the tribunal) within 30 days after the appointment of the second arbitrator, the secretariat shall appoint the chairman.

7. What is the extent and nature of court supervision of arbitration?

Pursuant to the Arbitration Act, the courts have a limited supervisory role in arbitral proceedings (Article 6). The main areas where the courts will intervene are in considering an application for dismissal of litigation where an arbitration agreement covers the dispute (Article 9), interim measures (Article 10), the appointment and any challenge of arbitrators (Articles 12 and 14), determining the jurisdiction of the tribunal (Article 17), challenge of experts appointed by the tribunal (Article 27(3)) and set-aside and enforcement proceedings (Articles 36(2) and 37).

8. Can an arbitral tribunal grant interim orders or relief?

Yes, tribunals have the power to grant interim orders and relief under Article 18(1) of the Arbitration Act and also Article 28.1 of the KCAB International Rules.

9. Can an arbitral tribunal award interest?

Both the Arbitration Act and the KCAB International Rules are silent on the matter of interest. However, in practice, KCAB tribunals usually award interest upon the party's request. When the governing law of the underlying contract is Korean law, parties are often entitled to claim interest as a matter of substantive law. The Korean Supreme Court has ruled that the substantive law of the underlying contract should apply to determine the rate of interest (*see* Supreme Court Case no. 89DaKa20252 dated 10 April 1990).

10. Are arbitration proceedings confidential?

The Arbitration Act does not refer to any confidentiality obligations. However, Article 52 of the KCAB International Rules stipulates that the arbitral tribunal, the secretariat, the parties and their representatives and assistants shall not disclose facts related to arbitration cases or facts disclosed in the arbitration without consent of the parties or as otherwise required by law.

11. Are there any restrictions on who may represent parties in arbitration?

Although there is no restriction in the Arbitration Act on a party's selection of its party-appointed representatives, there are restrictions on who may render legal services in Korea. Acting as counsel in an arbitration in Korea is considered to be rendering legal services, so only Korean law firms or foreign legal consultants may act as counsel in arbitration proceedings in Korea. An exception exists under the Foreign Legal Consultants Act where the arbitration contains at least one issue involving foreign law or customary international law. In practice, it is therefore common for foreign lawyers to appear in arbitrations, although usually Korean counsel are also instructed where there are issues of Korean law to be considered.

12. How are domestic arbitral awards enforced in Korea?

Upon application by a party to a court, domestic arbitral awards (awards rendered in arbitration seated in Korea even where one of the parties is a non-Korean entity) may be enforced in Korea in the same manner as court judgments under Article 38 of the Arbitration Act.

13. How and when may parties challenge arbitral awards made in Korea?

An arbitral award may only be challenged by applying to a court to set aside the award on the limited grounds set out in Article 36(2) of the Arbitration Act. Those grounds are the same as those found in Article 34 of the Model Law and Article V of the New York Convention. There is no right of appeal against the substantive findings of the arbitral tribunal.

Under Article 36(4) of the Arbitration Act, an application to set aside an arbitral award may not be made after the judgment for recognition or enforcement of the award rendered by a Korean court becomes final and conclusive.

14. Can foreign arbitral awards be enforced in Korea?

Yes. Korea is a signatory to the New York Convention subject to two reservations; Korea only enforces foreign awards rendered in another signatory country and only those awards for commercial disputes. Foreign arbitral awards rendered in a non-signatory country would be enforced in accordance with the enforcement procedure of foreign judgments under Article 39(2) of the Arbitration Act.

15. When can the Korean courts refuse enforcement of foreign arbitral awards?

Under Article 39(1) of the Arbitration Act, Korean courts will only refuse enforcement of foreign arbitral awards on the narrow grounds listed in Article V of the New York Convention, namely as follows:

- The parties to the arbitration agreement did not have the capacity to sign the agreement in accordance with the applicable law of each party;
- The arbitration agreement is unenforceable or invalid in accordance with the governing law, or the laws of the country in which the award was made if the arbitration agreement does not stipulate the governing law;
- The individual, body or organisation against which enforcement is sought was not properly notified of the appointment of the arbitrator or the procedures for resolving the dispute by foreign arbitration, or had reasonable cause for failing to exercise his, her or its right to participate in the proceedings;
- The foreign arbitral award was issued in respect of a dispute which was not referred to arbitration by the parties, or exceeds the scope of the request of the parties. If it is possible to sever the arbitration award, that portion which was correctly referred to arbitration by the parties should, however, be recognized and enforced in Korea;
- The composition of the foreign arbitration tribunal, or the foreign arbitration procedure, was inconsistent with the arbitration agreement or the laws of the country in which the foreign arbitral award was made, in cases where such matters are not stipulated in the arbitration agreement;
- The foreign arbitral award is not yet enforceable or binding on the parties;

- The foreign arbitral award has been set aside or suspended by a competent body of the country in which the foreign arbitral award was made, or of the country whose law governs the arbitration agreement; or
- The court of Korea concludes that the relevant dispute cannot be resolved by arbitration in accordance with the laws of Korea; or the recognition and enforcement of the foreign arbitral award is contrary to the fundamental principles of the laws of Korea.

8. MALAYSIA

Model Law	Yes
New York Convention	Yes
Arbitral institution	**Kuala Lumpur Regional Centre for Arbitration (KLRCA)** Bangunan Sulaiman Jalan Sultan Hishamuddin 50000 Kuala Lumpur Malaysia Tel: +603 2271 1000 Fax: +603 2271 1010 Email: enquiry@klrca.org Website: www.klrca.org
Current rules	KLRCA Arbitration Rules (Revised 2013)
Model Clause	*'Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the KLRCA Arbitration Rules.'*

1. What legislation governs domestic and international arbitration in Malaysia?

The Malaysian Arbitration Act 2005 ('**Arbitration Act**') governs domestic and international arbitration in Malaysia. It is based on the Model Law.

2. What matters are considered arbitrable in Malaysia?

Section 4(1) of the Arbitration Act provides that any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration, unless the arbitration agreement is contrary to public policy.

3. In what circumstances will the court stay proceedings in favour of arbitration?

Section 10(1) of the Arbitration Act provides that court proceedings shall be stayed in favour of arbitration unless the arbitration agreement is null and void, inoperative or incapable of being performed. Parties cannot opt out of this provision, as the Court of Appeal has held it to be mandatory.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

Yes. Section 21(2) of the Arbitration Act provides that where the parties fail to agree on the procedure to be followed by the tribunal in conducting the proceedings, the tribunal may, subject to the provisions of the Act, conduct the arbitration in such manner as it considers appropriate.

5. How are appointments and challenges to the appointment of arbitrators made?

Section 13(2) of the Arbitration Act provides that the parties are free to agree on a procedure for appointing an arbitrator.

Section 14(3) of the Arbitration Act provides for the challenge of an arbitrator's appointment when the circumstances give rise to justifiable doubts as to the arbitrator's impartiality or independence, or when the arbitrator does not possess qualifications agreed to by the parties.

Section 15 of the Arbitration Act outlines the procedure for challenging an arbitrator's appointment. A challenge may be initiated within 15 days after becoming aware of the constitution of the tribunal, or of any reasons referred to in Section 14(3), by sending a written statement of the reasons for the challenge to the tribunal.

If the challenge is unsuccessful, the challenging party may, within 30 days after having received notice of the decision rejecting the challenge, apply to the court to make a decision on the challenge.

6. Who appoints the tribunal if the arbitration agreement does not provide for it?

Where the arbitration agreement is silent on the appointment of the tribunal, Section 13 of the Arbitration Act provides a default appointment procedure.

For arbitrations with a sole arbitrator, in the event the parties fail to agree on an arbitrator, either party may apply to the Director of the KLRCA for the appointment of an arbitrator.

In an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two party-appointed arbitrators will then appoint the third arbitrator as the presiding arbitrator. If the two party-appointed arbitrators fail to agree upon the appointment of the third arbitrator within 30 days of their appointment, or within such extended period as the parties may agree, either party may apply to the Director of the KLRCA for the appointment of the third arbitrator.

7. What is the extent and nature of court supervision of arbitration?

The courts adopt a policy of minimal curial intervention in arbitration. Section 8 of the Arbitration Act provides that no court shall intervene in matters governed by the Arbitration Act except where provided for in the Act. The areas where the court maintains supervision are as follows:

- Section 10 of the Arbitration Act provides for the stay of court proceedings where there is an arbitration agreement.
- Section 11 of the Arbitration Act provides for the power to grant interim measures.

- Section 13 of the Arbitration Act provides for the power to appoint an arbitrator in certain situations.
- Section 15 of the Arbitration Act provides for the power to decide on a challenge to the appointment of an arbitrator.
- Section 16 of the Arbitration Act provides for the power to decide on the termination of the mandate of an arbitrator.
- Section 18 of the Arbitration Act provides for the power to hear an appeal on the jurisdiction of the tribunal.
- Section 29 of the Arbitration Act provides for the power to assist in the taking of evidence.
- Section 37 of the Arbitration Act provides for the setting aside of an award.
- Section 38 of the Arbitration Act provides for the power to recognise and enforce an arbitration award as a judgment.
- Section 41 of the Arbitration Act provides for the power to determine a preliminary point of law arising in the course of an arbitration.
- Section 42 of the Arbitration Act provides for parties to refer any question of law arising out of an award to the court.
- Section 44(1) of the Arbitration Act provides for the power of the court to tax costs and expenses of an arbitration in certain situations.
- Section 44(4) of the Arbitration Act provides for the power to order a tribunal to deliver an award in certain circumstances.
- Section 45 of the Arbitration Act provides for the power to extend time for commencing arbitral proceedings.
- Section 46 of the Arbitration Act provides for the power to extend time for the making of an award.
- Section 49 of the Arbitration Act provides for the power to direct any matter in connection with or for the purpose of bankruptcy proceedings to be referred to arbitration.

8. Can an arbitral tribunal grant interim orders or relief?

Yes. Section 19(1) of the Arbitration Act provides that unless agreed by the parties, a party may apply to the tribunal for orders for security for costs, discovery of documents and interrogatories, giving of evidence by affidavit, and the preservation, interim custody, or sale of any property which is the subject matter of the dispute.

9. Can an arbitral tribunal award interest?

Yes. Section 33(6) of the Arbitration Act provides that, unless otherwise provided in the arbitration agreement, the tribunal may award interest on any sum of money awarded calculated from the date of the award to the date of realisation, and may also determine the rate of interest.

10. Are arbitration proceedings confidential?

The Arbitration Act does not make express reference to confidentiality. Parties typically address the issue of confidentiality either through the arbitration agreement or by the adoption of institutional rules.

Rule 15 of the KLRCA Arbitration Rules provides that all matters relating to the arbitral proceedings shall remain confidential except where disclosure is necessary for purposes of implementation and enforcement, or to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to challenge an award in bona fide legal proceedings before a state court or other judicial authority.

11. Are there any restrictions on who may represent parties in arbitration?

There are no restrictions on the choice of party-appointed representatives. However, there is a pending appeal in the Malaysian Federal Court on whether lawyers who are not considered advocates under the Sabah Advocates Ordinance 1953 are prohibited from representing parties in arbitral proceedings in Sabah.

12. How are domestic arbitral awards enforced in Malaysia?

Upon the application of an enforcing party under Section 38(1) of the Arbitration Act, an arbitral award will be recognised as binding and will be enforced by entry of a judgment in terms of the award or by action.

13. How and when may parties challenge arbitral awards made in Malaysia?

Section 37(1) of the Arbitration Act provides for an application to set aside an award on the following limited and exhaustive grounds:

- A party to the arbitration agreement was under any incapacity.
- The arbitration agreement is not valid under the law to which the parties have subjected it, or, failing any indication thereon, under the laws of Malaysia.
- The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present that party's case.
- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.
- The award contains decisions on matters beyond the scope of the submission to arbitration.
- The composition of the tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the Arbitration Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with the Act.
- The court finds that the subject matter of the dispute is not capable of settlement by arbitration under the laws of Malaysia.
- The court finds that the award is in conflict with the public policy of Malaysia.

14. Can foreign arbitral awards be enforced in Malaysia?

Yes. Malaysia is a signatory to the New York Convention. As such, a foreign award rendered in a New York Convention signatory state may be enforced in Malaysia.

15. When can the Malaysian courts refuse enforcement of foreign arbitral awards?

Section 39(1) of the Arbitration Act provides that recognition or enforcement of an award may be refused at the request of the party against whom it is invoked, on the following limited and exhaustive grounds:

- A party to the arbitration agreement was under any incapacity.
- The arbitration agreement is not valid under the law to which the parties have subjected it, or, failing any indication thereon, under the laws of the State where the award was made.
- The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present that party's case.
- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.
- The award contains decisions on matters beyond the scope of the submission to arbitration.
- The composition of the tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the Arbitration Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with the Arbitration Act.
- The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.
- The court finds that the subject matter of the dispute is not capable of settlement by arbitration under the laws of Malaysia.
- The court finds that the award is in conflict with the public policy of Malaysia.

9. MYANMAR

Model Law	No
New York Convention	Yes (subject to local enactment in Myanmar)
Arbitral institution	An international arbitration centre has yet to be established.

1. What legislation governs domestic and international arbitration in Myanmar?

The Myanmar Arbitration Act of 1944 ('**Arbitration Act**') governs domestic arbitration in Myanmar. Myanmar acceded to the New York Convention on 15 July 2013, but local enacting legislation has yet to be passed.

A new arbitration bill is currently under discussion in the Parliament of Myanmar with the aim of adopting the principles of the Model Law into local law and to incorporate the New York Convention enforcement regime.

2. What matters are considered arbitrable in Myanmar?

The Arbitration Act does not define subject matter arbitrability. It is generally accepted that all civil matters, subject to a few exceptions, can be resolved in arbitration. The exceptions are matters which fall within the sole jurisdiction of the courts, such as a winding-up petition, or the appointment of a guardian for a minor.

3. In what circumstances will the court stay proceedings in favour of arbitration?

The courts will stay court proceedings in favour of arbitration where the subject matter of a dispute commenced in court is the same as that covered by the arbitration agreement between the parties.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

The Arbitration Act is silent on the subject of arbitration in the absence of express procedural rules. This is due to the age of the Arbitration Act itself, which came into force in 1944 before the dramatic rise of arbitration in the last 20 years or so. The conditions implied into arbitration agreements set out in the First Schedule to the Arbitration Act support the view that in the absence of express procedural rules, an arbitration may nevertheless proceed.

5. How are appointments and challenges to the appointment of arbitrators made?

The procedure for the appointment of arbitrators is found at the First Schedule of the Arbitration Act, which applies to all arbitrations by default unless otherwise specified by the parties. The default number of arbitrators is one, unless agreed otherwise.

Where reference is to an even number of arbitrators, each party shall appoint an even number of arbitrators, and the arbitrators shall appoint an umpire. If the reference is to three arbitrators, each party will appoint one arbitrator and the appointed arbitrators shall appoint a third.

An arbitrator may be challenged on the following grounds:

- The arbitrator has a personal interest in the subject matter of the dispute.
- The arbitrator has mishandled the arbitral proceedings.
- The arbitrator is incapable of acting as an arbitrator.
- The arbitrator is guilty of misconduct.

6. Who appoints the tribunal if the arbitration agreement does not provide for it?

The court will appoint the tribunal where the arbitration agreement is silent.

7. What is the extent and nature of court supervision of arbitration?

The court exercises a higher degree of supervision over arbitrations in Myanmar than many other jurisdictions. The court may intervene in the following situations:

- To allow parties to revoke the authority of an arbitrator.
- To appoint an arbitrator or umpire, or to fill a vacancy in certain circumstances.
- To set aside the appointment of a sole arbitrator by a party.
- To remove an arbitrator who fails to perform his or her duties diligently, or who is guilty of misconduct.
- To terminate the effectiveness of an arbitration agreement.
- To give its opinion when an arbitrator submits a special case.
- To direct an award to be filed.
- To modify or correct an award.
- To remit an award for reconsideration.
- To extend the time for the submission of an award.
- To render judgment in the terms of an award and pass a decree to its effect.
- To grant interim orders after an award is filed so as to prevent the rights of the person in whose favour a decree might be passed from being defeated or delayed.
- To supersede the reference.
- To summon the parties and witnesses whom the arbitral tribunal wishes to examine.

- To punish the parties or witnesses if they fail to give evidence or are guilty of contempt.

8. Can an arbitral tribunal grant interim orders or relief?

No. There is no provision in the Arbitration Act for a tribunal to make orders for interim measures.

9. Can an arbitral tribunal award interest?

The Arbitration Act does not expressly confer power on a tribunal to award interest. However, Section 29 of the Arbitration Act provides that a court may order interest on an award at a rate deemed by the court to be reasonable.

10. Are arbitration proceedings confidential?

The Arbitration Act does not make provision for the confidentiality of arbitration proceedings. Parties may separately agree on terms of confidentiality either in their arbitration agreement or by the adoption of rules which make provision for it.

11. Are there any restrictions on who may represent parties in arbitration?

No. The Arbitration Act does not impose restrictions on who may represent parties in arbitration.

12. How are domestic arbitral awards enforced in Myanmar?

A party may apply to have a domestic arbitral award enforced by filing it, after which the court will render a judgment in terms of the award. Thereafter, it may be enforced in the same manner as a court judgment.

13. How and when may parties challenge arbitral awards made in Myanmar?

After an award has been converted into a local court judgment, no right of appeal exists against the award unless the decree issued by the court is in excess of the award or is not otherwise compliant with the award.

An award may be set aside on the following grounds:

- The arbitrator or umpire was guilty of misconduct;
- The arbitrator or umpire improperly conducted the proceedings;
- The award was made after the award was superseded;
- The award was made after the arbitration proceedings became invalid under Section 35 of the Arbitration Act (where arbitral proceedings are stayed once all parties to the reference are engaged in court proceedings over the same subject matter);
- The award was improperly procured; or
- The award is otherwise invalid.

14. Can foreign arbitral awards be enforced in Myanmar?

Only foreign awards of countries that are signatories to the Geneva Convention on the Execution of Foreign Arbitral Awards 1927 are enforceable as domestic awards in Myanmar. There is currently no procedure for the enforcement of foreign awards other than those made in Geneva Convention countries. However, Myanmar has ratified the New York Convention and local enacting legislation is due to be passed. Once enacted, awards from any New York Convention will be enforceable in Myanmar.

Whilst it is possible in theory to invoke the Arbitration Act of 1937 to enforce foreign arbitral awards, this has not occurred in practice. That act provides that, in order to be enforceable, a foreign award must have been:

- made pursuant to an agreement to arbitrate valid under the law under which it was governed;
- made by the tribunal provided for in the agreement or agreed upon by the parties;
- made in conformity with the laws of the country governing the arbitration procedure;
- considered final in the country in which it was made; and
- made in connection with a matter which may lawfully be referred to arbitration under the laws of Myanmar, and

Finally, the enforcement of the award must not be contrary to the public policy or the laws of Myanmar.

15. When can the Myanmar courts refuse enforcement of foreign arbitral awards?

See answer to Question 14 above.

10. PHILIPPINES

Model Law	Yes
New York Convention	Yes
Arbitral institution	**Philippine Dispute Resolution Center (PDRCI)** 3F, Commerce and Industry Plaza 1030 Campus Avenue cor. Park Avenue McKinley Town Center Fort Bonifacio 1634 Taguig City Philippines Tel: +63 555-0798 Fax: +63 822-4102 Email: secretariat@pdrci.org
Current rules	Arbitration Rules of the PDRCI (1 January 2015)
Model clause	*'Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the PDRCI Arbitration Rules in force at the time of the commencement of the arbitration.'* *Parties may consider adding:* *'The number of arbitrators shall be ... (one or three);* *The place of arbitration shall be ... (city or country);* *The language(s) to be used in the arbitral proceedings shall be ...(language).'*

1. What legislation governs domestic and international arbitration in the Philippines?

International arbitration is governed by Republic Act No. 9285, which by Section 19 adopts the Model Law into Philippines law. Domestic arbitration is governed by Republic Act No. 876. Certain provisions of the Model Law also apply to domestic arbitration.

The Philippines ratified the New York Convention on 6 July 1967.

It should be noted that as regards construction disputes, the Philippines' Construction Industry Arbitration Commission (CIAC) is deemed to automatically have jurisdiction to resolve such a dispute, even if the parties selected a different arbitral institution.

2. What matters are considered arbitrable in the Philippines?

Philippines law provides that certain disputes are not capable of resolution by arbitration, as follows:

- Labour disputes covered by the Labour Code of the Philippines
- The jurisdiction of the courts
- The civil status of persons
- Matrimonial matters such as the validity of marriage and any ground for legal separation of married persons
- Certain matters concerning the inheritance of property
- Criminal matters
- Disputes which by law cannot be compromised

3. In what circumstances will the court stay proceedings in favour of arbitration?

The courts will stay court proceedings in respect of both domestic and international arbitration where the parties have agreed to resolve that dispute by arbitration.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

Yes. The provisions of the Model Law supply a set of default procedural rules where the parties have not agreed to one.

5. How are appointments and challenges to the appointment of arbitrators made?

The parties are free to agree on the number of arbitrators. Failing agreement on the number of arbitrators, the default is three arbitrators.

Following the Model Law, parties may challenge the appointment of an arbitrator only if circumstances give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not possess qualifications agreed to by the parties.

6. Who appoints the tribunal if the arbitration agreement does not provide for it?

Where the arbitration agreement is silent, the appointing authority shall be the appointing authority designated in the arbitral rules chosen by the parties. In the event that the appointing authority fails or refuses to make the appointment, the parties may apply to court to make the appointment.

In ad hoc arbitration, the default appointment of an arbitrator shall be made by the National President of the Integrated Bar of the Philippines (IBP) or his or her duly authorised representative.

7. What is the extent and nature of court supervision of arbitration?

Philippine law and jurisprudence have adopted a policy in favour of arbitration and generally restrict the courts' supervision of arbitration. Courts can intervene in the following circumstances:

- To grant protective orders to preserve confidentiality
- To appoint an arbitrator where an appointing authority fails or refuses to act
- To rule on a jurisdictional issue as a preliminary question
- To issue and enforce interim measures of protection
- To assist in the taking of evidence
- To set aside, enforce, and recognise arbitral awards and recognise and enforce foreign arbitral awards

8. Can an arbitral tribunal grant interim orders or relief?

Yes. Arbitral tribunals are granted this power under Sections 28 and 29 of Republic Act No. 9285.

9. Can an arbitral tribunal award interest?

The arbitration laws do not expressly empower an arbitral tribunal to award interest, but do not prohibit awards of interest based on the substantive law of the dispute.

10. Are arbitration proceedings confidential?

Yes. Section 23 of Republic Act No. 9285 provides that international arbitral proceedings and matters relating to the proceedings shall remain confidential. Section 33 of the same law also applies this rule of confidentiality to domestic arbitration.

11. Are there any restrictions on who may represent parties in arbitration?

Section 22 of Republic Act No. 9285 allows a party to appoint any representative in international arbitrations conducted in the Philippines. However, in relation to domestic arbitration, legal representation is limited to Filipinos.

12. How are domestic arbitral awards enforced in the Philippines?

For domestic awards, parties may apply to court to confirm the award. The court must grant the order unless the award is vacated, modified or corrected. Once confirmed, an award may be enforced in the same way as any court judgment.

13. How and when may parties challenge arbitral awards made in the Philippines?

A party may challenge an international arbitration award by applying to set it aside on any of the grounds set out in Article 34 of the Model Law. There is no right of appeal on the substance of the award.

A party may challenge a domestic arbitration award by applying to set it aside on one of the following grounds:

- The award was procured by corruption, fraud, or other undue means.
- The arbitrator was partial or corrupt.
- The arbitrator was guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the dispute.
- One or more of the arbitrators were disqualified to act as such under Section 9 of the Republic Act No. 876 and wilfully refrained from disclosing such disqualifications, or were guilty of any other misbehaviour by which the rights of any party have been materially prejudiced.
- The arbitrators exceeded their powers, or so imperfectly executed them, such that a mutual, final, and definite award upon the issues submitted to them was not made.

14. Can foreign arbitral awards be enforced in the Philippines?

Article 35 of the Model Law and the New York Convention govern the enforcement of foreign arbitral awards made in other New York Convention countries. A petition for recognition and enforcement of foreign arbitral awards must be filed with the Regional Trial Court in accordance with the rules of procedure of the Supreme Court.

For arbitral awards issued in non New York Convention countries, the court may, on ground of comity and reciprocity, recognise and enforce a non New York Convention award as a New York Convention award.

15. When can the Philippines courts refuse enforcement of foreign arbitral awards?

The courts will only refuse enforcement on the limited grounds found in Article V of the New York Convention.

11. SINGAPORE

Model Law	Yes
New York Convention	Yes
Arbitral institution	**Singapore International Arbitration Centre, India Office** 32 Maxwell Road #02-01, Maxwell Chambers Singapore 069115 Tel: +65 6221 8833 Fax: +65 6224 1882 Email: corpcomms@siac.org.sg
Current rules	Arbitration Rules of the Singapore International Arbitration Centre (Fifth Edition, 1 April 2013)
Model clause	*'Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ('SIAC') in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ('SIAC Rules') for the time being in force, which rules are deemed to be incorporated by reference in this clause.* *The seat of the arbitration shall be [Singapore].** *The Tribunal shall consist of _____ ** arbitrator(s).* *The language of the arbitration shall be _____.* *Parties should specify the seat of arbitration of their choice. If parties wish to select an alternative seat to Singapore, please replace [Singapore] with the city and country of choice. State an odd number, either state one or state three.'*

1. What legislation governs domestic and international arbitration in Singapore?

There are three main pieces of legislation:

- The International Arbitration Act (IAA).
- The Arbitration Act (AA).
- The Arbitration (International Investment Disputes) Act.

The IAA incorporates and gives effect to the Model Law, which aims to harmonise arbitration laws in different states. The IAA applies to arbitrations that are international (defined as any arbitration proceeding that contains a cross-border element), but parties may agree for the IAA to apply to an arbitration that would not be considered international if it is clearly stated in the arbitration agreement.

The AA applies to arbitrations that are not considered international, and generally provides for greater supervision by the Singapore courts than the IAA.

The Arbitration (International Investment Disputes) Act gives effect to the United Nations Convention on the Settlement of Disputes Between States and Nationals of Other States.

2. What matters are considered arbitrable in Singapore?

Section 11(1) of the IAA provides that any dispute may be determined by arbitration unless it is contrary to public policy to do so. For example, matters directly related to a statutory insolvency regime are non arbitrable. It is generally accepted that matters involving matrimonial and criminal issues are also not arbitrable.

3. In what circumstances will the court stay proceedings in favour of arbitration?

A stay of court proceedings in favour of arbitration is mandatory in the case of international arbitrations governed by the IAA unless the court is satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.

For domestic arbitration proceedings governed by the AA, the court has a discretion regarding whether to stay court proceedings in favour of arbitration.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

An arbitration agreement is not rendered unenforceable where parties do not provide for a set of procedural rules. The court will uphold an arbitration agreement so long as it evidences an intention by the parties to resolve their dispute by arbitration. In the absence of procedural rules, the parties will generally be taken to have agreed to an ad hoc arbitration. The procedural rules set out in the Model Law will apply unless the parties or the tribunal adopt an alternative process.

5. How are appointments and challenges to the appointment of arbitrators made?

The nomination and appointment of arbitrators are typically subject to the procedure to which the parties agreed. There are no restrictions as to who may be appointed as arbitrators unless parties have agreed otherwise.

Institutional arbitration rules have similar provisions for the nomination and appointment of arbitral tribunals in the event that the parties have not expressly provided for it. For example, under the SIAC Rules, if parties are unable to agree on the nomination of a sole arbitrator within 21 days of receipt of a Notice of Arbitration, the President of the SIAC Court will appoint an arbitrator as soon as possible. Similarly, where the tribunal is to consist of three arbitrators and a party fails to make a nomination within 14 days, the President of the SIAC will make the appointment instead.

A party may challenge the appointment of an arbitrator. Again, the institutional rules provide a timeline for this process. Where a challenge is made, the other party may agree to the challenge, or the challenged arbitrator may choose to withdraw from the proceedings.

If the other party does not agree to the challenge or the challenged arbitrator does not withdraw, the challenge will be ruled upon by the institution administering the arbitration. Such decision is final and cannot be the subject of appeal to the Singapore courts.

Parties can also bring a challenge against the appointment of an arbitrator in court. This is governed by a different procedure under the Rules of Court.

6. Who appoints the tribunal if the arbitration agreement does not provide for it?

If the parties fail to designate a procedure or authority for the appointment of arbitrators, the parties may apply to the Chairman of the SIAC to make the appointment.

7. What is the extent and nature of court supervision of arbitration?

The Singapore court adopts a policy of minimal supervision of arbitration proceedings in Singapore. It will intervene to assist in the process, for example, where the mechanism for appointing an arbitrator has failed.

The court can also grant interim relief in support of arbitration under Section 12A of the IAA. However, the court will only intervene to the extent that the tribunal has no power or is unable to act effectively. If the matter is not urgent, an application for court-ordered interim relief can only be brought with the permission of the tribunal or the agreement in writing of the other parties.

Any dispute as to the jurisdiction of the tribunal may be finally determined by the court.

8. Can an arbitral tribunal grant interim orders or relief?

Arbitrators have extensive powers to grant interim relief under the IAA and AA. Under Section 12 of the IAA, a tribunal may make orders, such as for parties to provide security for costs and discovery of documents. Arbitral rules such as the SIAC Rules also provide that, prior to the constitution of the full tribunal, an emergency arbitrator can be appointed to grant emergency interim relief.

These orders are enforceable through the Singapore courts as if they were orders made by a court. The procedure for this is governed by Order 69A Rule 5 of the Rules of Court.

9. Can an arbitral tribunal award interest?

A tribunal may award interest on the whole or any part of any sum which is awarded to any party, or which is in issue in the proceedings but paid prior to an award, for any period up to the date of payment.

A tribunal is empowered to award interest on a simple or compound basis and at such rate as it considers appropriate. An award will carry interest from the date of the award and at the same rate as the interest rate for court judgments in Singapore (currently 5.33% per annum), unless the award provides otherwise.

10. Are arbitration proceedings confidential?

Yes. Case law in Singapore has confirmed that arbitration proceedings are confidential. However, such confidentiality has not been placed on a statutory footing.

Where a party seeks to challenge an arbitral award or seeks to enforce an award in court, confidentiality might fall away as court proceedings are a matter of public record. Section 22 of the IAA therefore allows parties to apply for proceedings to remain private and Section 23 allows parties to apply for directions from the court that information be sealed or redacted.

11. Are there any restrictions on who may represent parties in arbitration?

There are no restrictions on who may represent a party in arbitration. It need not be a lawyer. The Singapore Legal Profession Act expressly permits foreign lawyers to represent a party in Singapore arbitration proceedings, including those where the governing law of the contract in question is Singapore law.

12. How are domestic arbitral awards enforced in Singapore?

Arbitral awards are enforced as if they were judgments or orders of the Singapore High Court. Under Order 69A Rule 6 of the Rules of Court, a party may apply to enforce the award. The application must be accompanied by an affidavit exhibiting the arbitration agreement and the award. It should also state the usual or last known place of abode or business of the enforcing party and the party against whom the award is to be enforced. The affidavit must confirm that the award has not been complied with, or the extent to which it has not been complied with, at the date of the application.

The party against whom the award is being enforced will have 14 days to challenge enforcement. If no challenge is made, or the challenge fails, the enforcing party may proceed to enforce the award as if it were a judgment of the Singapore High Court, and the full remedies for enforcement will be available to it.

13. How and when may parties challenge arbitral awards made in Singapore?

A party may seek to set aside an arbitral award made in Singapore on any of the grounds set forth in Article 34 of the Model Law or Section 24 of the IAA. These grounds relate to jurisdiction, procedural irregularity, public policy, fraud, or breach of natural justice.

If a party wishes to challenge a tribunal's decision in a Singapore-seated arbitration that it has or does not have jurisdiction to hear a dispute, the party may apply to court under Section 10 of the IAA for a decision.

14. Can foreign arbitral awards be enforced in Singapore?

The Singapore courts will enforce arbitral awards that were obtained in countries that are contracting states to the New York Convention. This means that arbitral awards from at least 150 states are enforceable in Singapore.

15. When can the Singapore courts refuse enforcement of foreign arbitral awards?

The Singapore courts may refuse enforcement of foreign arbitral awards under Section 31 of the IAA. The grounds for refusal set out in that section are exhaustive:

- A party could not validly enter into the arbitration agreement at the time the agreement was made.
- The arbitration agreement is not valid under its chosen law or under the law of the country where the award was made.
- A party was not given sufficient notice of the appointment of the arbitrator or of the arbitration proceedings, or was unable to present its case at those proceedings.
- Generally, where the award dealt with matters that parties did not intend to submit to arbitration.
- The tribunal or the arbitral procedure was not in accordance with the agreement of the parties or in accordance with the law of the country were the arbitration took place.
- The award has not yet become binding on parties or has been set aside or suspended by a competent authority of the country in which, or under the laws of which, the award was made.
- The subject matter is non-arbitrable under the laws of Singapore.
- The enforcement of the award would be contrary to the public policy of Singapore.

12. TAIWAN

Model Law	Yes
New York Convention	No
Arbitral institution	**Chinese Arbitration Association, Taipei (CAA)** Floor 14, 376 Renai Road Section 4 Taipei Taiwan 106 Tel: +886-2-2707-8672 Fax: +886-2-2707-8462 Email: service@arbitration.org.tw
Current rules	CAA Arbitration Rules (effective in 2001, most recently amended in 2010)
Model clause	*'Any dispute, controversy, difference or claim arising out of relating to or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitraion referred to the Chinese Arbitration Association, Taipei, in accordance with the Association's arbitration rules. The place of arbitration shall be in Taipei, Taiwan. The language of arbitration shall be (e.g. English). The arbitral award shall be final and binding upon both parties.'*

1. What legislation governs domestic and international arbitration in Taiwan?

Arbitration in Taiwan is primarily governed by two statutory enactments. The first is the Arbitration Law ('**Arbitration Law**'), adopted in 1998 and amended several times, most recently in 2009. It is based on the Model Law and applies to domestic and international arbitrations conducted in Taiwan. The second is the Rules on Arbitration Institutions, Mediation Procedures and Fees ('**Rules**'), which regulate the establishment of arbitral institutions and prescribes matters such as the fees for arbitration.

2. What matters are considered arbitrable in Taiwan?

Articles 1 and 2 of the Arbitration Law provides that parties may agree to arbitrate any dispute arising out of or relating to a legal relationship, save those that are not capable of settlement as a matter of Taiwanese law. The Arbitration Law does not specify what disputes are non-arbitrable, but it is generally accepted that most civil matters, including those arising out of non-contractual relationships, will be arbitrable.

3. In what circumstances will the court stay proceedings in favour of arbitration?

Article 4 of the Arbitration Law provides that a court will stay proceedings where the parties' dispute falls to be determined by arbitration pursuant to an arbitration agreement.

Where a party commences court proceedings contrary to an arbitration agreement, the court will stay the proceedings on application of the other party and order the plaintiff to submit to arbitration. The other party will, however, waive its right to seek a stay if it formally responds to the litigation.

The court proceedings will be dismissed if the plaintiff does not submit to arbitration within the time specified by the court. Otherwise, the proceedings will remain stayed for the duration of the arbitration and will be deemed withdrawn when an arbitral award is made.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

The Arbitration Law does not expressly refer to ad hoc arbitration. Article 19 of the Arbitration Law provides that where parties have not agreed on any procedural rules to govern the arbitration, the arbitral tribunal must apply the Arbitration Law. The Code of Civil Procedure or other rules of procedure may also be adopted by the tribunal where the Arbitration Law is silent on a matter. There have been conflicting judgments in the Taiwanese courts on the enforcement of ad hoc arbitration awards. It is therefore uncertain whether, at the enforcement stage, an ad hoc arbitration would be given the same legal effect as a final judgment as would be given to an institutional arbitration. However, in a recent order rendered in 2014, the Supreme Court recognised the effect and enforceability of an ad hoc arbitral award. The Supreme Court indicated that an ad hoc arbitration award should be recognised as long as the appointment of the arbitrators met the requirements set forth in the Arbitration Act.

5. How are appointments and challenges to the appointment of arbitrators made?

Parties are free to agree on the method of appointment of arbitrators and the number of arbitrators so long as an odd number of arbitrators is designated. An arbitrator appointed in accordance with an arbitration agreement must be either a natural person or an arbitral institution, failing which such appointment shall be deemed void. Failing an agreement between parties concerning the number of arbitrators, three arbitrators are to be appointed. Each party is to appoint one arbitrator and the two appointed arbitrators will jointly designate a third arbitrator to be the chair of the tribunal. Where a sole arbitrator is to be appointed, and the parties cannot agree, any party may apply to court to make the appointment.

Article 6 of the Arbitration Law provides that an arbitrator must possess legal or other professional knowledge or experience, a reputation for integrity and impartiality, and any of the following qualifications: prior service as a judge or public prosecutor; more than five years' practice as a lawyer, accountant, architect, or mechanic or in any other commerce-related profession; acting as an arbitrator in a domestic or foreign arbitration institution; teaching as an assistant professor or higher post in a domestic or foreign college certified or recognised by the Ministry of Education; or more than five years' practice as a specialist in a particular field or profession.

Article 7 prohibits a person from acting as an arbitrator where he or she has been convicted of a criminal offence for corruption or malfeasance; has been convicted of any other offence and sentenced to prison for one or more years; or has been disenfranchised by law, declared bankrupt, interdicted; or is a minor.

A party may challenge the appointment of an arbitrator where facts exist that create a justifiable concern over his or her independence or impartiality. Where an arbitrator is related in some way to one of the parties or if he or she does not possess qualifications that the parties agreed upon, any party may apply to the arbitral tribunal, or to the court in the case where the arbitration is to be conducted by a sole arbitrator, to challenge the arbitrator's appointment. The decisions of the courts are divided on whether the arbitrator being challenged may be involved in determining the application.

6. Who appoints the tribunal if the arbitration agreement does not provide for it?

Article 9 of the Arbitration Law provides that where three arbitrators are to be appointed and the two party-appointed arbitrators fail to agree on a chair within 30 days of their appointment, any party may apply to court to make the final appointment. Where an arbitration is to be conducted by a sole arbitrator and the parties fail to agree on an arbitrator, any party may apply to court to make the appointment.

7. What is the extent and nature of court supervision of arbitration?

The courts adopt a policy of minimal curial intervention. It may stay litigation where parties have agreed to resolve their dispute by arbitration. It may assist in the appointment of the tribunal. It may also order interim measures in appropriate cases. The court will also hear applications to set aside arbitration awards and for enforcement of domestic and foreign awards.

8. Can an arbitral tribunal grant interim orders or relief?

Article 39 of the Arbitration Law provides that any party may apply to the court for provisional attachment or injunction. By contrast, the arbitral tribunal is not expressly empowered to grant interim orders or relief. Article 36 of the CAA Arbitration Rules allows the arbitral tribunal, at the request of either party and upon the consent of the parties, to order 'any interim measures as agreed by the parties in respect to the subject-matter of the dispute for purposes of preserving perishable goods, such as ordering their sales or other interim measures the tribunal considers appropriate'.

9. Can an arbitral tribunal award interest?

There is no prohibition in the Arbitration Law preventing a tribunal from awarding interest to a party. Under Taiwanese law, an award creditor may also seek interest on a principal sum awarded from the date when the payment is due until the date of payment.

10. Are arbitration proceedings confidential?

Article 23 of the Arbitration Law provides that the arbitral proceedings are not to be made public unless the parties agree otherwise. Furthermore, Article 32 requires that the deliberations concerning the arbitral award not be made public. Article 15 imposes duties of confidentiality on the arbitrators. These provisions as to privacy are typically supplemented by arbitration rules which impose on the institution and arbitrators express duties of confidentiality. See, for example, Article 6 of the CAA Arbitration Rules.

11. Are there any restrictions on who may represent parties in arbitration?

Article 24 of the Arbitration Law provides that a party may appoint its representative(s) to appear before the arbitral tribunal to make statements for and on its behalf. The law does not require that representative to be a Taiwanese qualified lawyer.

12. How are domestic arbitral awards enforced in Taiwan?

Domestic arbitration awards are enforced by way of an enforcement order from the Taiwanese courts. Foreign arbitral awards are defined in Article 47 of the Arbitration Law as an award made outside the territory of Taiwan, or made within that territory in accordance with the laws of a foreign country. A foreign award is enforceable after it has been recognised by an order of a court of Taiwan.

13. How and when may parties challenge arbitral awards made in Taiwan?

An arbitral award made in Taiwan may be set aside in certain circumstances set out in Articles 38 and 40 of the Arbitration Law, as follows:

- The arbitral award concerns a dispute not within the scope of the arbitration agreement, or exceeds the scope of the arbitration agreement, unless the offending portion of the award may be severed and the severance will not affect the remainder of the award
- Reasons for the arbitral award were not provided
- The arbitral award directs a party to act contrary to the law
- The arbitration agreement is nullified, invalid, has yet to come into effect, or has become invalid prior to the conclusion of the arbitral proceedings
- The arbitral tribunal failed to give any party an opportunity to present its case prior to the conclusion of the arbitral proceedings, or if any party was not lawfully represented in the arbitral proceedings
- The composition of the arbitral tribunal or the arbitral proceedings was contrary to the arbitration agreement or the law
- An arbitrator failed to fulfil the duty of disclosure prescribed in Paragraph 2 of Article 15 of the Arbitration Law and appears to have been partial, or was requested to withdraw but continued to participate (provided that the request for withdrawal was not dismissed by the court)
- An arbitrator violated any duty entrusted in the arbitration and such violation carries criminal liability
- A party or any representative committed a criminal offence in relation to the arbitration

- Evidence or the content of any translation upon which the arbitration award relies, has been forged or fraudulently altered or contains any other misrepresentations
- Judgment of a criminal or civil matter, or an administrative ruling upon which the arbitration award relies, has been reversed or materially altered by a subsequent judgment or administrative ruling

The application must be made within 30 days of receipt of the award.

14. Can foreign arbitral awards be enforced in Taiwan?

Yes. Taiwan is not a signatory to the New York Convention. However, Articles 47 to 51 of the Arbitration Law prescribe the requirements for recognition of foreign awards as those set out in Article V of the New York Convention.

15. When can the Taiwanese courts refuse enforcement of foreign arbitral awards?

Article 38 of the Arbitration Law provides that the court may refuse to enforce a domestic award where:

- the award concerns a dispute not contemplated by the terms of the arbitration agreement, or exceeds the scope of the arbitration agreement, unless the offending portion of the award may be severed and the severance will not affect the remainder of the award;
- reasons for the arbitral award were not stated; or
- the arbitral award directs a party to act contrary to the law.

An application for enforcement of a foreign award may be refused in the following circumstances:

- The arbitration agreement is invalid as a result of the incapacity of a party according to the law chosen by the parties to govern the arbitration agreement;
- The arbitration agreement is null and void according to the law chosen to govern the arbitration agreement or, in the absence of choice of law, the law of the country where the arbitral award was made;
- A party was not given proper notice of the appointment of an arbitrator or of any other matter required in the arbitral proceedings, or any other situation arose which gives rise to lack of due process;
- The award does not relate to the subject matter of the dispute covered by the arbitral agreement, or exceeds the scope of the arbitration agreement, unless the offending portion can be severed from and will not affect the remainder of the arbitral award;
- The composition of the arbitral tribunal or the arbitration procedure was not in conformity with the arbitration agreement or, failing specific agreement thereon, with the law of the place of the arbitration;
- The award is not yet binding upon the parties or has been suspended or annulled by a court of competent jurisdiction;
- The recognition or enforcement of the award is contrary to the public order or good morals of Taiwan; or
- The dispute is not arbitrable under the laws of Taiwan.

Article 49(2) of the Arbitration Act provides that a Taiwanese court has a discretion to dismiss an application for recognition of a foreign award if the country where the arbitral award was made or whose laws govern the arbitration does not recognise arbitral awards made in Taiwan.

13. THAILAND

Model Law	Yes
New York Convention	Yes
Arbitral institution	**Thai Arbitration Institute of the Alternative Dispute Resolution Office (TAI)** Criminal Court Building 5th Floor, Ratchadapisek Tel: 0 2541 2298 Fax: 0 2512 8436 Email: adro@coj.go.th
Current rules	Arbitration Rules of the Arbitration Institute, Ministry of Justice (originally published on 30 April 1990)
Model clause	*'Any dispute controversy or claim arising out of or relating to this contract or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration Rules of the Thai Arbitration Institute, Office of the Judiciary applicable at the time of submission of the dispute to arbitration and the conduct of the arbitration thereof shall be under the auspices of the Thai Arbitration Institute.'*

1. What legislation governs domestic and international arbitration in Thailand?

Arbitration is governed by Arbitration Act B.E. 2545 (2002), which came into force on 30 April 2002 ('**Arbitration Act**'). It applies to both national and international arbitrations, so long as the parties agree on the application of the Thai arbitration law in the arbitration clause or in an arbitration agreement in writing. The Arbitration Act follows the Model Law.

Thailand is a signatory to the New York Convention.

2. What matters are considered arbitrable in Thailand?

Article 11 of the Arbitration Act recognises that parties may arbitrate disputes arising out of a defined legal relationship, whether contractual or not. Therefore, contractual or tortious disputes are generally considered to be arbitrable. Criminal matters, divorce, bankruptcy, insolvency, business rehabilitation and the appointment of the administrator of an estate are not generally capable of being referred to arbitration.

3. In what circumstances will the court stay proceedings in favour of arbitration?

Where a dispute is covered by an arbitration clause providing for arbitration in Thailand, it must be resolved through arbitration. The court will stay legal proceedings commenced in relation to such a dispute unless it finds the arbitration agreement void, inoperative, or incapable of determination by arbitration. A request for a stay must be made no later than the date for filing a statement of defence.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

Yes. Parties may agree to adopt their own arbitral procedure or they may select institutional rules to govern the arbitration. Where the parties do not agree on a procedure, the provisions of the Arbitration Act (which follow the Model Law) will apply.

5. How are appointments and challenges to the appointment of arbitrators made?

The rules governing the appointment and challenges to the appointment of arbitrators are detailed in Chapter II of the Arbitration Act.

Parties are free to agree on the method of appointing the tribunal. If the arbitration agreement is silent as to the required number of arbitrators, a sole arbitrator shall be appointed.

The Arbitration Act requires that arbitrators shall be impartial and independent. A prospective arbitrator must disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence, and an existing arbitrator must without delay make appropriate disclosure to the parties if any such circumstances arise.

Appointed arbitrators must also have the qualifications specified by the parties in their arbitration agreement, or by any applicable institutional rules. There are no other limitations or restrictions on an arbitral appointment.

Section 19 of the Arbitration Act provides that a party may challenge an arbitrator if there are circumstances giving rise to justifiable concerns as to his or her impartiality or independence, or if he or she lacks agreed qualifications. A party may not challenge his or her own appointed arbitrator unless he or she had no knowledge of the grounds for challenge at the time of appointment.

The challenge must be made in writing within 15 days from the date on which the party became aware of the appointment or the grounds for challenge. The tribunal will decide on the challenge. If the challenge is rejected, or where a sole arbitrator is challenged, the challenging party may request the court to decide the matter. That request must be filed within 30 days of receipt of the tribunal's decision, of becoming aware of the appointment of the sole arbitrator, or of the grounds for the challenge.

6. Who appoints the tribunal if the arbitration agreement does not provide for it?

Where the parties fail to agree, or where the appointment process fails for any reason, the Thai court acts as the default appointing authority.

Where the tribunal consists of a sole arbitrator, and the parties are unable to agree on that arbitrator, then either party can apply to the court requesting it to appoint the arbitrator.

Where the tribunal consists of more than one arbitrator, then each party must appoint an equal number of arbitrators, and those arbitrators jointly appoint an additional arbitrator (the chairman). If any party fails to appoint its arbitrator within 30 days after notification from the other party, or if the party-appointed arbitrators are unable to agree on a chairman within 30 days from the date of their own appointment, then either party can apply to the court requesting it to appoint the arbitrator or the chairman, as the case may be.

7. What is the extent and nature of court supervision of arbitration?

The Arbitration Act confers broad powers on the tribunal and restricts the intervention of the courts into the arbitral process. The key areas where the courts may be involved in the process are to determine whether to stay proceedings in favour of arbitration, to determine applications by the parties for provisional measures, and to determine whether to enforce an award.

8. Can an arbitral tribunal grant interim orders or relief?

No. Under Section 16 of the Arbitration Act, only the courts are entitled to issue an order imposing an interim measure in order to protect parties' interests before or during the arbitration process. The following orders can be granted:

- injunctive relief (restraining the party against whom the arbitration is initiated from performing certain acts);
- security for costs (demanding the party who initiates the arbitration to deposit money as security for payment of costs and expenses).

9. Can an arbitral tribunal award interest?

The Arbitration Act does not prohibit awards of interest. It is generally accepted that arbitrators have the power to award interest if this is provided for in the contract at issue.

10. Are arbitration proceedings confidential?

The Arbitration Act does not regulate the confidentiality of arbitration proceedings. However, the parties are free to agree to duties of confidentiality, and often do so by the adoption of institutional arbitration rules that make express provision for it.

11. Are there any restrictions on who may represent parties in arbitration?

Yes. Foreign nationals may only represent clients in arbitration if the law governing the dispute is not Thai law or if the award will not be enforced in Thailand.

12. How are domestic arbitral awards enforced in Thailand?

Awards are enforced by means of an application to the competent court for a judgment recognising and enforcing the award. Once an enforcement judgment has been obtained, it may be enforced in the same way as any other Thai judgment, through the processes of the Legal Execution Department.

13. How and when may parties challenge arbitral awards made in Thailand?

There is no right of appeal to the Thai courts from a final award. The parties' only recourse is to apply to set aside an award within 90 days of receipt on one of the following grounds:

- A party to the arbitration agreement was under some incapacity according to the law applicable to that party;
- The arbitration agreement was invalid under the law agreed to by parties or, in the absence of such agreement, under Thai law;
- The applicant was not given proper advance notice of the appointment of the tribunal or of the proceedings, or was otherwise unable to present its case;
- The award deals with a dispute which is not within the scope of the arbitration agreement or contains a decision on a matter outside the scope of the agreement;
- The composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the parties' agreement;
- The award deals with a dispute that is not capable of being settled by arbitration under the law; and
- The recognition or enforcement of the award would be contrary to public order or good morals.

14. Can foreign arbitral awards be enforced in Thailand?

Yes. Thailand is a party to the New York Convention permitting enforcement of awards made in any other state that is also a signatory to the convention.

15. When can the Thailand courts refuse enforcement of foreign arbitral awards?

The Thai courts may refuse enforcement of any domestic or foreign award if the opposing party proves one of the grounds set out in Sections 43 and 44 of the Arbitration Act, which correspond to those grounds contained in Article V of the New York Convention. A court may also refuse to enforce an award where it finds that the dispute was not capable of settlement by arbitration under Thai law or that the enforcement would be contrary to public policy or the good morals of the people.

14. VIETNAM

Model Law	Yes
New York Convention	Yes
Arbitral institution	**Vietnam International Arbitration Centre (VIAC)** No.9 Dao Duy Anh Street Dong Da District Hanoi Vietnam Tel: 84.4.3574 4001 or 84.4 3574 6916 Fax: 84.4.3574 3001 Email: info@viac.org.vn
Current rules	Rules of Arbitration of the Vietnam International Arbitration Centre (1 January 2012)
Model clause	*'Any dispute arising out of or in relation with this contract shall be resolved by arbitration at the Vietnam International Arbitration Centre (VIAC) in accordance with its Rules of Arbitration'.* *or* *'Any dispute arising out of or in relation with this contract shall be resolved by arbitration at the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry (VIAC) in accordance with its Rules of Arbitration'.* Parties may wish to consider adding: (a) the number of arbitrators shall be [one or three]. (b) the place of arbitration shall be [city and/or country]. (c) the governing law of the contract [is/shall be] the substantive law of [ ].* (d) the language to be used in the arbitral proceedings shall be [ ].** Note: * For disputes which involve a foreign element ** For disputes which involve a foreign element or disputes in which at least one party is an enterprise with foreign investment capital

1. What legislation governs domestic and international arbitration in Vietnam?

Both domestic and international arbitration in Vietnam are governed by the Law on Commercial Arbitration ('**Arbitration Law**'), which came into effect on 1 January 2011. In order to improve the effectiveness and feasibility of the Arbitration Law, the Supreme People's Court of Vietnam subsequently issued Resolution No. 01/2014/NQ - HDTP Guiding the Implementation of Certain Provisions of the Arbitration Law.

The Arbitration Law is based on the Model Law.

The recognition and enforcement of foreign awards in Vietnam is regulated by Part Sixth (VI) of the Civil Procedure Code 2004 ('**Civil Procedure Code**').

2. What matters are considered arbitrable in Vietnam?

Article 2 of the Arbitration Law provides that the following disputes can be resolved by arbitration: (1) disputes between parties arising from commercial activities, (2) disputes arising between parties at least one of whom is engaged in commercial activities, and (3) other disputes between parties which the law stipulates may be resolved by arbitration.

The phrase 'commercial activity' is not specifically defined in the Arbitration Law. In Commercial Law No. 36/2005/QH11 dated 31 December 2005, the phrase is given to mean any 'activity for profit-making purposes comprising the purchase and sale of goods, provision of services, investment, commercial enhancement, and other activities for profit-making purposes'.

Although the Arbitration Law does not specifically identify subject matter that is not arbitrable, certain matters are recognised to fall within the exclusive jurisdiction of the national courts such as criminal matters, marriage and matrimonial matters, employment disputes, and administrative matters.

3. In what circumstances will the court stay proceedings in favour of arbitration?

Article 6 of the Arbitration Law provides that the court will stay court proceedings where the dispute between the parties has been agreed to be resolved by arbitration, unless the parties' arbitration agreement is invalid or incapable of being performed.

If a court proceeds with a claim despite the existence of an arbitration agreement, a party may maintain an objection to the court's jurisdiction within 15 days from the date of receipt of the notice of enrolment of the court.

4. Is an arbitration clause that does not refer to a set of administering institution's rules enforceable?

Yes. The Arbitration Law makes provision for ad hoc proceedings, although in practice such proceedings are rarely used in Vietnam.

5. How are appointments and challenges to the appointment of arbitrators made?

Articles 39 to 41 of the Arbitration Law concern the appointment of the arbitral tribunal. The parties are free to agree the number of arbitrators to hear a dispute. If the parties do not agree, the tribunal shall consist of three arbitrators.

Article 20 of the Arbitration Law provides that to be an arbitrator, a person must have full civil capacity (as prescribed in the Civil Code), possess a university degree, and have at least five years' work experience. In exceptional cases, an expert with appropriate qualifications and practical experience need not satisfy the requirement of a university degree and work experience. However, incumbent judges, procurators, investigators, enforcement officers, or civil servants of people's courts, people's procuracies, investigative agencies, or judgment enforcement agencies may not act as arbitrators. In addition, those charged with criminal acts or convicted of criminal charges and who have served or are serving criminal sentences may not act as arbitrators.

The standards set out in Article 20 of the Arbitration Law are minimum standards. The law expressly provides that an arbitral institution may require more stringent standards for arbitrators appointed to resolve disputes under the institution's auspices.

Article 42.1 of the Arbitration Law provides that an arbitrator must refuse an appointment (and the parties shall have the right to request his or her replacement) in the following circumstances:

- The arbitrator is a relative or representative of a party;
- The arbitrator has an interest related to the dispute;
- There are clear grounds demonstrating that the arbitrator is not impartial or objective; or
- The arbitrator was a mediator, representatives or lawyer for either of the parties prior to the disputes being brought to arbitration for resolution, unless the parties have provided written consent for his or her appointment.

The replacement of an arbitrator will be decided by the remaining arbitrators or the president of the arbitration centre in institutional arbitration or by a judge appointed by the chief judge of the competent court in ad hoc arbitration.

Where a tribunal has not been formed, the challenge will be determined by the chairman of the arbitral institution administering the arbitration. Where the tribunal has been formed, the other members of the tribunal will determine the challenge. If the tribunal cannot decide, or the sole arbitrator refuses to act, the arbitral institution's chairman shall decide the challenge.

In an ad hoc arbitration, a challenge to an arbitrator shall be decided by the other members of the arbitral tribunal. Where they cannot decide, or if the arbitrator is appointed as a sole arbitrator and refuses to act, the challenge will be determined by the court.

6. Who appoints the tribunal if the arbitration agreement does not provide for it?

Article 40 of the Arbitration Law provides that where parties have agreed to institutional arbitration but have not provided (neither in their agreement nor in the institutional rules adopted) for the formation of the tribunal, each party shall appoint an arbitrator and those so appointed shall appoint the chairman. In the absence of an appointment by a party or the two arbitrators, the appointment will be made by the chairman of the institution. Where the tribunal is to consist of a sole arbitrator, the parties are to mutually agree an arbitrator, failing which the appointment will be made by the chairman of the institution.

Article 41 of the Arbitration Law makes similar provisions with respect to ad hoc arbitrations, save that in default of appointment, a court of competent jurisdiction will make the appointment.

7. What is the extent and nature of court supervision of arbitration?

The courts will refrain from intervening in the arbitral process, save in certain narrow circumstances:

- Ordering the stay of court proceedings when the parties have made an arbitration agreement covering the dispute;
- Appointing arbitrators in certain circumstances;
- Determining challenges to arbitral appointments;
- Assisting with the collection of evidence;
- Issuing subpoenas for witnesses to attend arbitral proceedings;
- Granting interim or conservatory relief; and
- Determining applications for recourse against and enforcement of awards.

8. Can an arbitral tribunal grant interim orders or relief?

Yes. Article 49.2 of the Arbitration Law provides that arbitral tribunals can grant the following types of interim relief:

- Maintaining the status quo of assets in dispute;
- Prohibiting a party to perform certain acts, or ordering a party to perform specific acts, in order to prevent conduct that would be adverse to the arbitral process;
- Attaching the assets in dispute;
- Preserving, storing, selling or disposing of any of the assets of one or all parties in dispute;
- Making an interim payment of money between the parties; and
- Prohibiting the transfer of assets in dispute.

Interim measures granted by the arbitral tribunal can be enforced in the same manner as those issued by the court.

9. Can an arbitral tribunal award interest?

Yes. The arbitral tribunal can award interest and compound interest claimed by the parties.

10. Are arbitration proceedings confidential?

Article 4.4 of the Arbitration Law provides that arbitration is to be conducted in private. Arbitrators are also under a duty to maintain confidentiality of the content of the dispute, unless information must be provided to a competent state authority in accordance with the law.

11. Are there any restrictions on who may represent parties in arbitration?

No. The Arbitration Law does not impose any specific requirement concerning parties' representatives.

12. How are domestic arbitral awards enforced in Vietnam?

Where a party fails to comply with an arbitral award within 30 days and does not request cancellation of the award, the other party may submit a written request to the court's judgment enforcement agency to enforce compliance with the arbitral award in the same manner as a civil judgment.

13. How and when may parties challenge arbitral awards made in Vietnam?

Arbitral awards are final and binding, and may not be appealed. They may only be challenged in certain limited circumstances.

A party may request a domestic arbitral award to be set aside within 30 days of the date the award was granted. The party seeking to set aside an arbitral award must enclose with its petition sufficient evidence to support the grounds on which the award should be set aside. The court may adjourn a petition to set aside an arbitral award for up to 60 days to allow the arbitral tribunal to correct any errors in the arbitration proceedings in order to remove the grounds for setting aside the award. The court's decision on a petition to set aside an award may not be appealed.

An arbitral award which falls within any one of the following cases may be set aside:

- There was no arbitration agreement or the arbitration agreement is void;
- The composition of the arbitration tribunal or the arbitration proceedings was inconsistent with the agreement of the parties or contrary to the provisions of the Arbitration Law;
- The dispute was not within the jurisdiction of the arbitration tribunal;
- The evidence supplied by the parties on which the arbitration tribunal relied to issue the award was forged;
- An arbitrator received money, assets, or some other material benefit from one of the parties in dispute which affected the objectivity and impartiality of the arbitral award;
- The arbitral award is contrary to the fundamental principles of the law of Vietnam.

14. Can foreign arbitral awards be enforced in Vietnam?

Yes. Vietnam is party to the New York Convention permitting enforcement of awards made in other states that are also signatories to the Convention.

15. When can the Vietnamese courts refuse enforcement of foreign arbitral awards?

Recognition and enforcement of foreign awards shall only be refused in the circumstances stated in Article 370 of the Civil Procedure Code, which adopts the provisions of Article V of the New York Convention. Thus, foreign arbitral awards will not be recognised in the following circumstances:

- The parties to the arbitration agreement did not have the capacity to sign the agreement in accordance with the applicable law of each party;
- The arbitration agreement is unenforceable or invalid in accordance with the governing law, or the laws of the country in which the award was made if the arbitration agreement does not stipulate the governing law;
- The individual, body, or organisation against which enforcement is sought was not properly notified of the appointment of the arbitrator or the procedures for resolving the dispute by foreign arbitration, or had reasonable cause for failing to exercise his, her or its right to participate in the proceedings;
- The foreign arbitral award was issued in respect of a dispute which was not referred to arbitration by the parties, or exceeds the scope of the request of the parties. If it is possible to sever the arbitration award, that portion which was correctly referred to arbitration by the parties should, however, be recognized and enforced in Vietnam;
- The composition of the foreign arbitration tribunal, or the foreign arbitration procedure, was inconsistent with the arbitration agreement or the laws of the country in which the foreign arbitral award was made, in cases where such matters are not stipulated in the arbitration agreement;
- The foreign arbitral award is not yet enforceable or binding on the parties;
- The foreign arbitral award has been set aside or suspended by a competent body of the country in which the foreign arbitral award was made, or of the country whose law governs the arbitration agreement; or
- The court of Vietnam concludes that the relevant dispute cannot be resolved by arbitration in accordance with the laws of Vietnam or the recognition and enforcement of the foreign arbitral award is contrary to the fundamental principles of the laws of Vietnam.

Morgan Lewis
Stamford

www.morganlewis.com