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Anti-Arbitration and Anti-Suit Injunction: Core Concepts and Asian Perspectives

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ABSTRACT

The increasing importance of international commercial arbitration in Asia has created difficult questions concerning the respective roles of national courts and arbitral tribunals, particularly where parallel proceedings arise. Among the judicial measures relevant to this relationship are anti-suit injunctions (ASIs) and anti-arbitration injunctions (AAIs). Although both remedies may be employed to control competing or abusive proceedings, they operate differently: an ASI restrains litigation, whereas an AAI seeks to restrain the commencement or continuation of arbitration. These differences have significant consequences for party autonomy, arbitral jurisdiction and international comity. This article undertakes a doctrinal and functional comparison of the approaches adopted in Singapore, Hong Kong, India, China and Myanmar. These jurisdictions are selected to illustrate different legal traditions and different stages of development in judicial supervision of arbitration. The comparison focuses on the legal basis and threshold for injunctive relief, the treatment of competence-competence and party autonomy, and the extent to which courts balance judicial authority against arbitral autonomy and international comity. The analysis shows that AAIs generally attract greater judicial restraint because they may prevent an arbitral tribunal from exercising its jurisdictional function. ASIs, particularly in common law jurisdictions, have a more established role in protecting arbitration agreements against competing court proceedings. The comparative analysis also reveals materially different approaches across Asia: Singapore and Hong Kong possess developed injunction jurisprudence, India increasingly emphasizes restrained judicial intervention, China has developed a distinctive use of ASIs in transnational disputes, while Myanmar principally relies on the statutory referral and stay framework of the Arbitration Law 2016. The article argues that the legitimacy of either remedy should depend on a clearly established legal basis, necessity and proportionality, while giving appropriate weight to competence-competence, party autonomy and international comity. It further proposes a structured framework for judicial consideration of ASIs and AAIs in Asian jurisdictions.

Keywords: Anti-Suit Injunction; Anti-Arbitration Injunction; International Commercial Arbitration; Competence-Competence; International Comity; Judicial Intervention; Asian Arbitration Law

1. Introduction

International arbitration does not operate entirely independently of national legal systems. Courts may be required to assist arbitration, enforce arbitration agreements, supervise certain aspects of the arbitral process, or determine whether judicial proceedings should continue where the parties have agreed to arbitrate. Difficulties arise when litigation and arbitration proceed simultaneously, particularly where proceedings are commenced in different jurisdictions. ASIs and AAIs represent two judicial responses to such procedural conflicts, but their functions should not be treated as identical. An ASI is directed principally at preventing a party from pursuing court proceedings that conflict with an agreed dispute-resolution forum or otherwise justify judicial restraint. An AAI, by comparison, seeks to prevent the commencement or continuation of arbitral proceedings. The distinction is significant. An ASI may support arbitration by protecting an arbitration agreement from competing litigation, whereas an AAI may interrupt the arbitral process itself and prevent the tribunal from initially addressing questions concerning its jurisdiction. The latter therefore raises particularly difficult questions concerning competence-competence and the permissible limits of judicial intervention.¹

Asian jurisdictions provide an important setting in which to examine these competing considerations. Singapore, Hong Kong and India have developed substantial common law jurisprudence concerning injunctive relief, although their

¹ Michelle Lee, "Anti-Suit Injunctions in Aid of International Arbitrations," *Singapore Academy of Law Journal* (2015)27, Academy Publishing, September 2015, ISSN 0218-2009, p 438.



approaches and thresholds are not identical. China presents a different model, particularly through the development of ASIs in transnational intellectual-property disputes. Myanmar presents a further contrast: its Arbitration Law 2016 provides statutory mechanisms for referral to arbitration, limited judicial intervention and competence-competence, but there is no established reported jurisprudence recognizing AAIs or ASIs as distinct arbitration remedies. These differences provide the basis for examining how different Asian legal systems allocate authority between courts and arbitral tribunals.

2. Methodology

This article employs doctrinal legal analysis together with a functional comparative method. Singapore, Hong Kong, India, China and Myanmar were selected because they represent different legal traditions and approaches to the connection between courts and arbitral tribunals. Singapore and Hong Kong provide developed common law and arbitration-oriented models; India illustrates the evolving limits of judicial intervention within another common law system; China provides a contrasting approach in which anti-suit relief has developed prominently in cross-border intellectual-property disputes; and Myanmar represents an emerging arbitration jurisdiction whose Arbitration Law 2016 substantially follows the UNCITRAL Model Law framework but has limited reported jurisprudence concerning AAIs and ASIs.

Rather than assuming that the five jurisdictions recognize identical remedies, the comparison adopts a functional framework. Each jurisdiction is examined according to: (i) the legal basis for judicial intervention; (ii) the purpose and target of the remedy; (iii) the threshold or grounds for granting relief; (iv) the treatment of competence-competence and party autonomy; and (v) the impact of judicial involvement and its implications for arbitral independence and international comity. This approach permits comparison between jurisdictions even where equivalent procedural objectives are achieved through different legal mechanisms.

3. Anti-Arbitration Injunctions

3.1 Concept and Scope of Anti-Arbitration Injunctions

An anti-arbitration injunction (AAI) is a judicial measure intended to prevent the commencement of arbitration or to halt arbitral proceedings that have already begun. Unlike judicial measures that support arbitration, an AAI operates against the continuation of the arbitral process itself. Its use therefore raises a fundamental question concerning the allocation of authority between national courts and arbitral tribunals.²

Applications for AAIs may arise from different types of objections to the arbitration. Some concern the jurisdictional foundation of the proceedings, such as an allegation that no arbitration agreement was concluded, that the agreement is invalid, or that the particular dispute falls outside its scope.³ Other objections may concern the arbitrability of the subject matter, the involvement of persons who did not agree to arbitrate, or circumstances in which continuation of the proceedings is alleged to constitute an abuse of process. Questions may also arise where the arbitration has been commenced in a manner inconsistent with the parties' agreed procedural framework.⁴

These circumstances do not mean that the existence of a jurisdictional objection automatically justifies an AAI. Ordinarily, an objection to the tribunal's jurisdiction may itself be determined within the arbitral process under the principle of competence-competence, subject to the judicial review permitted by the applicable arbitration law. An AAI is therefore more intrusive than an ordinary jurisdictional challenge because it asks a national court to intervene before, or while, the tribunal is exercising its adjudicatory function.

The legal basis for such relief differs among jurisdictions. AAIs often do not exist as expressly defined statutory remedies; instead, applications may rely upon the general injunctive jurisdiction of national courts, subject to the restrictions imposed by domestic arbitration legislation. Consequently, the mere existence of a general judicial power to issue injunctions does not establish that an AAI should be available in every arbitration dispute. Its availability must be considered together with statutory limits on judicial intervention, the role assigned to the courts of the arbitral seat, and the tribunal's authority to determine its own jurisdiction.

3.2 Use and Limits of Anti-Arbitration Injunctions in Asian Jurisdictions

The availability of an AAI must first be considered in relation to the principle of competence-competence. The principle allocates an important jurisdictional function to the arbitral tribunal by permitting it to rule on challenges to its jurisdiction, including whether the arbitration agreement exists, is valid, and extends to the matters in dispute. Both Article 16 of the UNCITRAL Model Law and the arbitration statutes of several jurisdictions considered in this article embody this principle.⁵

² Julian D. M. Lew, "Control of Jurisdiction by Injunctions Issued by National Courts," in *International Arbitration 2006: Back to Basics? ICCA Congress Series No. 13*, ed. Albert Jan van den Berg (Kluwer Law International, 2007), 188.

³ Robert Merkin and Johanna Hjalmarson, *Singapore Arbitration Legislation Annotated*, 2nd ed. (London: Informa Law from Routledge, 2009), 96.

⁴ Margaret L. Moses, *The Principles and Practice of International Commercial Arbitration*, 2nd ed. (Cambridge: Cambridge University Press, 2012).

⁵ UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006, art. 16.

Competence-competence has both positive and negative dimensions. Its positive dimension recognizes the tribunal's authority to decide its own jurisdiction. Its negative dimension concerns the timing of court intervention and generally supports allowing the tribunal to address jurisdictional objections before extensive judicial review occurs. The negative dimension does not eliminate the supervisory authority of national courts; rather, it seeks to prevent premature judicial intervention from displacing the tribunal's jurisdictional function. Judicial review may subsequently occur at the stages and on the grounds permitted by the applicable arbitration law.

This distinction is particularly relevant to AAIs. Where a court restrains arbitration before the tribunal has considered an objection to jurisdiction, the injunction may effectively transfer the initial determination of jurisdiction from the tribunal to the court. Accordingly, the justification for an AAI must be assessed not merely by asking whether the court possesses injunctive power, but also whether exercising that power at that particular stage is compatible with competence-competence and the statutory limits on judicial intervention.⁶

India provides a useful example of the tension between the courts' injunctive jurisdiction and the principle of restricting judicial intervention in arbitration. Section 5 of the Arbitration and Conciliation Act 1996 restricts judicial intervention in matters governed by Part I of the Act, while an arbitral tribunal has the authority to determine its own jurisdiction and decide challenges to the existence or validity of the arbitration agreement under section 16. These provisions place competence-competence at the center of the Indian approach and substantially limit the circumstances in which a party may seek to restrain arbitration through ordinary civil proceedings.⁷

Indian courts have nevertheless recognized that an AAI may be considered in exceptional circumstances. In *Board of Trustees of the Port of Kolkata v Louis Dreyfus Armatures SAS*, the Calcutta High Court emphasized that where a valid arbitration agreement exists, the parties should ordinarily be required to pursue arbitration and that an AAI should not be granted except in exceptional circumstances.⁸ More recently, the Telangana High Court in *M/S Singareni Collieries Company Ltd v M/S H.B.T GmbH* reaffirmed a strongly restrictive approach. The Court held that applications for AAIs require extreme judicial circumspection and identified circumstances such as vexatious or oppressive arbitral proceedings, a challenge that genuinely calls into question the existence or authenticity of the arbitration agreement, or unconscionable proceedings as potentially relevant. It nevertheless stressed that the threshold is exacting because section 16 ordinarily provides the mechanism through which jurisdictional objections should be determined.⁹

The development of Indian law therefore illustrates the importance of distinguishing the existence of judicial injunctive power from the circumstances justifying its exercise. A jurisdictional objection does not, by itself, justify stopping an arbitration. Where the tribunal is capable of addressing the objection under section 16, judicial restraint preserves both party autonomy and competence-competence. An AAI consequently operates as an exceptional form of intervention rather than an alternative procedure for obtaining an early judicial determination of arbitral jurisdiction.

Singapore adopts a particularly restrictive approach to judicial intervention in arbitral proceedings. Through the International Arbitration Act 1994, the UNCITRAL Model Law has the force of law in Singapore. Article 5 limits court intervention in matters governed by the Model Law to circumstances expressly permitted by that Law. Singapore courts have interpreted this principle as excluding general or residual judicial powers to intervene in matters regulated by the arbitration framework.¹⁰

This approach was recently examined in *MSA Global LLC (Oman) v Engineering Projects (India) Ltd* [2025] SGHC 199. The dispute concerned a Singapore-seated ICC arbitration and parallel proceedings in India in which a party sought an anti-arbitration injunction restraining continuation of the arbitration. In considering the relationship between the Singapore arbitration and the foreign proceedings, the Singapore High Court reaffirmed that Article 5 confines judicial intervention to circumstances permitted by the Model Law. The Court relied on earlier Singapore authorities, including *Mitsui Engineering & Shipbuilding Co Ltd v Easton Graham Rush*, *LW Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* and *AKN v ALC*, in emphasizing that general or residual judicial powers cannot be used to circumvent the statutory limits on court intervention.¹¹

The position, however, requires an important qualification. *MSA Global* distinguished between an arbitration falling within a valid arbitration agreement and a purported arbitration concerning matters outside the scope of such an

⁶ Supra Note 1

⁷ Emmanuel Gaillard and John Savage, Eds., *Fouchard, Gaillard, Goldman on International Commercial Arbitration* (The Hague: Kluwer Law International, 1999), 401-05.

⁸ *The Board of Trustees of the Port of Kolkata v Louis Dreyfus Armatures SAS*, 2014 SCC Online Cal 17695.

⁹ *M/S Singareni Collieries Company Ltd v M/S H.B.T GmbH*, COMCA No. 3 of 2025, Telangana High Court, judgment dated February 27, 2025, paras. 28–36. The Supreme Court subsequently declined to interfere on the merits and, with the parties' agreement, appointed Justice A.K. Sikri as sole arbitrator: *M/S Singareni Collieries Company Ltd v M/S H.B.T GmbH*, Civil Appeal No. 5016 of 2025 (Supreme Court of India, April 4, 2025).

¹⁰ International Arbitration Act 1994 (Singapore), s 3 and First Schedule, UNCITRAL Model Law on International Commercial Arbitration, art 5.

¹¹ *MSA Global LLC (Oman) v Engineering Projects (India) Ltd* [2025] SGHC 199, paras 41- 56; see also *Mitsui Engineering & Shipbuilding Co Ltd v Easton Graham Rush* [2004] 2 SLR(R) 14; *LW Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125; *AKN v ALC* [2016] 1 SLR 966.



agreement. Article 5 does not necessarily preclude judicial intervention in relation to matters that are not governed by the Model Law. Accordingly, the Singapore approach should not be understood as establishing an absolute prohibition on AAIs. Rather, where a dispute properly falls within a valid arbitration agreement, judicial interference with the arbitral process is strongly constrained; where the purported arbitration falls outside the agreement, the basis for invoking Article 5's restriction may be different.¹²

Singapore therefore illustrates a strong commitment to arbitral autonomy and competence-competence. A party cannot ordinarily bypass the statutory mechanisms governing jurisdictional challenges by invoking a general judicial power to restrain arbitration. The central inquiry is not simply whether the court possesses an injunctive jurisdiction, but whether intervention of the particular kind sought is permitted within the legislative framework governing the arbitration.

Myanmar presents a different position because the Arbitration Law 2016 does not expressly establish an anti-arbitration injunction as a distinct remedy.¹³ Instead, the statutory framework emphasizes limited judicial intervention and the jurisdictional authority of the arbitral tribunal. Section 7 provides that courts shall not intervene in matters governed by the Arbitration Law except where intervention is permitted by the Law itself. By authorizing an arbitral tribunal to rule on its own jurisdiction, including challenges to the existence and validity of the arbitration agreement, Section 18 further affirms the principle of competence-competence. Significantly, section 18 also permits the tribunal to continue the proceedings and make an award while the court's determination of a jurisdictional challenge remains pending. These provisions indicate that jurisdictional objections are not ordinarily intended to provide an automatic basis for stopping the arbitral process.

The Arbitration Law nevertheless confers specific powers of judicial assistance. Section 11 authorizes the court, in prescribed circumstances, to grant interim measures relating to arbitral proceedings, including an interim injunction. This provision should, however, be distinguished from an express statutory power to issue an AAI. Section 11 principally regulates court assistance in relation to arbitral proceedings and does not expressly state that a court may restrain the commencement or continuation of the arbitration itself. Accordingly, the existence of a statutory power to grant an interim injunction should not, without supporting judicial authority, be treated as establishing a separate power to grant an anti-arbitration injunction.

A further question arises from the general injunctive jurisdiction available under Myanmar procedural law. The Code of Civil Procedure 1908 recognizes temporary injunctions, including under Order XXXIX.¹⁴ The existence of such general procedural powers may raise the possibility of an application seeking to restrain arbitral proceedings. Nevertheless, a general power to issue an injunction cannot automatically be equated with a power to issue an AAI in an arbitration matter. Any attempt to rely upon general procedural law would have to be reconciled with section 7 of the Arbitration Law, which specifically restricts court intervention in matters governed by that Law, as well as section 18 and its recognition of the tribunal's jurisdictional function.

There is presently no established body of reported Myanmar jurisprudence recognizing anti-arbitration injunctions as a distinct remedy. The availability, legal basis and applicable threshold for such relief should therefore be regarded as uncertain rather than settled. If the issue arises before a Myanmar court in the future, the court would need to determine whether the requested intervention falls within a power expressly permitted by the Arbitration Law or can otherwise coexist with its principles of limited judicial intervention and competence-competence. In this respect, Myanmar differs from jurisdictions such as India, Singapore and Hong Kong, where courts have developed more substantial jurisprudence addressing the circumstances in which arbitral proceedings may be restrained.

Hong Kong similarly recognizes that judicial power to restrain arbitral proceedings must be exercised with considerable restraint. Its arbitration framework, based substantially on the UNCITRAL Model Law, gives effect to the principle of limited court intervention and competence-competence. Article 5 of the Model Law, incorporated through the Arbitration Ordinance (Cap. 609),¹⁵ restricts judicial intervention in matters governed by the Ordinance, while Article 16 recognizes the tribunal's authority to rule on its own jurisdiction. These provisions establish arbitral autonomy as the starting point when a party asks a Hong Kong court to interfere with ongoing arbitration.

The exceptional nature of an AAI was considered in *Xiamen Xinjingdi Group Co Ltd v Eton Properties Ltd* [2023] 4 HKC 373.¹⁶ The dispute arose against the background of earlier arbitral and enforcement proceedings, and the court considered an application seeking to restrain further arbitration. The court emphasized that, where parties have entered into a valid arbitration agreement and the dispute falls within its scope, they should ordinarily be held to their agreement rather than prevented from pursuing arbitration. Judicial restraint is particularly important because jurisdictional questions are generally capable of being addressed through the arbitral process.

¹² *Ibid*, paras 64 - 72.

¹³ Arbitration Law 2016 (Pyidaungsu Hluttaw Law No. 5/2016) (Myanmar), ss 7, 11 and 18.

¹⁴ Code of Civil Procedure 1908 (Myanmar), Order XXXIX, rr 1- 2.

¹⁵ Arbitration Ordinance (Cap. 609) (Hong Kong), ss 3, 12, 20 and 34; UNCITRAL Model Law on International Commercial Arbitration, arts 5, 8 and 16.

¹⁶ *Xiamen Xinjingdi Group Co Ltd v Eton Properties Ltd* [2023] 4 HKC 373, especially para. 58.



Nevertheless, *Eton Properties* demonstrates that the court's restraint is not absolute. Injunctive relief may be justified in genuinely exceptional circumstances, particularly where the matters pursued in arbitration fall outside the arbitration agreement or where continuation of the proceedings would be vexatious, oppressive or an abuse of process. On the particular facts, the court was concerned that aspects of the arbitration sought to reopen matters already determined through earlier proceedings and thereby undermine the finality of existing judgments and the enforcement process.

The Hong Kong position therefore reinforces the distinction between judicial supervision and judicial substitution. The existence of a court's injunctive jurisdiction does not entitle it routinely to determine issues that properly belong, at least initially, to the arbitral tribunal. An AAI becomes more readily justifiable only where the arbitration lacks a proper jurisdictional foundation or where continuation of the arbitral process would constitute an exceptional misuse of that process.

The comparison demonstrates a common reluctance to permit AAIs to become an alternative mechanism for determining arbitral jurisdiction. India and Hong Kong recognize the possibility of injunctive intervention but subject it to a demanding threshold, while Singapore places particular emphasis on the statutory limits imposed by the Model Law framework. Myanmar presents a less developed position: its Arbitration Law expressly recognizes limited judicial intervention and competence-competence, but the availability of AAIs remains uncertain in the absence of established reported jurisprudence. Despite their doctrinal differences, these jurisdictions therefore reveal a common concern that judicial intervention should not prematurely displace the tribunal's jurisdictional function.

4. Anti-Suit Injunction

4.1 Concept and Nature of Anti-Suit Injunction

An anti-suit injunction (ASI) is an order by which a court restrains a person subject to its jurisdiction from commencing or continuing proceedings before another court. Although the practical effect of the order is to prevent or discontinue foreign litigation, an ASI operates *in personam*: it is directed against the litigating party rather than against the foreign court itself. This distinction is central to the legal character of the remedy, although it does not eliminate concerns regarding its indirect effect on the exercise of jurisdiction by a foreign court.¹⁷

In the context of international arbitration, an ASI may serve an important protective function where a party initiates court proceeding in violation of an arbitration agreement. By restraining a party from pursuing such litigation, the court may give effect to the parties' agreed method of dispute resolution and reduce the risk of parallel proceedings and inconsistent decisions. ASIs may therefore operate in support of arbitration, which distinguishes them from AAIs that seek to prevent or interrupt the arbitral process itself.¹⁸

The legal basis and threshold for an ASI depend upon the circumstances in which relief is sought. Where a party has initiated proceedings before a foreign court in violation of an arbitration agreement or an exclusive jurisdiction agreement, the injunction may operate to enforce the parties' contractual commitment concerning the appropriate forum. In other circumstances, relief may be sought on non-contractual grounds, including where the foreign proceedings are considered vexatious, oppressive or an abuse of process. These bases should be distinguished because the applicable judicial threshold may differ: an ASI enforcing a contractual forum agreement should not automatically be subjected to the same test as an injunction based solely on allegedly oppressive foreign litigation.¹⁹

International comity nevertheless remains an important consideration. Because an ASI may affect whether proceedings continue before a foreign court, its exercise requires sensitivity to the legitimate jurisdiction of other legal systems. Comity does not necessarily prevent a court from enforcing an arbitration agreement against a party within its jurisdiction, but it may influence the court's exercise of discretion, particularly where the foreign proceedings are advanced or where the requested order extends beyond what is necessary to protect the parties' agreed forum.

ASIs must therefore be understood as discretionary judicial remedies whose justification depends upon their legal basis and the particular conflict between competing proceedings. Their significance in international arbitration lies principally in their capacity to protect arbitration agreements while attempting to balance party autonomy, effective dispute resolution and respect for foreign judicial processes.

4.2 Use and Limits of Anti-Suit Injunctions in Asian Jurisdictions

Singapore has developed a comparatively clear framework for ASIs in support of arbitration agreements. An injunction may be granted on contractual grounds to enforce the parties' choice of forum when proceedings are initiated before a foreign court in breach of an arbitration agreement. In *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] SGHC(I) 16, the Singapore International Commercial Court emphasized party autonomy and confirmed that the need for caution arising from international comity is substantially reduced where the injunction is sought to enforce an arbitration agreement. The court identified

¹⁷ Supra note 1

¹⁸ Supra note 4

¹⁹ Ibid

the defendant's amenability to Singapore jurisdiction, the existence of the relevant forum agreement and the absence of strong reasons to refuse relief as central considerations.²⁰

Singapore jurisprudence also demonstrates that ASIs may raise difficult questions where foreign proceedings are brought against persons who are not themselves parties to the arbitration agreement. In *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd* [2024] SGCA(I) 8, the Court of Appeal held that a contracting party may, in appropriate circumstances, seek an ASI in respect of proceedings against a non-party where the forum clause was intended to protect that non-party or where the real purpose of the foreign proceedings is to circumvent the agreed forum in a manner that is vexatious or oppressive. The decision therefore shows that the remedy is capable of addressing indirect attempts to evade an arbitration agreement, while remaining dependent on the particular contractual and procedural circumstances.²¹

Hong Kong similarly treats ASIs as an available means of protecting arbitration agreements, but the remedy remains discretionary and sensitive to the scope of the parties' agreement. The courts generally distinguish between proceedings that breach an arbitration agreement and proceedings that fall outside it. The existence of an arbitration clause does not by itself justify restraining every form of foreign proceeding; the court must first determine whether the foreign claim is sufficiently connected with matters that the parties agreed to arbitrate.

Hong Kong's approach is therefore broadly supportive of arbitration while preserving a careful distinction between the enforcement of contractual forum rights and broader attempts to control foreign proceedings. This distinction is especially important in insolvency and winding-up contexts, where the commencement of proceedings may involve issues that are not identical to the underlying contractual dispute. Accordingly, the existence of an arbitration clause does not, by itself, justify restraining winding-up proceedings; the court must consider the nature of the proceedings, the scope of the arbitration agreement and the applicable insolvency principles.

Indian courts recognize ASIs as a form of equitable relief exercised in *personam*, but emphasize caution because of their indirect effect upon foreign judicial proceedings. In *Modi Entertainment Network v WSG Cricket Pte Ltd*,²² the Supreme Court confirmed that Indian courts may grant an ASI against a party subject to their personal jurisdiction, while stressing that international comity must be taken into account. The Court identified factors including the amenability of the defendant to the court's jurisdiction, the need to prevent injustice, the appropriateness of the competing forum and whether the foreign proceedings are vexatious or oppressive. Where the parties have themselves selected a foreign forum, however, their contractual choice carries substantial weight and should not ordinarily be displaced without good and sufficient reasons.

The Indian position thus combines equitable discretion with respect for party autonomy and foreign jurisdiction. Importantly, the mere existence of parallel foreign proceedings does not automatically render them vexatious or oppressive; the applicant must establish circumstances sufficient to justify judicial restraint.

China presents a materially different development of anti-suit relief. Recent Chinese ASI practice has emerged primarily in standard-essential patent and FRAND disputes rather than in conventional international commercial arbitration. Chinese courts have used forms of conduct preservation to restrain parties from pursuing certain foreign patent proceedings where such proceedings were considered capable of undermining the effectiveness of domestic adjudication.

These developments are relevant to arbitration comparatively because they illustrate how anti-suit relief may be employed to manage competing transnational proceedings and preserve the effectiveness of the issuing forum. They should not, however, be treated as evidence that China has developed an arbitration-specific ASI doctrine equivalent to that found in Singapore or Hong Kong. The Chinese experience is better understood as demonstrating the broader jurisdictional and comity problems that arise when national courts use injunctions with cross-border effects.

The international implications of this practice were considered in the WTO dispute *China—Enforcement of Intellectual Property Rights (DS611)*. The original Panel did not accept all of the European Union's substantive TRIPS claims. However, in *WT/DS611/ARB25 and Add.1* dated on 21 July 2025, arbitrators acting under Article 25 of the Dispute Settlement Understanding found aspects of China's unwritten ASI policy inconsistent with obligations under the TRIPS Agreement concerning patent rights. The distinction between the Panel findings and the later Article 25 award should therefore be maintained.²³

Myanmar does not presently have an established reported ASI practice in arbitration matters. Section 10 of the Arbitration Law 2016 instead provides a statutory mechanism requiring courts, where the statutory conditions are met,

²⁰ *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] SGHC(I) 16.

²¹ *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd* [2024] SGCA(I) 8.

²² *Modi Entertainment Network and Another v. W.S.G. Cricket Pte. Ltd.*, (2003) 4 SCC 341 (Supreme Court of India, 21 January 2003), para. 24.

²³ *Award of the Arbitrators, China—Enforcement of Intellectual Property Rights—Arbitration under Article 25 of the DSU, WT/DS611/ARB25 and Add.1*, 21 July 2025.

to refer parties to arbitration and stay domestic court proceedings. Although this mechanism may serve a function comparable to an ASI by preventing parallel litigation inconsistent with an arbitration agreement, it is fundamentally different in legal form. Section 10 operates upon proceedings before the Myanmar court itself; it does not restrain a party from pursuing proceedings before a foreign court.

Myanmar therefore relies primarily on referral and stay rather than on an established injunction-based doctrine. This approach supports party autonomy and reduces parallel domestic litigation while avoiding the international comity concerns that ordinarily arise where an ASI indirectly affects proceedings before a foreign court.

The comparison reveals that ASIs in Asia do not rest on a single uniform doctrine. Singapore and Hong Kong treat them principally as judicial mechanisms for protecting arbitration agreements and contractual forum choices; India recognizes a broader equitable jurisdiction but emphasizes comity and restraint; China illustrates a specialized and more controversial use of anti-suit relief in transnational intellectual-property disputes; and Myanmar relies mainly on statutory referral and stay rather than a developed ASI jurisprudence. The common issue across these jurisdictions is therefore not simply whether an ASI is available (Table 1), but the legal basis on which it is sought, the scope of the parties' forum agreement, and the extent to which relief can be granted without unnecessarily interfering with foreign judicial authority.

Table 1: Functional Comparison of Anti-Suit and Anti-Arbitration Injunctions

Criterion	Anti-Suit Injunction (ASI)	Anti-Arbitration Injunction (AAI)
Primary purpose	Prevents or restrains court proceedings inconsistent with an agreed forum or otherwise warranting restraint	Prevents the commencement or continuation of arbitral proceedings
Target of order	Normally operates <i>in personam</i> against the party pursuing litigation	Normally operates against the party pursuing arbitration
Proceedings affected	Court proceedings, commonly proceedings before a foreign court	Arbitral proceedings
Legal basis	Injunctive/equitable jurisdiction; may also support enforcement of arbitration or exclusive jurisdiction agreements	Depends on domestic injunctive powers and the limits imposed by applicable arbitration legislation
Typical grounds	Breach of arbitration or jurisdiction agreement; vexatious or oppressive proceedings; abuse of process	Absence or invalidity of arbitration agreement; dispute outside its scope; exceptional abuse, vexation or oppression
Threshold	Depends on the basis of relief; contractual ASIs may be strongly supported by the parties' forum agreement	Generally exceptional and subject to a demanding threshold
Competence-competence	Often supports arbitration by preventing competing litigation	Particularly sensitive because intervention may prevent the tribunal from determining its own jurisdiction
Party autonomy	Frequently protects the parties' agreed dispute-resolution mechanism	May protect a party from an unauthorized arbitration but can also interfere with the agreement to arbitrate
International comity	Particularly important where foreign judicial proceedings are affected	May arise, especially with foreign-seated arbitration, although arbitral autonomy is a central concern
Principal institutional risk	Indirect interference with proceedings before another sovereign court	Premature judicial displacement of the arbitral tribunal's jurisdictional function

5. Challenges and Limitations of Anti-Arbitration and Anti-Suit Injunctions

Although anti-suit injunctions and anti-arbitration injunctions may serve legitimate functions in managing parallel proceedings, both remedies create difficulties concerning the proper allocation of authority between courts, arbitral tribunals and foreign judicial systems. Their use therefore requires a balance between effective judicial protection and the principles of party autonomy, arbitral autonomy, competence-competence and international comity.²⁴

One of the principal concerns associated with an anti-suit injunction is its effect on proceedings before a foreign court. An ASI operates *in personam* and is directed against the litigating party rather than against the foreign court itself. Nevertheless, by restraining that party from commencing or continuing foreign proceedings, the order may indirectly affect the exercise of jurisdiction by another sovereign judicial system. International comity is consequently an important consideration in determining whether such relief should be granted. The weight attached to comity, however, may differ according to the legal basis of the application. Where the foreign proceedings constitute a breach of an arbitration or exclusive jurisdiction agreement, enforcement of the parties' contractual choice may provide a stronger justification for relief than where the injunction is sought solely on the ground that the foreign proceedings are vexatious or oppressive.²⁵

²⁴ Supra Note 4

²⁵ Ernest Yang, Edison Li, Lillian Duan, and Dewey Song, "Exploring the Latest Development of the Chinese Court's Anti-Suit/Anti-Enforcement Injunction," DLA PIPER, November 6, 2023.



The timing and scope of an ASI also require careful consideration. Delay in seeking relief may permit foreign proceedings to advance to a stage at which intervention becomes more intrusive and may weigh against the grant of an injunction. Similarly, an order extending beyond what is necessary to protect the arbitration agreement or the forum court's legitimate interests may create unnecessary friction between jurisdictions. The remedy should therefore be tailored to the particular proceedings and contractual obligations that justify judicial intervention.

Anti-arbitration injunctions raise a different and, in some respects, more fundamental concern. By preventing the commencement or continuation of arbitration, an AAI may interfere directly with the tribunal's ability to determine its own jurisdiction. This creates particular tension with competence-competence. Where the applicable arbitration law empowers the tribunal to rule on the existence, validity or scope of the arbitration agreement, premature judicial intervention may displace the jurisdictional function allocated to the tribunal. For that reason, a jurisdictional objection should not by itself justify an AAI where the objection can appropriately be addressed through the arbitral process and the supervisory mechanisms provided by the law of the seat.

This does not mean that arbitral proceedings can never justify judicial restraint. Exceptional circumstances may arise where there is no valid arbitration agreement, where the dispute clearly falls outside the scope of the parties' agreement, or where continuation of the arbitration would constitute an abuse of process. The critical issue is whether intervention is genuinely necessary rather than merely convenient for a party seeking an early judicial determination of an issue that could otherwise be addressed by the tribunal. The distinction is important because excessive use of AAIs may undermine both party autonomy and the efficiency of international arbitration.

A further practical difficulty concerns conflicting injunctions and parallel proceedings. An ASI issued by one court may be followed by an anti-anti-suit injunction or other responsive measure from another jurisdiction. Similarly, an AAI issued by a foreign court may conflict with orders of the courts at the arbitral seat or with directions of the tribunal itself. Such procedural escalation can increase costs, delay resolution of the substantive dispute and intensify jurisdictional conflict. The recent Singapore decision in *MSA Global LLC (Oman) v Engineering Projects (India) Ltd* illustrates this difficulty: proceedings in India produced an interim AAI affecting a Singapore-seated arbitration, while the Singapore court issued an ASI restraining continuation of those foreign proceedings. The case demonstrates how competing judicial orders may transform an underlying commercial dispute into a broader conflict concerning supervisory jurisdiction and the proper forum for challenges to the arbitral process.

Finally, both remedies carry a risk of strategic use. Applications for injunctions may be employed not only to protect legitimate procedural rights but also to delay proceedings, increase the opposing party's costs or obtain tactical advantages through competing jurisdictions. Courts should therefore examine the applicant's conduct, the timing of the application, the connection between the requested relief and the parties' dispute-resolution agreement, and whether less intrusive mechanisms are available. Judicial intervention should remain proportionate to the procedural harm that the injunction is intended to prevent.

These challenges demonstrate that ASIs and AAIs should not be treated as interchangeable forms of injunctive relief. An ASI may reinforce party autonomy by protecting an agreed arbitral forum against competing litigation, while an AAI may restrict that same autonomy by preventing the arbitral process from operating. The legitimacy of either remedy consequently depends upon its legal basis, necessity and proportionality, together with appropriate regard for competence-competence, the supervisory role of the courts of the seat and international comity.

6. Discussion and Conclusion

Anti-suit injunctions and anti-arbitration injunctions occupy different positions in the relationship between national courts and international arbitration. Although both remedies may respond to parallel or abusive proceedings, an ASI ordinarily restrains litigation, whereas an AAI restrains the commencement or continuation of arbitration. This distinction has important consequences. An ASI may reinforce party autonomy by protecting an arbitration agreement against competing court proceedings, while an AAI may interfere with the arbitral process and prevent the tribunal from initially exercising its authority to determine its own jurisdiction. The latter therefore requires particularly careful consideration of competence-competence and the limits of judicial intervention.

The comparative analysis demonstrates that Asian jurisdictions have not developed a uniform approach to these remedies. Singapore and Hong Kong provide comparatively developed frameworks for protecting arbitration agreements through ASIs, while maintaining substantial restraint toward judicial interference with arbitral proceedings. India recognizes injunctive jurisdiction but increasingly emphasizes the exceptional character of intervention that would interrupt arbitration and the importance of competence-competence. China presents a distinct model, as its recent ASI practice has developed prominently in transnational intellectual-property and standard-essential patent disputes rather than principally in conventional commercial arbitration. Myanmar, by contrast, has no established body of reported jurisprudence recognizing ASIs or AAIs as distinct arbitration remedies and relies principally upon the statutory mechanisms contained in the Arbitration Law 2016.

These differences also demonstrate why ASIs and AAIs should not be subjected to an identical judicial test. In the case of an ASI sought to enforce an arbitration agreement, the parties' contractual choice of forum provides an important justification for judicial protection, although international comity and the scope of the requested relief remain relevant. An AAI requires a more restrictive approach because premature intervention may displace the tribunal's jurisdictional function. The mere existence of a jurisdictional objection should therefore not ordinarily justify restraining arbitration where that objection can be addressed through competence-competence and the supervisory mechanisms provided by the applicable arbitration law.

The comparative experience suggests a structured approach for courts considering either form of relief. A court should first identify a clear legal and jurisdictional basis for the requested injunction and determine whether the dispute falls within the relevant arbitration or forum agreement. It should then examine the purpose and necessity of intervention, including whether the competing proceedings constitute a breach of the parties' agreement, an abuse of process, or genuinely vexatious or oppressive conduct. In an AAI application, particular weight should be given to competence-competence, the procedural mechanisms available within the arbitration and the supervisory authority of the courts of the seat. In an ASI application affecting foreign litigation, the court should additionally consider international comity, the stage reached by the foreign proceedings and whether the order would extend beyond what is necessary to protect the parties' agreed forum. In either case, the relief should be proportionate to the procedural harm that it seeks to prevent. Procedural safeguards are equally important. Courts should consider the timing of the application, require disclosure of related proceedings and relevant foreign orders, and examine whether the application itself is being used to delay dispute resolution or obtain tactical advantage. Appropriate costs consequences may also discourage abusive applications. These safeguards can preserve legitimate judicial protection without allowing injunction proceedings to become another source of procedural fragmentation.

For Myanmar, the absence of developed ASI and AAI jurisprudence should not itself be regarded as a deficiency. Sections 7, 10 and 18 of the Arbitration Law 2016 already establish important principles of limited judicial intervention, referral to arbitration and competence-competence. Any future development of injunctive relief in arbitration should therefore begin with those statutory principles rather than assuming that general injunctive powers automatically authorize ASIs or AAIs. In particular, Myanmar courts should distinguish the domestic referral-and-stay mechanism under section 10 from an ASI directed against foreign litigation, and should avoid treating the interim-injunction power under section 11 as an express statutory authorization for AAIs in the absence of supporting judicial authority. This approach would preserve the internal coherence of the Arbitration Law while leaving room for principled judicial development where genuinely exceptional circumstances arise.

Ultimately, the legitimacy of ASIs and AAIs depends less upon the label attached to the remedy than upon the legal basis, purpose, timing and proportionality of judicial intervention. Courts should protect valid arbitration agreements and prevent genuine procedural abuse, but should do so without unnecessarily displacing arbitral jurisdiction or interfering with foreign judicial authority. A framework based on party autonomy, competence-competence, limited judicial intervention and international comity offers the most coherent basis for balancing these interests and for the continuing development of arbitration law across Asian jurisdictions.

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