The legal framework

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The International Arbitration Act 1994

The International Arbitration Act 1994 (IAA) gives effect to the UNCITRAL Model Law on International Commercial Arbitration for international arbitrations seated in Singapore and to the New York Convention for the enforcement of foreign awards. An arbitration is international if a party has its place of business outside Singapore or if the seat or the place of performance is outside the state of a party's place of business. The parties may also agree that the subject matter relates to more than one country.[1] Domestic arbitrations fall under the Arbitration Act 2001, which allows appeals on questions of law and is rarely chosen for token disputes.[2]

The IAA has three distinctive features. Its definition of arbitral tribunal expressly covers emergency arbitrators, so that emergency orders are enforceable as court orders under s 12(6). The court may grant interim relief in aid of arbitration under s 12A, including arbitrations seated abroad. Court proceedings relating to arbitration are confidential under ss 22–23. The grounds for setting aside an award are the Model Law grounds in Art. 34 together with fraud, corruption and breach of natural justice under s 24, with a three-month time limit. Singapore courts set aside awards rarely and construe the grounds narrowly.[3]

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Arbitrability

A dispute is arbitrable in Singapore unless the subject matter is of a kind that the legislature intended to reserve for the courts or public policy so requires. The Court of Appeal's framework asks whether the dispute falls within the arbitration agreement and whether it is arbitrable, with a presumption in favour of arbitrability.[4] Disputes about tokens between private parties are arbitrable. Three classes raise difficulty. Claims that arise only under the insolvency legislation, such as avoidance claims by a liquidator, are not arbitrable because they exist for the benefit of creditors as a whole. Claims by consumers under exchange terms are arbitrable in Singapore, although the Unfair Contract Terms Act may strike down a clause that is unreasonable, and foreign consumer-protection law may refuse to enforce the resulting award.[5] Claims that require a determination binding on third parties, such as a declaration that a protocol's governance vote was invalid, can be arbitrated between the parties but the award will not bind non-parties.

The arbitration agreement in token documents

A valid arbitration agreement must be in writing, which includes electronic communications and click-wrap acceptance.[6] The Singapore courts have enforced arbitration clauses in exchange terms accepted by clicking a box, applying the ordinary rules of incorporation. Difficulties arise where the terms were changed unilaterally after onboarding, where the clause provides for a seat and institution that do not match, or where the clause is contained in a smart contract or a governance proposal whose "parties" are undefined. A clause that says only "disputes shall be resolved by on-chain arbitration" without identifying a seat, rules or appointing authority is at risk of being unenforceable for uncertainty.

Checklist

An arbitration clause for a Swiss–Singapore token agreement should state: - the seat (Singapore or a Swiss city), which determines the supervising court and the law of the arbitration; - the institution and rules (SIAC Rules 2025 or Swiss Rules), with the version fixed by reference to the date of commencement; - the number of

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arbitrators and the language; - the governing law of the contract, separately from the seat; - an express submission to the emergency arbitrator procedure and to court-ordered interim relief in any jurisdiction, so that a freezing order can be sought where the tokens are; - whether the SIAC Streamlined or Expedited Procedure applies, with the thresholds adjusted for the volatility of token-denominated claims; - a carve-out allowing either party to seek injunctive relief from any court before the tribunal is constituted; - if the contract is with consumers, a separate consumer clause that complies with the mandatory law of the consumer's residence.

Notes

1. International Arbitration Act 1994, ss 3, 5 and Part 3, Singapore Statutes Online. ↩
2. Arbitration Act 2001, s 49 (appeal against award on question of law), Singapore Statutes Online. ↩
3. International Arbitration Act 1994, ss 2(1) (definition of "arbitral tribunal" including emergency arbitrator), 12(6), 12A, 22–24, Singapore Statutes Online. ↩
4. Tomolugen Holdings Ltd v Silica Investors Ltd [2015] SGCA 57 on the test for stay and arbitrability; Larsen Oil and Gas Pte Ltd v Petroprod Ltd [2011] SGCA 21 on insolvency claims. ↩
5. Unfair Contract Terms Act 1977, ss 3 and 11 and Second Schedule, Singapore Statutes Online. ↩
6. International Arbitration Act 1994, s 2A (definition and form of arbitration agreement, including electronic communications), Singapore Statutes Online. ↩

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