

Arbitrating in Singapore: the SIAC Procedure

1. Promotion of international arbitration

Since the Eighties, the Government has actively encouraged the growth of international arbitration in Singapore. To this end, Singapore has acceded to the New York Convention in 1986, established the Singapore International Arbitration Centre (the “SIAC”) in 1991 and enacted the International Arbitration Act (Cap 143A) (the “IAA”) incorporating the UNCITRAL Model Law (the “Model Law”) in 1995. Under the IAA, the Chairman of SIAC is designated the appointing authority for the purposes of Article 11 of the Model Law.

2. Background to the Establishment of SIAC

In 1986, the Economic Committee recommended the setting up of an international arbitration centre. In 1987, a working party headed by Mr Warren Khoo was established to conduct feasibility studies on the proposal. The working party duly submitted a report recommending that Singapore should aspire to play a useful role as a regional commercial arbitration centre. Accordingly, BG Lee Hsien Loong, the then Minister for Trade and Industry, approved the setting up of an international arbitration centre. The SIAC commenced operations in 1991 with the main objective of developing Singapore to be a regional and international hub for commercial arbitration.

3. SIAC’s facilities and services

The SIAC provides facilities and services for the conduct of international arbitration proceedings. The facilities and services include: -

- (a) hearing rooms of various sizes (seats 6 to 44 participants);
- (b) recess rooms adjoining the main hearing room;
- (c) library;
- (d) audio and video recording facilities;
- (e) telephone conferencing facilities;
- (f) technology chambers with video conferencing facilities;
- (g) secretarial, transcription and interpretation services; and

- (h) administration of arbitration proceedings.

The SIAC also maintains international and local panels of accredited arbitrators. The panelists include a good number of eminent arbitrators of international repute.

4. Why Arbitrate?

- (a) Freedom to choose arbitrator: Unlike court proceedings where litigants will not be able to choose their presiding judge, parties arbitrating can choose their own arbitrator or arbitrators.
- (b) Freedom to choose procedure: Unlike court proceedings where the Rules of Court and other rules of evidence strictly applies, parties arbitrating can choose more practical arbitration procedure or rules, such as documents only arbitration or arbitration in accordance with SIAC Rules. Parties and their advisors are also free to choose the mode of correspondence and filing of documents, be it the traditional way or the more advanced paperless way.
- (c) Less Formal: Arbitral proceedings are less formal than court proceedings; for example, the arbitrator's bench is not elevated. After all, the arbitrator's fees are paid directly by the parties.
- (d) Speed: Provided the arbitrator appointed is not too heavily engaged, arbitral proceedings can be resolved very quickly. SIAC's Code of Ethics requires the arbitrator to set aside sufficient time to dispose of the matter in a timely manner. Most straightforward SIAC cases are disposed of between 6 to 9 months.
- (e) Confidentiality: Arbitral hearings are conducted in private, no reporters are allowed to report on the proceedings or publish the award.
- (f) Cost Efficient: Generally, arbitration may cost as much as litigation. However, arbitration can be less costly under certain procedure such as fast track arbitration or "documents only arbitration".
- (g) Extra-territorial Enforcement of arbitral award under the New York Convention: An award given in Singapore is enforceable in the courts of over 120 New York Convention countries. On the other hand, a Singapore court judgment is difficult to enforce outside Singapore in the absence of some reciprocal enforcement arrangements.

5. The SIAC Procedure

- (a) **Notice of Arbitration (Rule 3)**

The party wishing to commence the arbitration (the “Claimant”) shall serve on the other party (the “Respondent”) and concurrently file with the Registrar of SIAC a Notice of Arbitration. The arbitration commences upon the receipt of the Notice of Arbitration by the Registrar. The Notice of Arbitration shall include the following: -

- (i) demand that the dispute be referred to arbitration;
- (ii) names and addresses of the parties;
- (iii) reference to the arbitration agreement;
- (iv) reference to the contract out of which the dispute arose;
- (v) brief statement describing the nature and circumstances of the dispute and specifying the relief claimed; and
- (vi) statements on any matters which the parties have previously agreed as to the conduct of the arbitration or with respect to which the Claimant wishes to make a proposal.

The Notice of Arbitration may also include a proposal for appointment of the sole arbitrator or appointing authority or the notification of appointment of the Claimant’s arbitrator where parties have opted for a 3-member Tribunal.

(b) The Response (Rule 4)

The Respondent may within 14 days of the receipt of the Notice of Arbitration send to the Claimant and concurrently file with the Registrar a Response. The Response shall contain: -

- (i) confirmation or denial of all or parts of the claims;
- (ii) brief statement of the nature and circumstances of the counterclaim; and
- (iii) comments in response to statements contained in the Notice of Arbitration.

The Response may also include a response to any proposal for appointment of the sole arbitrator or the appointing authority or the notification of appointment of the Respondent’s arbitrator where parties have opted for a 3-member Tribunal.

(c) Number of Arbitrators (Rule 6)

A sole arbitrator shall be appointed unless the parties have agreed otherwise. This approach is consistent with Section 9 of the International Arbitration Act (“IAA”)(Cap.143A).

(d) Appointment of Arbitrator(s) by SIAC (Rules 7 & 8)

If the parties are unable to agree on the appointment of the sole arbitrator, which is not uncommon, the Chairman of SIAC will appoint the sole arbitrator shortly after a request is made in accordance with the SIAC Rules by either party (usually the Claimant). This is a very useful provision in the SIAC Rules, as a party (usually the Claimant) will not suffer undue delay when the other party is totally uncooperative or non-participatory. A request for appointment would be processed upon receipt of the Notice of Arbitration, all relevant contractual documents and the requisite appointment fees and the initial deposit as advance of the costs of arbitration. The appointment process will commence with the Chairman's nomination of suitable candidates based on a matching of the nature and quantum of claim with the expertise, experience and the fees of the nominees. Once suitable candidates are nominated, the Registrar will get in touch with the nominees to ascertain that they do not have any conflict of interests with the parties and that they are willing and able to serve at reasonable fees. The Chairman will proceed with the appointment only after the selected candidate has executed the SIAC Code of Ethics. The Code requires the arbitrator to discharge his duties without bias, have an adequate knowledge of the language of arbitration, give the arbitration sufficient time and disclose all facts and circumstances that may give rise to justifiable doubts as to his independence and impartiality.

If 3 arbitrators are to be appointed, each party shall appoint its arbitrator. The two arbitrators so appointed shall appoint the presiding arbitrator. Where parties are unable to agree on the appointment of the presiding arbitrator after both parties have duly appointed their arbitrators, either party may request the Chairman of the SIAC to make the appointment.

(e) Party Representation (Rule 21)

A party may be represented by lawyers or any other representatives of its choice. Under the Legal Profession Act (Cap. 161), if the proper law of the contract is the law of Singapore, a foreign lead Counsel may appear jointly with a Singapore advocate & solicitor. Otherwise, parties are free to engage foreign lawyers to represent them in arbitral proceedings conducted in Singapore.

(f) Oral Hearing (Rule 22)

Unless the parties have agreed on documents-only arbitration, the parties shall have the right to oral hearing. If any party fails to appear at a hearing without showing sufficient cause for such failure, the Tribunal may proceed and make an award on the evidence before it.

(g) The Award (Rule 28)

Unless all parties agree otherwise, the Tribunal shall issue its written reasoned award within 45 days from the close of hearing. If there are more than one arbitrator and they fail to agree on any issue, they shall decide by a majority. Failing a majority decision on any issue, the presiding arbitrator shall make the decision alone as if his is the sole arbitrator. The award shall be delivered to the Registrar who shall transmit certified copies to the parties. The Tribunal may award simple or compound interest. In the event of a settlement, the Tribunal may render a consent award if the parties so request.

(h) Costs (Rule 30)

The Tribunal usually fixes the costs of the arbitration in its award. The Tribunal shall determine the proportion in which the parties are to pay such costs. If it is not so fixed, the Registrar shall tax the costs. The costs of arbitration include: -

- (i) the fees of the Tribunal;
- (ii) the travel and other expenses of the Tribunal;
- (i) the costs of expert advice required by the Tribunal;
- (ii) the fees of the appointing authority(if any); and
- (iii) the fees and expenses of SIAC.

The Tribunal shall have the authority to award legal costs to the successful party. Such costs shall, unless the award otherwise directs, be taxed by the Registrar.

(i) SIAC Case Administration

Under the SIAC Rules, the Centre will carry out important administrative and secretariat functions as soon as the arbitration is commenced. Such functions include: -

- (i) Under Rule 3.3, the receipt of a Notice of Arbitration by the Registrar signifies the commencement of arbitration under the SIAC Rules.
- (ii) Under Rule 5, the Registrar shall, at the request of the Tribunal or the parties assist to provide the physical arrangements and facilities for the conduct of the proceedings.

- (iii) Under Rules 7 to 9, the Chairman of SIAC will perform the important function as the default ultimate appointing authority in the event that the parties are unable to agree on the appointment of the arbitrator or arbitrators. Where applicable, the Chairman will also step in and make an appointment where a party fails to appoint its arbitrator, the designated appointing authority fails to make an appointment or where the party appointed arbitrators fails to agree on the selection of the presiding arbitrator. This is an important function that the SIAC performs as part of its administrative role in ensuring the smooth progression of the arbitration conducted under its Rules.
- (iv) Under Rules 11 to 14, an arbitrator may be challenged by a party if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. Unless the challenge is agreed to by the other party or resulted in voluntary withdrawal by the arbitrator concerned, the Chairman will decide any such challenge. This is yet another very important function that the SIAC performs.
- (v) Under Rule 28.1, the Tribunal is obliged to render its award within 45 days from close of hearing. The Registrar generally oversees the Tribunal's compliance of this requirement.
- (vi) Under Rule 28.4, upon the delivery of the award by the Tribunal, the Registrar is responsible to transmit certified copies of the award to the parties.
- (vii) Under Rule 29, the parties may request the Tribunal to correct in the award any error in computation, any clerical or typographical error or any error of a similar nature and/or to make an additional award. Any such request will have to be made by notice to the Registrar.
- (viii) Under Rule 30.1, unless otherwise fixed by the Tribunal in the Award, the costs of arbitration will have to be taxed by the Registrar.
- (ix) Under Rule 30.3, unless otherwise directed by the Tribunal in the Award, the party and party costs will have to be taxed by the Registrar.
- (x) Under Rule 30.5, a certificate signed by the Registrar on the amount of costs or fees taxed shall form part of the award.
- (xi) Under Rule 31.3, where the parties are unable to agree on the fees of the Tribunal, the Registrar will determine the appropriate rate of fees.
- (xii) Under Rule 31.4, when a party so request, the Tribunal shall fix its fees only after consultation with the Registrar.
- (xiii) Under Rule 34.3, the Chairman and the Registrar, together with the Tribunal shall act in the spirit of the Rules and make reasonable efforts to ensure that the award is legally enforceable.

In addition to these functions expressly stipulated in the Rules, the SIAC Secretariat will also oversee the smooth, proper and timely progression of the arbitration proceedings generally. The SIAC charges

administration fees that are based on the amount of the claim or the counterclaim as the case may be. The tariff is as follows: -

Amount of Claim/Counterclaim	SIAC Administration Fees
Up to S\$50,000	3% (minimum S\$500)
S\$50,000 – S\$100,000	S\$1,500 + 2% of excess over S\$50,000
S\$100,000 – S\$250,000	S\$2,500 + 1% of excess over S\$100,000
S\$250,000 – S\$500,000	S\$4,000 + 0.75% of excess over S\$250,000
S\$500,000 – S\$1,000,000	S\$5,875 + 0.5% of excess over S\$500,000
S\$1,000,000 – S\$5,000,000	S\$8,375 + 0.25% of excess over S\$1,000,000
S\$5,000,000 – S\$10,000,000	S\$18,375 + 0.1% of excess over S\$5,000,000
S\$10,000,000 – S\$100,000,000	S\$23,375 + 0.05% of excess over S\$10,000,000
Over S\$100,000,000	S\$68,375

6. Why Arbitrate in Singapore?

Within a short period of existence since 1991, the SIAC has gained in reputation as an independent international arbitration institution. From 2 cases in 1991 to about 90 cases each for the last 3 years, the SIAC caseload speaks for itself. Maritime disputes accounted for 36% of SIAC’s caseload. Trade/Commercial and Construction/Engineering disputes occupied the second and third positions at 30% and 22% respectively. 70% of all SIAC arbitration cases are international in nature involving at least a non-Singaporean party.

With efficient airport and established telecommunication, transportation, financial and legal infrastructure, resolving cross-border disputes by arbitration in Singapore is attractive. The following is a summary of factors that make arbitrating in Singapore attractive.

- (a) **Locality:** Singapore is one of the most convenient regional hubs in the Asia-Pacific region.
- (b) **Accessibility:** World-class telecommunication, transportation, financial and legal infrastructure. Major 5-star hotels and conference/hearing facilities are readily available.
- (c) **Expertise:** The SIAC can appoint from its panel arbitrators who can handle international dispute of any complexity and size. Established local and international law firms with extensive arbitration practice. Under the Legal Profession Act, foreign lawyers are free to act for and represent parties arbitrating in Singapore if foreign law governs the contract. Even if the governing law is Singapore law, foreign lawyers may appear as lead counsels jointly with a local lawyer.

- (d) Law and Procedure: The International Arbitration Act (“IAA”), which governs international arbitration in Singapore, has adopted UNCITRAL Model Law in its First Schedule. The SIAC Rules are modelled largely upon UNCITRAL arbitration rules. Parties can arbitrate in Singapore in accordance with the laws and procedures that are widely adopted and accepted internationally.
- (e) Enforcement of Singapore Awards: Singapore acceded to the New York Convention in 1986 (Second Schedule, IAA). By virtue of the New York Convention, an award given in Singapore is enforceable in the Courts of over 120 countries.
- (f) SIAC: A neutral international arbitration institution that facilitates resolution of disputes by arbitration. The SIAC provides comprehensive physical and administrative support for the conduct of international and domestic arbitration proceedings in Singapore.

For more information on the SIAC and arbitration in Singapore generally, please contact: -

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