

New Mechanisms, Shortened Timelines: SIAC Consults on Draft Seventh Edition of SIAC Rules

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Introduction

Since its establishment in 1991, the [Singapore International Arbitration Centre](#) ("**SIAC**") has emerged as a leading global arbitration institution. Ranked second among the world's top five arbitral institutions, SIAC was also determined to be the most preferred arbitral institution in the Asia-Pacific in the 2021 Queen Mary University of London and White & Case International Arbitration Survey: Adapting Arbitration to a Changing World.

Part of SIAC's competitive edge is the SIAC Rules ("**2016 Rules**"), currently in their sixth edition, which provide a framework to ensure that SIAC arbitrations are administered in an efficient, cost-effective and flexible manner. Per the last revision, the 2016 Rules incorporated new procedures for multi-contract disputes and providing for the joinder of additional parties, among others.

To enhance the user experience and raise the bar on efficiency, expedition and cost-effectiveness, SIAC recently launched a public consultation on the draft 7th Edition of the SIAC Rules ("**Draft Rules**"). The consultation will run from 22 August 2023 to 21 November 2023. Key amendments proposed include:

1. the introduction of new mechanisms for preliminary determination, coordinated proceedings, and the use of a new online case management system;
2. the mandatory disclosure of third-party funding relationships and arrangements;
3. amendments to the rules on the constitution of the tribunal, including a new list procedure that the President of the SIAC Court ("**President**") may employ when appointing an arbitrator;
4. changes to the Emergency Arbitration procedure to improve its efficiency, such as shortened timelines;

5. changes to the Expedited Procedure, including the monetary limit on the amount in dispute; and
6. other general amendments, including information security measures and providing for virtual or hybrid hearings.

In this article, we provide an overview of the above key changes.

New Mechanisms

Preliminary Determination

Draft Rule 46 allows a party to apply to the Tribunal for a preliminary determination of any issue where:

1. the parties so agree;
2. the applicant demonstrates that doing so is likely to contribute to a savings of time and costs and a more efficient and expeditious resolution of the dispute; or
3. the circumstances so warrant.

If the Tribunal allows the application to proceed, the parties must be given the opportunity to be heard. Thereafter, the Tribunal shall make a decision, ruling, order or award (collectively "**Decision**") on the application, with reasons, within 45 days from the date the application was filed, unless the Registrar extends the time.

Coordinated Proceedings

Per Draft Rule 17, coordinated proceedings are where the same Tribunal is constituted in two or more arbitrations, and a common question of law or fact arises. In such cases, the Tribunal may determine that the coordinated arbitrations shall be conducted concurrently or sequentially, heard together, or suspended pending a determination in the other coordinated arbitration/s.

SIAC Gateway

The Draft Rules incorporate the use of SIAC's new online case management system, the SIAC Gateway. In particular:

1. the Registrar may direct that the parties shall be required to upload all written communications to the SIAC Gateway (Draft Rule 4.2);
2. any written communications shall be deemed to be received if they are uploaded to the SIAC Gateway by direction of the Registrar (Draft Rule 4.3); and
3. the Claimant may file the Notice of Arbitration online through the SIAC Gateway, subject to compliance with Draft Rule 4 (Draft Rule 6.1).

Disclosure of Third-Party Funding Relationships

In recent years, Singapore's legislative framework was amended to allow third-party funding for:

1. In 2017 – international arbitration proceedings, including related court and mediation proceedings (please see our January 2017 Client Update titled "[Singapore to Allow Third Party Funding in International Arbitration](#)");
2. In 2021 – domestic arbitration proceedings, including related court and mediation proceedings (please see our June 2021 Arbitration Asia article titled "[Singapore Extends Scope of Permissible Third-Party Funding](#)").

In light of the above, the Draft Rules propose that parties must include a statement on the existence of any third-party funding relationship, together with the identity and contact details of the third-party funder. This statement must be included in:

1. the Notice of Arbitration;
2. the Response to the Notice of Arbitration;
3. an application for consolidation of two or more arbitrations into a single arbitration;
4. an application for joinder of one or more additional parties to an arbitration; and
5. an application to appoint an emergency arbitrator.

Additionally, under Draft Rule 38, a party:

1. must disclose any third-party funding agreement ("**Agreement**") immediately upon concluding the same;
2. must immediately notify the Tribunal, the parties, and the Registrar of any changes to the disclosed Agreement; and
3. once the Tribunal has been constituted, shall not enter into an Agreement which may give rise to a conflict of interest with any member of the Tribunal.

Constitution of the Tribunal

Several new rules were introduced, namely:

1. **New list procedure for appointment of arbitrator/s ("List Procedure") by the President** (Draft Rule 19.8) – Upon a party's request, the President may consider the use of the List Procedure, under which the President will provide a list of at least five names to the parties. Each party is to number the candidates in order of preference, and the President will appoint the arbitrator/s accordingly.
2. **Risk of unequal treatment that may affect enforceability of award** (Draft Rule 19.11) – If an appointment procedure agreed upon by the parties gives rise to such a risk, the President may take any necessary measure to constitute an independent and impartial Tribunal. The parties will be deemed to have waived their right to participate in the constitution of the Tribunal, and any appointment may be revoked by the President.
3. **Compliance with the SIAC's Code of Ethics for Arbitrators ("Code of Ethics")** (Draft Rules 20.1, 29.1) – Arbitrators appointed under the Draft Rules must conduct themselves in accordance with the *Code of Ethics*, as well as the Draft Rules and the *Practice Notes* (Guidelines published by the Registrar to supplement, regulate and implement the SIAC Rules) for the time being in force. Failing to do so will enable the President to initiate the removal of the arbitrator in question.
4. **Challenge of an arbitrator who is a member of the SIAC Board or the SIAC Court** (Draft Rule 28.6) – A Committee of the SIAC Court will be constituted, and must include an external challenge committee member who shall be appointed according to the List Procedure.

Amended procedures include:

	2016 Rules	Draft Rules
Nomination of arbitrator where three arbitrators are to be appointed	Within <u>14 days after receipt of a party's nomination of an arbitrator</u>	Within <u>21 days from the date of commencement of the arbitration by default</u> (Draft Rule 22.1)

	2016 Rules	Draft Rules
Grounds of challenge of arbitrator's appointment	Three grounds of challenge	Two additional grounds (Draft Rule 26.1): <ul style="list-style-type: none"> • Where the arbitrator becomes <i>de jure</i> or <i>de facto</i> unable to perform their functions; or • Where the arbitrator fails to act or perform their functions in accordance with the Rules or within prescribed time limits.
Repetition of hearings upon replacement of an arbitrator	Hearings to be repeated by default unless otherwise agreed by the parties	Tribunal to decide whether hearings shall be repeated. Any hearings held previously relating solely to a Decision shall not be repeated and the Decision shall remain in effect (Draft Rule 30.2).

Emergency Arbitration Procedure

Several amendments to Schedule 1, which sets out the procedure for emergency arbitration, were proposed:

	2016 Rules	Draft Rules
Filing of application for emergency arbitration	An application may only be filed concurrently with the filing of the Notice of Arbitration, or any time thereafter but prior to the constitution of the Tribunal.	An application may now also be filed prior to the filing of the Notice of Arbitration (paragraph 2). If the Notice is not filed within five days from the Registrar's receipt of the application, the application shall be considered as withdrawn on a without prejudice basis unless the Registrar extends the time (paragraph 6).
Notice of challenge to appointment of an Emergency Arbitrator	Must be filed within <u>two days</u> of being notified of the appointment	Must be filed within <u>24 hours</u> of the date of receipt of the notice of appointment (paragraph 9(a))
Making of order or award	Within <u>14 days</u> from appointment	Within <u>10 days</u> from appointment (paragraph 17)

Expedited Procedure

	2016 Rules	Draft Rules
Amount in dispute	May not exceed <u>S\$6 million</u> , representing the aggregate of the claim, counterclaim and any defence of set-off	May not exceed <u>S\$10 million</u> at the time of application (Draft Rule 14.1(b))
Third ground for application	A party may file an application for the arbitration to be conducted in accordance with the Expedited Procedure <u>in cases of exceptional urgency</u> .	A party may file an application for the arbitration to be conducted in accordance with the Expedited Procedure where <u>the circumstances of the case warrant the application of the Expedited Procedure</u> (Draft Rule 14.1(c)).

	2016 Rules	Draft Rules
Hearings	Tribunal determines whether a hearing is required	By default, the dispute shall be decided on the basis of written submissions and documentary evidence instead of a hearing. Further, any hearing shall be held virtually unless the parties agree otherwise (Draft Rule 14.2).

Other Amendments

	2016 Rules	Draft Rules
Early Dismissal – default timeline for order or award	Tribunal to make an order or award within <u>60 days</u> from the date the application was filed	Tribunal to make a Decision within <u>45 days</u> from the date the application was filed (Draft Rule 47.4)
Scrutiny of award – timeline for submission of draft award to Registrar	Tribunal to submit draft award not later than <u>45 days</u> from the closure of proceedings	Tribunal to submit draft award not later than <u>30 days</u> from the closure of proceedings (Draft Rule 53.1)
Non-payment of deposits for the costs of the arbitration	Any party is free to pay the whole of the deposits.	The Registrar may direct the other party to make payment of the deposits (Draft Rule 56.4).
Publication of Decision	SIAC requires consent from the parties and the Tribunal to publish any Award.	Parties are deemed to have agreed that SIAC may publish any Decision and any reasoned decision by the SIAC Court with party names and other identifying information redacted, unless a party provides a written objection within six months after the conclusion of the arbitration (Draft Rule 60).
Hybrid and virtual hearings	Not explicitly permitted, although Rule 21.2 empowers the Tribunal to hold hearings and meetings "by any means it considers expedient or appropriate".	Explicit provisions for the use of videoconference, teleconference, or other forms of electronic communication in place of in-person hearings
Information security	N/A	The Tribunal shall discuss information security measures with and give directions to the parties. In the event of non-compliance, the Tribunal may take appropriate measures, including issuing an order or award for sanctions, damages, or costs (Draft Rule 61).
Enforcement of confidentiality obligations regarding trade secrets	N/A	The Tribunal may take measures to protect trade secrets (Draft Rule 59.5).

Concluding Remarks

The Draft Rules draw from SIAC's experience of administering more than 3,000 international cases under the 2016 Rules, and aim to improve the SIAC Rules' efficiency and cost-effectiveness. For instance, incorporating the SIAC Gateway and providing for virtual and hybrid hearings will keep the SIAC Rules up to date with modern technology, while the creation of new mechanisms for preliminary determinations and coordinated proceedings assist in streamlining an arbitration.

The proposed changes represent an ambitious undertaking by a leading arbitral institute to introduce sweeping changes that would enhance an already fluid and popular framework even further. The proposals respond not just to areas that have called for improvements, but truly position the SIAC Rules for the wider adoption of arbitration as an effective means of international dispute resolution in years to come.

Across Rajah & Tann Asia's geographical footprint in Southeast Asia, other arbitral institutions have also recently revised their rules. As covered by our leading [Arbitration Asia](#) partners:

1. the [Singapore Chamber of Maritime Arbitration](#) ("SCMA") [launched the Fourth Edition of the SCMA Rules](#) to streamline proceedings and adopt electronic methods, among others;
2. the [Asian International Arbitration Centre](#) (AIAC) [published its Arbitration Rules 2021](#) to allow for a new summary determination mechanism and the consolidation of multi-contract disputes, among others;
3. the [National Commercial Arbitration Centre of Cambodia](#) ("NCAC") [revised its rules](#) to introduce an expedited procedure and provide for an emergency arbitrator, and more recently in 2023 has also [adopted mediation rules](#) to allow NCAC to provide mediation services; and
4. the [Thai Arbitration Institute](#) (TAI) [amended its rules](#) to provide for an expedited procedure.

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