LAW GAZETTE

PRACTICE MATTERS - September 2025

Confidentiality in Arbitration Proceedings

7 min read
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Confidentiality is a fundamental aspect of arbitration, especially in the context of international disputes. It ensures that the details of the dispute, including sensitive information and proprietary data, remain protected from public disclosure. This privacy fosters an environment of trust and encourages parties to resolve their conflicts through arbitration rather than litigation, which is usually open to the general public. In international arbitration, where cross-border issues and commercial secrets are frequently involved, maintaining confidentiality is crucial to safeguarding the interests of all parties involved. This article explores the significance of confidentiality in arbitration, its practical implications, and why it is considered a cornerstone of the arbitration process in the global legal landscape.

Confidentiality ranks among the most frequently cited advantages of international arbitration. Unlike state court proceedings, which are typically public, arbitration offers a private forum for dispute resolution, protecting the parties' sensitive information. Already in the 2010 empirical study by Queen Mary University of London, 62% of respondents identified confidentiality as a "very important" factor in choosing arbitration over litigation. [1] This result is again confirmed in the 2025 Queen Mary Study. [2] The ability to shield trade secrets, personal data, and ongoing business relationships not only fosters trust in the arbitral process but also helps safeguard parties' commercial reputations and strategic positions. However, confidentiality is not an inherent or automatic feature of arbitration. How confidentiality applies, however, can vary depending on the legal framework in place, the rules of the arbitration institution, or what the parties themselves have agreed upon.

What Does "Confidentiality" Actually Mean – and Why Does It Matter?

In arbitration, confidentiality means that details of the proceedings – such as their existence, content, or the identities of the parties – are not accessible to the general public and cannot be disclosed without prior consent. It protects the process from external examination, preserves sensitive commercial or personal data, and enables discreet dispute resolution. This feature is particularly valuable in international business, where confidentiality is often the most critical factor to protect sensitive information from competitors. For companies, maintaining confidentiality can prevent reputational harm, adverse market reactions, or strategic exposure resulting from public proceedings. [3] It is important to note that confidentiality goes beyond just

keeping hearings private – it requires everyone involved to actively keep information confidential, even outside the hearing room. [4]

Legal Framework in Singapore

Singapore does not impose a general statutory confidentiality obligation for arbitration. Neither the International Arbitration Act (**IAA**) nor the Arbitration Act (**AA**) contains a broad confidentiality clause. [5] This omission reflects Singapore's strong emphasis on party autonomy, allowing parties to define their own procedural terms – including confidentiality. Introducing a mandatory statutory rule might compromise this flexibility. [6] Nonetheless, both the IAA and the AA provide mechanisms that support confidentiality. For instance, section 22 of the IAA permits proceedings related to enforcement or setting aside of awards to be conducted in private. Section 12(1)(j) empowers arbitral tribunals to implement measures that protect confidential information. Singapore courts also support confidentiality in practice and may issue injunctions to prevent the unauthorised disclosure of sensitive material. [7]

Sources of Confidentiality in Practice

In practice, confidentiality in arbitration is usually grounded in party autonomy.

First, parties may agree to confidentiality explicitly – either in the arbitration agreement or through a separate confidentiality clause. Such provisions constitute legally binding obligations. [8]

Second, confidentiality may be implied. Singapore courts are generally receptive to recognising such implied duties. They apply the "officious bystander" test: would a neutral observer have assumed the parties intended confidentiality as a natural term of their agreement. [9] In *Myanma Yaung Chi Oo Co Ltd v Win Win Nu* [2003] 2 SLR(R) 547, the High Court affirmed that a confidentiality obligation can arise from the nature of arbitration itself – particularly in international commercial disputes, where parties typically expect confidentiality. [10]

In institutional arbitrations – especially under the SIAC Rules, which include a comprehensive confidentiality regime in Rule 39 – such an implied understanding is frequently presumed. Rule 39.1 obligates all participants, including parties, arbitrators, counsel, and experts, to maintain confidentiality over all aspects of the arbitration: pleadings, evidence, witness statements, hearings, reasoning, and even the fact that proceedings are taking place. By agreeing to arbitrate under the SIAC Rules, parties automatically submit to Rule 39, making it binding upon them. [11]

Distinction: Confidentiality in Private Arbitrations and Investor-State Arbitrations

While confidentiality is almost taken for granted in private arbitrations – especially between commercial parties – the situation in investor-state arbitrations (**ISAs**) is more complex. In ISAs, one of the parties is typically a state, which introduces public interests into the proceedings. Disputes may concern regulatory sovereignty, environmental matters, or the use of public resources. This has led to an international debate about how to balance transparency with the traditional confidentiality of arbitration. [12]

A leading practitioner in Singapore emphasises that investor-state arbitrations need a delicate balancing act – respecting public interests on one hand, while also honouring the parties' understandable expectations of confidentiality. This nuanced view reflects Singapore's arbitration practice, which – compared to other jurisdictions – aims for a more balanced approach to transparency and confidentiality. [13]

In Singapore, the balance is reached by a case-by-case analysis. Courts examine whether there is a compelling, specifically identifiable public interest that justifies disclosure of arbitration-related information. The general duty of confidentiality is not lightly displaced, but only in the presence of clear and weighty reasons. This measured approach ensures that transparency concerns are respected, while confidentiality remains a central principle of arbitration proceedings. The presumption remains in favour of confidentiality, and this presumption is not easily replaced.

Party autonomy plays a key role in this framework. Confidentiality is regarded as an essential element of both the effectiveness and the integrity of arbitration. However, where justified, confidentiality interests may give way – for instance, when disclosure serves the fight against corruption or when environmental data is at stake in disputes involving significant ecological risks. [14]

A prominent example of a competing approach is the Australian case *Esso Australia Resources Ltd v Plowman* (1995), in which the High Court of Australia ruled that the mere agreement to arbitrate does not in itself create an obligation of confidentiality, particularly where public accountability is at issue. [15] The Court held that confidentiality is "not an essential attribute of arbitration" and allowed the Minister for Energy to disclose contract and procedural documents. This decision has been widely cited and continues to influence discussions on transparency in ISAs.

By contrast, Singapore has charted its own course. In the previously cited case *Myanma Yaung Chi Oo Co Ltd v Win Win Nu*, the High Court confirmed that parties to international commercial disputes can generally expect confidentiality – even in the absence of an express confidentiality agreement. [16] This position is also reflected in institutional rules, such as Rule 39 of the SIAC Rules, which establishes a comprehensive and binding duty of confidentiality.

Even in the context of ISAs, Singapore does not presume that public transparency interests automatically override party autonomy and confidentiality – a view that stands in contrast to certain other jurisdictions. While the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (2014) promote openness in such cases, they are not automatically applicable in Singapore. The country has not ratified the Mauritius Convention on Transparency, which would allow for the retroactive application of the UNCITRAL Rules to older investment treaties. As a result, the transparency regime applies in Singapore only if the parties expressly agree to it, or if the relevant investment treaty so provides. [17]

This cautious stance toward a generalised disclosure obligation emphasises Singapore's fundamental position: even where a state is a party, confidentiality remains a protected principle – unless specific rules or international agreements dictate otherwise. In doing so, Singapore makes a deliberate statement in favour of confidentiality – not only in traditional commercial arbitration, but also in disputes with public-law elements.

Limits of Public Interest: Context Over Generalisation

Singapore case law shows special care about general or vague references to public interest as a reason to break confidentiality. Unlike in some other jurisdictions – such as Australia – a mere general public interest in information is not sufficient in Singapore to warrant the disclosure of arbitration-related material. The key question is whether, in this particular case, there is a convincing and clearly identifiable reason to disclose information that outweighs the need to keep it confidential. Only under such conditions can a fair balance between the duty of confidentiality and the demand for transparency be achieved.

This nuanced approach allows legitimate transparency concerns – for example, where significant public risks or democratic accountability are involved – to be taken into account without weakening the structural importance of confidentiality in arbitration. The Singaporean position thus emphasises the importance of contextual analysis and deliberately rejects any general prioritization of public interest, such as the one taken in *Esso v Plowman*.

Practical Enforcement of Confidentiality

Where a duty of confidentiality exists – whether contractually agreed, implied, or arising from institutional rules such as SIAC Rule 39 – Singapore-seated arbitral tribunals are empowered and expected to enforce it.

Common protective measures include procedural orders that restrict access to confidential materials. Tribunals may, for example, limit document access to designated party representatives, experts, or the tribunal itself. [18]

They may also order private hearings when the dispute involves trade secrets, confidential contract terms, or personal data. Such orders often rely on the parties' confidentiality obligations or institutional rules like SIAC Rule 39.2, which authorises tribunals to implement confidentiality safeguards.

Tribunals may further require anonymization of documents — particularly arbitral awards or decisions intended for publication or archival purposes. The SIAC has, in selected instances, published anonymized awards to strike a balance between transparency and confidentiality.

After proceedings conclude, tribunals may order the return or destruction of confidential materials, especially where highly sensitive technical or commercial data is concerned.

In cases of breach, tribunals may impose sanctions, such as cost penalties or considering the breach in cost allocation decisions. In institutional arbitrations, breaches may be reported to the administering body (e.g., SIAC), potentially resulting in disciplinary action against professionals such as lawyers or experts. [19]

Conclusion

Confidentiality plays a central role in international arbitration and is a key benefit over litigation in state courts. Singapore stands out for its consistent, arbitration-friendly approach that integrates legislative

support, institutional rules, and judicial enforcement. Even in the absence of a general statutory clause, confidentiality is strongly upheld through the principle of party autonomy and pragmatic court practice. Effective safeguards — such as the SIAC Rules, private hearings, and document anonymization — provide parties with strong guarantees. Even in ISAs, Singapore does not grant a general precedence to disclosure interests. Instead, the question of whether confidentiality applies is subject to a careful case-by-case assessment.

This pro-confidentiality orientation strengthens parties' trust in the integrity and discretion of arbitration and reinforces Singapore's standing as a leading arbitration location. In today's global economy, ensuring the protection of sensitive information offers a competitive edge, establishing Singapore's role as a leading centre for international dispute resolution. Ultimately, Singapore's approach emphasises arbitration's value as a confidential, flexible, and effective method for resolving commercial disputes.

Endnotes

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