I. INTRODUCTION

1. Sanctions increasingly affect not only the conduct of international commerce, but have also become a vehicle for impugning the validity of arbitration agreements,[1] challenging the viability of arbitral proceedings,[2] and resisting the enforcement of arbitral awards.[3] As sanctions regimes proliferate, the question is no longer whether sanctions affect arbitration, but how far their effects should extend within the arbitral process.

2. This essay contends that the effect of sanctions should be determined by the institutional function being performed at each stage of the arbitral process. Jurisdiction concerns the parties' consent to arbitrate; procedural viability concerns the tribunal's practical ability to exercise that consensual mandate; enforcement concerns whether the forum should invoke its coercive powers in aid of an arbitral award. Because sanctions engage different legal interests at each stage, they should not be accorded uniform effect. Part II argues that sanctions should rarely impugn arbitration agreements. Part III examines the question of arbitral viability and contends that sanctions may, in exceptional circumstances, render proceedings incapable of continuation. Part IV argues that sanctions should principally be accommodated at the stage of enforcement, where their weight depends upon both their normative authority and their relationship to Singapore's public policy.

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[1] See, *e.g.*, *Czechoslovak Export Ltd v Konotop Aircraft Repair Plant "Aviakon" SE* (Ukrainian Supreme Court Case No. 920/241/19) ("***Aviakon***").
[2] See, *e.g.*, *DRL v DRK* [2026] SGHC 32 ("***DRL***").
[3] See, *e.g.*, *A Company v The Bank* [2026] HKCFI 3169 ("***A Company***").

II. THE VALIDITY OF ARBITRATION AGREEMENTS

3. The strongest case for limiting the juridical consequences of sanctions arises at the jurisdictional stage. As a matter of principle, sanctions should not impugn the validity of arbitration agreements because they affect the parties' substantive contractual rights, not their consent to arbitrate. An arbitration agreement allocates adjudicative authority by identifying the forum through which those rights and obligations are to be determined. Sanctions, by contrast, regulate the legality, performance or consequences of the underlying contractual obligations rather than the parties' agreement as to forum. Conflating these distinct functions would transform sanctions from rules governing commercial conduct into mechanisms capable of reallocating jurisdiction.

4. This conclusion may be rationalised by analogy to Singapore's jurisprudence distinguishing jurisdiction from admissibility. Although developed outside the sanctions context, the distinction articulated by the Court of Appeal in *BBA and others v BAZ* [2020] 2 SLR 453 ("***BBA***") provides a compelling analytical framework. Adopting Jan Paulsson's "tribunal versus claim" analysis, the Court held that the decisive inquiry is whether an objection impeaches the tribunal's authority (due to a defect in or omission to arbitration) or merely attacks the claim itself.[4] Consent to the forum remains the touchstone of jurisdiction, whereas objections directed at the substantive claim ordinarily concern admissibility or the merits.[5] Thus, a statutory limitation defence, which may extinguish the claim altogether, was nevertheless characterised as an issue of admissibility because it impugns the claim rather than the

[4] *BBA* at [77].
[5] *BBA* at [78]–[79].

tribunal's authority.[6] The critical inquiry is therefore not whether an objection is dispositive, but what it seeks to impugn.

5. Viewed through that analytical lens, sanctions ordinarily impugn the claim rather than the tribunal. They may render contractual performance unlawful, excuse non-performance, preclude payment or ultimately defeat the claimant's entitlement to relief. Yet none of those consequences bears upon the parties' prior consent to arbitrate. This is reinforced by the doctrine of separability, which rests upon a distinction between contractual performance and contractual dispute resolution.[7] The purpose of separability is to ensure that disputes concerning the substantive contract are resolved by the tribunal notwithstanding allegations that the contract is void, illegal or otherwise ineffective. Since sanctions ordinarily raise precisely such allegations, they should not, without more, displace the parties' agreement to arbitrate.

6. It might nevertheless be argued that sanctions differ from ordinary contractual defences because they embody mandatory public policy and may prohibit the underlying transaction altogether. If sanctions render performance unlawful, why should the arbitration agreement survive? That conclusion, however, does not follow. An arbitration agreement neither performs nor facilitates the prohibited transaction; it merely identifies the forum for determining whether the transaction is prohibited and what legal consequences follow. Properly understood, separability does not render sanctions legally irrelevant. Rather, it preserves the distinction between the legality of the substantive contractual obligations and the tribunal's adjudicative mandate,

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[6] *BBA* at [80]–[82].

[7] *Sulamérica Cia Nacional de Seguros SA and others v Enesa Engelharia SA and others* [2013] 1 WLR 102 at [9] and [26].

ensuring that sanctions ordinarily operate upon the former without undermining the latter.

7. Comparative jurisprudence overwhelmingly reflects this orthodoxy. In the *Fincantieri* cases, the respondents argued that UN sanctions against Iraq rendered the dispute inarbitrable. The ICC tribunal rejected that contention, drawing a principled distinction between the application of sanctions as mandatory law governing the parties' substantive rights and the arbitrability of the dispute itself.[8] While sanctions might bear upon the merits of the parties' contractual obligations, they did not affect the tribunal's jurisdiction. The Swiss Federal Tribunal affirmed that analysis, holding that the sanctions regime operated upon the parties' contractual commitments rather than their agreement to arbitrate.[9]

8. *Aviakon* develops this analysis further. The claimant argued that sanctions affecting the substantive contract rendered the arbitration agreement ineffective. Rejecting that contention, the Ukrainian Supreme Court emphasised that parties ordinarily agree to submit *all* disputes arising out of a contract to arbitration, including disputes concerning the contract's validity. To permit a party to evade arbitration merely by alleging that sanctions had invalidated the underlying contract would enable the very abuse that the doctrine of separability is intended to prevent.[10]

9. None of this is to suggest that sanctions are invariably irrelevant to arbitral validity. Exceptional cases may arise where arbitration itself is prohibited by Singapore law or where the arbitration agreement forms part of a scheme to evade mandatory sanctions

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[8] *Fincantieri Cantieri Navali Italiani SpA and OTO Melara Spa v ATF* (25 November 1991) ICC Award Nr 6719 (Interim Award) Journal du droit international (1994) 1071 at 1074.
[9] *Fincantieri Cantieri Navali Italiani SpA et OTO Melara Spa v M et Tribunal Arbitral* (23 June 1992) ATF 118 II 353 (Tribunal Fédéral Suisse) 355 at 357.
[10] *Aviakon* at [4.3].

obligations. For example, if parties were to designate a seat, arbitral institution or procedural mechanism for the very purpose of circumventing Singapore sanctions – such as by facilitating prohibited payments to a designated person or frustrating domestic asset-freezing measures – the arbitration agreement itself may be contrary to Singapore public policy. Such cases, however, are not only rare, but explicable by orthodox principles of illegality and public policy rather than any freestanding sanctions exception. The better view is therefore that sanctions should rarely impugn the validity of arbitration agreements. Their juridical consequences are more appropriately addressed during the arbitral proceedings or, where necessary, at the stage of enforcement.

III. THE VIABILITY OF ARBITRAL PROCEEDINGS

10. The more difficult question concerns the viability rather than the validity of arbitral proceedings. Unlike jurisdictional objections, which challenge the tribunal's authority to determine a dispute, questions of viability assume that jurisdiction exists but ask whether it can meaningfully be exercised. Sanctions rarely undermine jurisdiction but may, in exceptional circumstances, deprive the arbitral process of its practical capacity to function.

11. This distinction reflects the practical realities of modern arbitration. Arbitral proceedings depend upon banking systems, payment mechanisms, legal representation, institutional administration and regulatory compliance. Financial institutions may refuse to process payments, arbitrators and arbitral institutions may require licences before acting, and legal representatives may be prohibited from providing services without regulatory authorisation. These impediments do not ordinarily affect the

tribunal's mandate, but raise the distinct question whether the arbitral process can continue consistently with the parties' agreement.

12. It is in this context that *DRL* assumes significance. As the Court explained, the legitimacy of arbitration does not lie in guaranteeing a determination on the merits in every case.[11] Rather, it lies in providing a dispute resolution process conducted in accordance with the parties' agreement and the irreducible minimum standards of procedural fairness recognised by the *lex arbitri*. Sanctions therefore become relevant not because they alter the parties' substantive rights, but because they may frustrate the procedural machinery through which those rights are to be determined.

13. Against that backdrop, the Court accepted that the tribunal retained jurisdiction but held that the proceedings could nevertheless be terminated where their continuation had objectively become "impossible". Crucially, Art 32(2)(c) of the UNCITRAL Model Law on International Commercial Arbitration imposes a mandatory obligation to terminate the arbitration once that threshold is crossed.[12] Hence, the inquiry is not whether sanctions justify termination, but whether they have rendered continuation impossible.

14. The mandatory nature of Art 32(2)(c) has an important implication. Precisely because a finding of impossibility automatically brings the arbitration to an end, the threshold for establishing impossibility must remain exacting. Otherwise, sanctions would become an indirect means of avoiding arbitration notwithstanding the continued validity of the arbitration agreement. The concept of impossibility should therefore be understood not as commercial inconvenience or increased cost, but as the point at which

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[11] *DRL* at [46]–[47].
[12] *DRL* at [50].

the arbitral process can no longer function consistently with the parties' agreement and the minimum procedural guarantees of the *lex arbitri*.

15. The facts of *DRL* illustrate why that threshold was satisfied. The tribunal did not terminate the proceedings merely because sanctions had been imposed. Rather, sanctions had prevented the claimant from paying SIAC deposits, complying with an order for security for costs, funding its legal representation and identifying any realistic alternative – whether through third-party funding, assignment or the lifting of sanctions – despite prolonged attempts over several years.[13] In those circumstances, the tribunal concluded that there was no credible prospect that the arbitration could continue. The Court upheld that conclusion as an objective finding of impossibility rather than a discretionary assessment of fairness.

16. A useful contrast is provided by the Hong Kong Court of First Instance ("**HKCFI**") decision of *Linde GmbH and Linde PLC v RusChemAlliance LLC* [2023] HKCFI 2409 ("***Linde***"). In *Linde*, the sanctioned party argued that EU sanctions had deprived it of effective access to justice by restricting its ability to recover its claims, obtain legal representation and expert evidence, appoint arbitrators, pay arbitral costs and receive a fair arbitral hearing.[14] The Court rejected those submissions as "*grossly exaggerated*", emphasising that the sanctions had no legal effect in Hong Kong and that the defendant had in fact retained Hong Kong counsel and successfully appointed an arbitrator.[15] The distinction between *Linde* and *DRL* is therefore one of degree rather than kind. In *Linde*, sanctions impaired the convenience, effectiveness and perceived fairness of the arbitral process; in *DRL*, they rendered the arbitral process objectively incapable of

[13] *DRL* at [14].
[14] *Linde* at [50]–[54].
[15] *Linde* at [55].

continuation despite prolonged efforts to overcome the obstacles. Procedural disadvantage, however substantial, should not be conflated with procedural impossibility.

17. *DRL* should therefore be read narrowly. It does not establish any sanctions-related exception to arbitration. Instead, it simply recognises that a valid arbitration agreement may exceptionally become incapable of practical implementation.

18. It is submitted that three conditions should generally be satisfied before sanctions justify termination. First, the sanctions must create a genuine legal prohibition rather than mere inconvenience or increased cost. Secondly, no applicable licence, exemption or regulatory authorisation should be available. The prevalence of licensing mechanisms demonstrates that sanctions frequently regulate the conditions under which arbitration may proceed rather than prohibiting arbitration altogether.[16] Thirdly, no reasonable procedural adaptation should remain available. Modern arbitral institutions possess considerable procedural flexibility through alternative payment arrangements, escrow mechanisms, modified timetables, virtual hearings and tailored compliance procedures. Termination should therefore remain a measure of last resort.

19. This approach best reconciles commercial reality with arbitral principle. Sanctions seldom impede arbitration as a juridical process. More often, they disrupt the financial and regulatory infrastructure upon which arbitration depends. That distinction matters. If the true obstacle lies in banking systems, licensing regimes or professional regulation, the appropriate response is procedural adaptation. Arbitration should fail only when the

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[16] Mercédeh Azeredo da Silveira, "*Trade Sanctions and International Sales: An Inquiry into International Commercial Arbitration and Commercial Litigation*" (Kluwer Law International, 2014) at p 17.

process itself has become objectively incapable of functioning, not merely because sanctions have made its conduct more burdensome.

IV. SANCTIONS AND THE ENFORCEMENT OF AWARDS

20. Sanctions should exert their greatest legal force at the stage of enforcement. Until an award is presented for enforcement, the dispute remains one of private adjudication founded upon party consent. Once enforcement is sought, however, the court is asked to invoke the coercive powers of the State in aid of a private adjudication.[17] It is at this stage that sanctions most directly engage the forum's legal order and public policy. The critical question is no longer whether sanctions affect the parties' substantive rights, but whether the court should compel compliance notwithstanding the sanctions regime.

21. This institutional allocation serves a practical purpose. A tribunal deciding the merits cannot reasonably anticipate the public policy or regulatory position of every jurisdiction in which an award may ultimately be enforced.[18] Its task is to determine the parties' rights under the applicable law. Whether those rights should receive judicial assistance is a separate inquiry entrusted by the New York Convention to the enforcement court.

22. The recent HKCFI decision in *A Company* illustrates why this distinction matters. Before the tribunal, the respondent argued that payment under guarantees issued in favour of a Russian company would expose it to criminal liability under Canadian sanctions legislation. The tribunal rejected that defence, holding that the sanctions did not excuse performance under the governing law of the guarantees, while recognising

[17] *Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 2 SLR 1279 at [113]–[114].
[18] *CEF and another v CEH* [2022] 2 SLR 918 at [39].

that Canadian regulators might ultimately adopt a different view.[19] Rather than attempting to resolve that potential conflict itself, the tribunal accepted that any inconsistency between its award and the position of the Canadian authorities would ultimately fall to be addressed by the enforcing court.[20]

23. The subsequent enforcement proceedings confirmed that allocation of responsibility. Following the Canadian regulator's refusal to grant a licence, the respondent argued that payment pursuant to the award would expose it and its employees to criminal liability.[21] Significantly, the HKCFI did not revisit the tribunal's interpretation of Canadian sanctions law or reconsider its conclusions on the merits. Instead, it confined itself to the distinct question whether enforcement of the award would offend Hong Kong public policy.[22] The tribunal's determination of the parties' rights and the court's assessment of enforceability were treated as analytically distinct inquiries.

24. Equally significant was the Court's treatment of the sanctions themselves. Although the practical consequences of the Canadian sanctions were plainly relevant, they were not treated as determinative of Hong Kong public policy.[23] The Court recognised the risk of criminal liability under Canadian law while maintaining that enforceability depended upon Hong Kong's own conception of public policy. The decision demonstrates that foreign sanctions may inform the enforcement analysis without displacing the forum's autonomous assessment of whether its coercive powers should be exercised.

25. This is also consistent with the SICC decision of *DNZ v DOA and another* [2025] SGHC(I)(1) ("***DNZ***"). There, the award debtor argued that enforcement would place it

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[19] *A Company* at [20].
[20] *A Company* at [17]–[19].
[21] *A Company* at [28].
[22] *A Company* at [39].
[23] *A Company* at [70]–[84].

in the untenable position of having to breach EU law and expose itself to infringement proceedings and substantial penalties. The Court rejected that submission, holding that it is not contrary to Singapore public policy merely because a party faces conflicting legal obligations arising under a foreign legal regime.[24] Singapore's public policy is not engaged simply because enforcement may place a party in breach of foreign sanctions or expose it to regulatory consequences abroad. The inquiry remains whether enforcement would offend Singapore's own fundamental legal principles.

26. As the United States Court of Appeals observed in *Parsons & Whittemore Overseas Co v Société Générale de industrial du Papier*, the public policy exception must remain narrowly confined, lest the "*vagaries of international politics*" be enshrined under the rubric of "public policy" and undermine the Convention's utility.[25] That caution assumes particular significance in the sanctions context. If every sanctions regime was capable of engaging Article V(2)(b), the exception would cease to operate as a narrow safeguard and instead become a conduit through which shifting geopolitical interests could erode the finality and enforceability of arbitral awards.

27. The remaining question is how much weight sanctions should carry in the public policy inquiry. Existing discourse often frames the issue as a binary distinction between domestic and foreign sanctions. That distinction is useful but incomplete. The more principled inquiry concerns the source of the sanctions measure, the interests it protects and the degree of normative authority it commands.

28. Recent European jurisprudence illustrates why this calibration is necessary. Advocate General Biondi has opined that Article 11 of Regulation 833/2014 forms part of EU

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[24] *DNZ* at [139].

[25] 508 F.2d 969, 974 (2d Cir. 1974) at [10].

public policy and that national courts reviewing arbitral awards must ensure compliance with that provision.[26] Read broadly, Biondi appears to have enlarged the role of sanctions in post-award review. Yet her opinion does not deny parties access to arbitration. Rather, it proceeds on the basis that sanctions-affected disputes remain arbitrable while recognising that resulting awards may ultimately be refused enforcement if they conflict with EU public policy. The Biondi Opinion therefore reinforces, rather than displaces, the distinction between adjudication and enforcement.

29. The subsequent English Commercial Court decision in *OWH SE i.L. v RTI Limited and Ors* [2026] EWHC 1015 ("***OWH***") provides an important qualification. Rejecting an expansive reliance on Biondi's reasoning, the Court emphasised that not every component of a sanctions regime attracts the same public policy weight.[27] Primary sanctions prohibitions differ fundamentally from statutory immunity provisions designed to protect parties who reasonably withhold performance. The Court reaffirmed that sanctions-related public policy must be balanced against the equally fundamental public interest in the finality and enforcement of arbitral awards.[28] Public policy is not a monolithic concept; different sanctions measures engage it to different degrees.

30. That insight provides a more principled framework than a simple domestic-foreign dichotomy. At one end of the spectrum are sanctions implementing binding UN Security Council resolutions. Their authority derives from the collective security framework established by the UN Charter[29] and, where incorporated into Singapore law, they engage Singapore's public policy in its strongest form.[30] A second category

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[26] Opinion of Advocate General Biondi in *NV Reibel v JSC VO Stankoimport* (Case C-802/24) at [54].
[27] *OWH* at [88].
[28] *OWH* at [86]–[87].
[29] Tamás Szabados, "*EU Economic Sanctions in Arbitration*" (2018) 35 J. Int'l Arb. 439 at 440.
[30] *The "Sahand" and other applications* [2011] 2 SLR 1093 at [31]–[33].

comprises sanctions adopted pursuant to other international obligations that Singapore has chosen to implement domestically. While lacking the universal authority of Security Council measures, they reflect legislative choices made by Singapore and may legitimately justify restrictions upon enforcement.

31. A different analysis applies to foreign sanctions not incorporated into Singapore law. Multilateral sanctions adopted collectively by regional organisations may warrant greater consideration because they reflect broader international consensus rather than the policy preferences of a single State. By contrast, unilateral foreign sanctions possess significant commercial consequences but do not automatically become part of Singapore's legal order. Treating them as determinative of Singapore public policy would allow foreign governments to influence the enforcement of arbitral awards through unilateral legislative action.

32. This does not mean that unilateral foreign sanctions are *ipso facto* irrelevant. They may expose parties to criminal liability abroad or create genuine obstacles to lawful compliance with an award. Those considerations may properly inform the public policy inquiry but should not dictate its outcome. The decisive question remains whether enforcement of the award would "*shock the conscience, was clearly injurious to the public good or wholly offensive to the ordinary reasonable and fully informed member of the public, or would violate the forum state's most basic notions of morality and justice*".[31] By confining sanctions to that inquiry, Singapore can respect legitimate regulatory interests while preserving both its neutrality as an arbitral seat and the pro-enforcement philosophy of the New York Convention.

[31] *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597 at [59].

V. CONCLUSION

33. Sanctions have become an enduring feature of international commerce, but they should not become a licence to unsettle the architecture of international arbitration. Their effect should turn not on their political significance, but on the institutional function they seek to constrain. Preserving that distinction ensures that sanctions regulate commercial conduct without distorting consensual adjudication, procedural fairness or the limited supervisory role of enforcement courts. In doing so, Singapore can remain both a responsible participant in the international legal order and a neutral, reliable seat for international arbitration.
