

DRAFT 7TH EDITION OF THE SIAC RULES: EMBRACING THE NEXT GENERATION OF DISPUTES

The Singapore International Arbitration Centre (**SIAC**) has released a public consultation draft of the 7th Edition of the SIAC Rules (**Draft 7th Edition**). Drawing on the SIAC's experience of administering more than 3,000 international cases under the SIAC Rules 2016 (6th Edition), the Draft 7th Edition incorporates features designed to improve the arbitral process for the next generation of international disputes.

The Draft 7th Edition represents a significant overhaul of the SIAC Rules 2016. As well as a considerable number of entirely new provisions (the overall number of Rules is increased from 41 to 65), many of the Rules have been redrafted to provide greater clarity and to fit within an overall structure which better reflects the chronology of a typical SIAC arbitration.

Some of the most significant developments are the introduction of a Streamlined Procedure for low-value disputes, changes to the Tribunal appointment procedure, explicit provisions on the use of new technologies and the introduction of the SIAC Gateway, a new online case filing platform.

The Draft 7th Edition of the SIAC Rules will apply to any arbitration which is commenced on or after the date on which the Draft 7th Edition comes into force (unless the arbitration agreement in question provides for a different edition of the SIAC Rules to apply). Parties to existing SIAC arbitration agreements and parties who frequently include SIAC arbitration clauses in their transaction documents should therefore familiarise themselves with the key features of the Draft 7th Edition.

Notable features of the Draft 7th Edition of the SIAC Rules

- SIAC has issued the Draft 7th Edition of the SIAC Rules for public consultation with users invited to provide comments by 21 November 2023.
- A new "Streamlined Procedure" is introduced for low-value disputes, designed to be determined on a documents-only basis within a three-month timeframe.
- Changes to the arbitrator appointment procedure encourage a more collaborative approach; a list procedure is made available for certain appointments.
- The Emergency Arbitrator procedure is enhanced; an applicant can make an Emergency Arbitrator application before filing a Notice.
- The consolidation and joinder provisions are fine-tuned, including broadening the basis for potential consolidation applications.
- Existing practices such as applications for preliminary determinations and security for costs are codified.
- New provisions on non-participation and non-compliance will help to minimise delay and disruption caused by obstructive parties.
- Parties must disclose third-party funding agreements and the identity of any funder.

SIAC invites all its users and stakeholders to participate in the consultation on the Draft 7th Edition, which runs until 21 November 2023. The 7th Edition of the SIAC Rules is expected to be finalised and come into effect in 2024.

KEY FEATURES

The amendments in the Draft 7th Edition are focussed on enhancing the user experience and increasing the efficiency of SIAC arbitration proceedings. The new Rules also incorporate certain Schedules as may be published from time to time, leaving room for the SIAC to introduce further specialist procedures in due course.

We set out below a summary of the key amendments and new provisions.

General principles for conduct of the arbitration

The general principles for the conduct of a dispute are stated near the beginning of the Rules. These principles now expressly include the concept of proportionality, providing that the SIAC and the Tribunal shall endeavour to ensure "*the expeditious and cost-effective conduct of the arbitration proportionate to the complexity of the claim and amount in dispute*" (Rule 3.5).

Commencement of arbitration and constitution of the Tribunal

The requirements for the Notice of Arbitration and Response to the Notice of Arbitration are slightly amended:

- It is no longer mandatory to provide a copy of the contract and the arbitration agreement along with the Notice – a "*description*" of the contract and arbitration agreement will be sufficient (Rules 6.3(d) and (e)).
- The requirement for the parties to nominate an arbitrator or make a proposal for a sole arbitrator in the Notice of Arbitration and the Response has been removed. Instead, the parties shall provide "*any comment as to... the number of arbitrators and procedure for the constitution of the Tribunal*" (Rules 6.3(g), 7.1(e)).

The Draft 7th Edition introduces changes which are designed to encourage a more balanced and collaborative approach to the constitution of the Tribunal. In line with the revised requirements for the Notice of Arbitration and Response, the Rules now provide that where a sole arbitrator is to be appointed, the parties may jointly nominate the sole arbitrator within 21 days from the date of commencement (Rule 21.1). Where three arbitrators are to be appointed, the Claimant and Respondent shall each nominate an arbitrator within 21 days from the date of commencement (Rule 22.1).

These changes to the appointment procedure could significantly change the strategy which parties to SIAC arbitrations adopt when nominating arbitrator candidates. Under the Draft 7th Edition, for instance, the Claimant does not necessarily have to identify its party-nominated arbitrator by the time of filing the Notice and the Respondent may not have had the chance to consider the Claimant's party-nominated arbitrator before it is required to nominate its own party-appointed arbitrator.

In a further effort to give parties a greater stake in the constitution of the Tribunal, a new Rule provides that the SIAC may, upon the request of a party, use a list procedure to appoint arbitrators when appointing a sole arbitrator, a presiding arbitrator, or where Claimant or Respondent parties have failed to make a joint nomination (Rule 19.8). Under the list procedure, the President shall communicate to the Claimant and Respondent an identical list of arbitrator candidates containing at least five names. The parties rank the candidates in order of preference and are entitled to object to one candidate. The President shall appoint the arbitrator "*in accordance with the mutual order of preference of the parties.*" Encouraging use of the list procedure is intended to give parties a greater stake in the constitution of the tribunal.

A new provision states that the President shall bear in mind principles of diversity and inclusion (where appropriate) when making arbitrator appointments (Rule 19.5).

Streamlined Procedure

A new "Streamlined Procedure" is introduced which is designed to provide a swift and low-cost method of dispute resolution for low-value and straightforward disputes. The Streamlined Procedure may apply by application of a party where the amount in dispute does not exceed S\$1 million (Rule 13). Arbitrations under the Streamlined Procedure are heard by a sole arbitrator and unless the Tribunal decides otherwise, the arbitration shall be decided on the basis of written submissions, there shall be no document production and no party shall be entitled to file any fact or expert witness evidence (Schedule 2, paras 1, 11). The final award shall be made within 3 months from the date of constitution of the Tribunal (Schedule 2, para 13). Fees under the Streamlined Procedure shall not exceed 50 per cent of the maximum amounts under the Schedule of Fees (Schedule 2, para 14).

The threshold for application of the Expedited Procedure, meanwhile, increases to S\$10 million (up from S\$6 million) (Rule 14.1). Under the Draft 7th Edition, both the Streamlined Procedure and the Expedited Procedure may (if the President decides) apply where "*the circumstances of the case warrant the application of the Streamlined [or the Expedited Procedure]*" (Rules 13.1(c) and 14.1(c)). This raises the possibility that parties may apply for the arbitration to be conducted under the Streamlined Procedure or the Expedited Procedure even for higher value disputes which are nonetheless deemed to be relatively straightforward and amenable to compressed timelines.

The SIAC Gateway, new technologies and information security

Provisions have been introduced which seek to take advantage of new technologies to facilitate the conduct of arbitration proceedings, while providing adequate measures to protect the information which is shared in relation to the arbitration.

- The parties, Tribunal and SIAC Secretariat are required to upload all communications to the SIAC Gateway, a new digital solution hosted by SIAC designed to provide a centralised case filing platform and which is expected to ease significantly the burden of case administration (Rules 4.2 and 4.3). The Claimant will be able to file the Notice of Arbitration online through the SIAC Gateway (Rule 6.1).

- In line with practices widely adopted since Covid-19, new provisions confirm that hearings may be conducted in-person, in hybrid form or by videoconference, teleconference or other form of electronic communication (Rule 39.2).
- There is a new requirement for the Tribunal to discuss any information security measures proposed by the parties and consider giving directions on reasonable cybersecurity measures to protect information shared in the proceedings (Rule 61).

Emergency arbitration

There are some amendments to facilitate and accelerate Emergency Arbitrator proceedings, including:

- An applicant may now file an Emergency Arbitrator application prior to the filing of the Notice of Arbitration, with the Notice to be filed within 5 days (instead of concurrent with or following the Notice of Arbitration under the SIAC Rules 2016) (Schedule 1, para 2 and 6). This may enable parties to make an Emergency Arbitrator application with even greater urgency.
- Express 24-hour time limits are imposed on the ability to challenge an Emergency Arbitrator (Schedule 1, para 9), and the deadline for Emergency Arbitrator to make the award is reduced to 10 days from the date of his/her appointment (Schedule 1, para 17). This timeframe reflects the timeframe under which Emergency Arbitrator awards are made under the SIAC Rules in practice.

Consolidation, joinder and coordinated proceedings

The Draft 7th Edition seeks to streamline the existing consolidation and joinder provisions to ensure that, where appropriate, multi-contract and multi-party disputes can be heard efficiently before the same Tribunal. The adjustments include:

- A new provision which allows the potential for consolidation under two or more arbitrations pending "*under SIAC's administration*", confirming that arbitrations under different sets of the SIAC Rules (and potentially the UNICTRAL Rules) may be consolidated (Rule 16.1).
- The available grounds for a consolidation application have been expanded to include where "*the arbitration agreements are compatible and (...) a common question of law or fact arises out of or in connection with all the arbitrations*" (Rule 16.1(c)).

There is a new provision allowing two or more arbitrations to be "coordinated" in cases where a common question of law or fact arises (Rule 17).

Coordinated arbitrations shall be heard together and aligned procedurally, with the Tribunal issuing separate awards in each arbitration.

This is a practice which has already been adopted in parallel arbitrations administered by the SIAC which are not subject to formal consolidation.

Preliminary determination

A new Rule provides that a party may apply to the Tribunal for a preliminary determination of any issue on a preliminary basis (Rule 46), codifying a procedural device which is already available to parties and tribunals.

Preliminary determination of a key issue can often significantly accelerate resolution of the overall dispute or facilitate an early settlement. Codifying this

procedural mechanism may encourage parties to consider applying for preliminary determination of a key issue in appropriate cases.

Tribunal secretaries

New provisions are introduced regulating the appointment of Tribunal Secretaries. Agreement of the parties is no longer required, so that a Tribunal secretary may be appointed in cases with a non-participating respondent. The Rules provide that in appropriate cases a member of the SIAC Secretariat may be appointed as Tribunal Secretary and a procedure is introduced for challenges to Tribunal Secretaries (Rules 24.5 and 24.6).

Third-Party Funding

A new Rules is introduced on Third-Party Funding in line with widely adopted best practices, requiring a party to disclose the existence of any third-party funding agreement and the identity of the third-party funder. The Tribunal may order disclosure of details of the third-party funder's interest in the outcome of the proceedings and whether the third-party funder has committed to undertake adverse costs liability (Rule 38).

Arbitrator challenges

A protocol is established for challenges filed against an arbitrator who is also a member of the SIAC Board or the SIAC Court. In that case, a Committee of the SIAC Court shall be constituted which shall include an external challenge committee member to be appointed in accordance with the Rule 19.8 list procedure (Rule 28.6).

Where an arbitrator resigns or is removed in a tribunal of three arbitrators, the SIAC Court or President may determine that the remaining arbitrators shall proceed with the arbitration without appointing a substitute arbitrator (Rule 30.3). This may be intended to mitigate the disruptive effect of late-stage arbitrator challenges near the conclusion of the arbitration proceedings.

Non-participation and non-compliance

There are expanded provisions on non-participation and non-compliance, including confirmation that if a party fails or refuses to comply with the Rules or the Tribunal's orders or directions, the Tribunal may proceed with the arbitration, impose such sanctions as it deems appropriate and make an award on the evidence before it (Rule 44.3). This provision may assist Tribunals to overcome "due process paranoia" and ensure there is no undue delay to proceedings on account of non-participating or obstructive parties.

OTHER NEW PROVISIONS

Other new provisions in the Draft 7th Edition include:

- **Party representation:** New provisions on party representation provide for the Tribunal's power to reject a proposed change in party representation. This is intended to safeguard the composition of the Tribunal and stop "tactical" changes of counsel from causing unnecessary disruption to the arbitration proceedings, for instance by engineering conflicts with existing Tribunal members (Rule 10).
- **Sustainability:** At the first case management conference, the parties and the Tribunal should consider whether it would be appropriate to adopt environmentally sustainable procedures for the arbitration (Rule 32.4(b)).

- **Issues for Determination:** The Tribunal is required to use "reasonable efforts" to identify the issues to be determined in the arbitration and record them in a procedural order (Rule 34.1). This is a practice which can make awards less susceptible to challenge on the basis that the Tribunal has not dealt with an issue raised by the parties.
- **Witness interviews:** A new provision confirms that a party or its representatives may interview any witness or potential witness prior to their appearance to give oral evidence at any hearing, and also directs that "[i]n no circumstance may a party or its representatives provide or direct the content of the witness' testimony" (Rule 40.5). This provision seeks to standardise (at a high level) the practice of witness interviews in advance of oral arbitration hearings.
- **Security for costs and Security for claims:** New Rules provide expressly that parties may make applications for security for costs and security for claims (without providing any legal threshold for such applications) (Rules 48 and 49).
- **Publication of Awards:** Parties are deemed to agree that SIAC may publish any decision, ruling, order, award or reasoned decision by the SIAC Court with the names of the parties and other identifying information redacted. Parties who object to the publication of any materials should object to the Registrar within six months of the conclusion of the arbitration (Rule 60).
- **Document retention:** SIAC clarifies that it will maintain an archive of each SIAC arbitration for a minimum of six years from the date of the final award and thereafter dispose of documents in a confidential manner without notice (Rule 62).

COMMENTS

The SIAC has undertaken a commendably comprehensive review of the SIAC Rules, based on its extensive case administration experience. The Draft 7th Edition offers a broad range of procedural mechanisms which – to an even greater extent – should enable the SIAC, the parties and the Tribunal to tailor the arbitration proceedings to the requirements of a particular dispute.

Innovations such as the Streamlined Procedure will provide greater efficiency and cost-effectiveness for small-value and straightforward disputes, while fine-tuning the Rules on joinder and consolidation will provide greater efficiency in the administration of complex multi-party disputes. It also appears that the SIAC has also made an effort to introduce amendments designed to deal with situations brought about by obstructive or non-participating parties and other problematic case administration scenarios.

Already a highly reputable and popular institution,¹ the amendments to the SIAC Rules are set to cement SIAC's position as a dynamic and innovative arbitral institution preferred by international parties.

The Draft 7th Edition remains subject to feedback from users and other contributors in the ongoing consultation process before it is finalised. Users

¹ SIAC ranked as the second-most preferred arbitral institution globally in the [2021 International Arbitration Survey: Adapting arbitration to a changing world](#) conducted by Queen Mary University of London.

are encouraged to submit any feedback or comments on the Draft 7th Edition to the SIAC or to Clifford Chance.

CONTACTS



Nish Shetty*
Partner

T +65 6410 2285
E nish.shetty
@cliffordchance.com



Paul Sandosham*
Partner

T +65 6661 2055
E paul.sandosham
@cliffordchance.com



Kabir Singh
Partner

T +65 6410 2273
E kabir.singh
@cliffordchance.com



Elan Krishna*
Partner, Cavenagh Law

T +65 6506 2785
E elan.krishna
@cliffordchance.com



Matthew Brown
Senior Associate

T +65 6506 2763
E matthew.brown
@cliffordchance.com



Jamie Pang*
Senior Associate

T +65 6506 2783
E jamie.pang
@cliffordchance.com



Kenneth Tay*
Senior Associate

T +65 6661 2035
E kenneth.tay
@cliffordchance.com



Deborah Loh*
Senior Associate

T +65 6410 2275
E deborah.Loh
@cliffordchance.com



Ian Choo*
Associate

T +65 6410 1304
E ian.choo
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance Pte Ltd, 12 Marina Boulevard,
25th Floor Tower 3,

Marina Bay Financial Centre, Singapore
018982

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