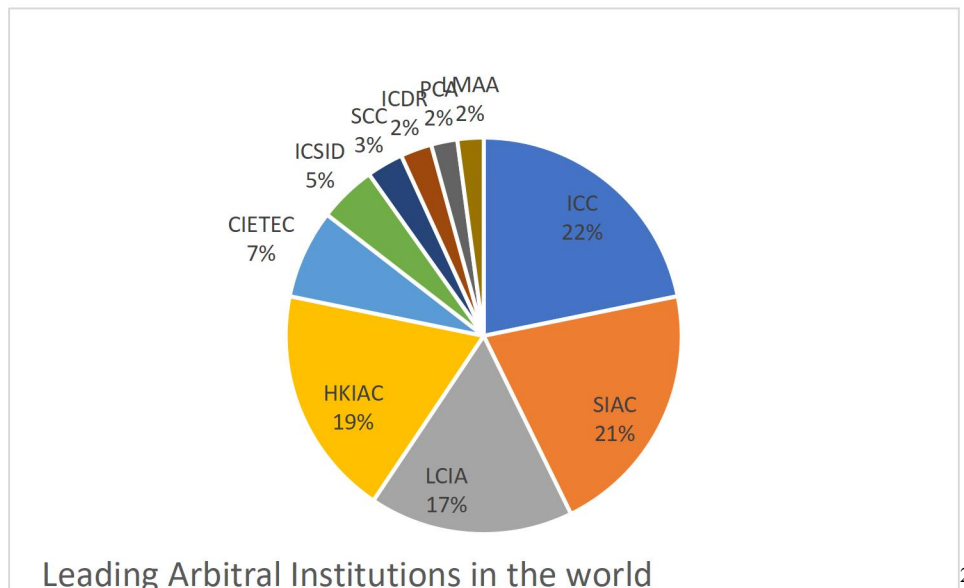


2023 SIAC UNRAVELED- THE PINNACLE OF ARBITRATION PRACTICE

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I. INTRODUCTION

The Singapore International Arbitration Centre [“SIAC”] has emerged as one of the leading arbitral institutions in the world, being the second most preferred institution after the International Chamber of Commerce [“ICC”].¹ In order to sustain this changing regime of arbitration, SIAC has brought forth the 7th edition draft SIAC amendment rules [“Draft Rules”], designed to be in tune with the latest practices in arbitration. The Draft Rules were released for public consultation from 22nd August to 21st November 2023. Owing to the success of the previously held public consultations, SIAC aims to cater for the rules of the institution based on the feedback and opinions given by the arbitration community, to ensure that it is only moving forward within the arbitral world.



SIAC, having already emerged as number two in the world, is only looking forward towards improvement, in accord with the evolving arbitral practices across the globe. Having achieved this, SIAC is now aiming to introduce some unique features, such as a Streamlined Procedure, one that other arbitral institutions have not adopted. The new rules aim to introduce new key features

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¹ 2021 International Arbitration Survey: Adapting arbitration to a changing world conducted by Queen Mary University London in association with White & Case LLP, <https://www.whitecase.com/sites/default/files/2021-05/quml-international-arbitration-survey-2021-web.pdf>.

² *Id.*

comprising of streamlined procedure, SIAC gateway, third-party funding, preliminary determination, and various other amendments focused on enhancing the user experience and increasing the efficiency of SIAC proceedings.³

The present paper focuses on the Streamlined Procedure, Third-Party Funding Preliminary Determination, and SIAC Gateway as sought to be introduced in the draft of the 7th Edition of the SIAC Rules.

A. Streamlined Procedure

The Draft Rules propose to introduce a new procedure, namely the Streamlined Procedure, the addition of which is aimed at a substitution of the Expedited Procedure and which most people would claim was the most innovative aspect of the Draft Rules.

Streamlined Procedure is covered by Rule 13, which states that a party may, at any time prior to the constitution of the Arbitral Tribunal, file an Application for the arbitration to be conducted in accordance with the Streamlined Procedure set out in Rule 13, read with Schedule 2 of the Draft Rules provided that (a) the Parties have mutually consented to the Application of the Streamlined Procedure; (b) the amount in dispute does not exceed SGD 1,000,000 at the time of the application; or (c) the circumstances of the case warrant the application of the Streamlined Procedure.⁴ The final determination as to whether a dispute ought to be adjudicated in accordance with the Streamlined Procedure will ultimately be decided by the President on receipt of an application for the same from the parties.

On the approval of an application seeking Streamlined Procedure by the President, the parties to a dispute may jointly nominate a Sole Arbitrator within three days from the date of the President's decision⁵. On the failure of the Parties to do so, or if the parties so request, the President shall appoint the sole arbitrator within three days.⁶ The appointment of such arbitrator may be challenged by either party through an application to be filed before the Registrar in accordance with Rule 27 of the Draft Rules within 3 days from the notice of appointment or the date from which the circumstances specified in Rule 26.1 of the Draft Rules become known to the party.⁷

On a successful application for Streamlined Procedure, the newly appointed Tribunal shall conduct a case management hearing with the parties to discuss the timelines for the proceedings including

³ Clifford Chance, *Draft 7th Edition of the SIAC Rules: Embracing the next generation of disputes* (Sept. 2023) <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2023/09/SIAC-rules-client-briefing.pdf>.

⁴ SIAC Rules (7th Edition) (consultation draft), Rule 13, Singapore International Arbitration Centre, 2023.

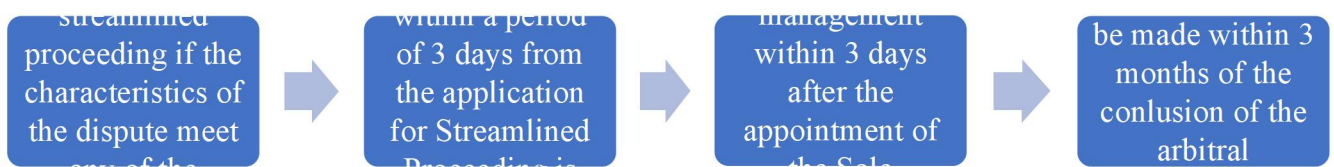
⁵ SIAC Rules (7th Edition) (consultation draft), Schedule 2, Clause 2, Singapore International Arbitration Centre, 2023.

⁶ SIAC Rules (7th Edition) (consultation draft), Schedule 2, Clause 3, Singapore International Arbitration Centre, 2023.

⁷ SIAC Rules (7th Edition) (consultation draft), Schedule 2, Clauses 5 and 7, Singapore International Arbitration Centre, 2023.

but not limited to the time period for filing and determining any interlocutory applications.⁸ Clause 11 to Schedule 2 further gives the Tribunal the authority to determine the dispute simply based on written submissions and accompanying documentary hearings without any hearings for the production of documents and evidence being led by any fact/expert witness.⁹

The final award shall be published within three months from the date of the constitution of the Tribunal, which is about half the time prescribed for publishing an award under the Expedited Procedure in the existing regime.¹⁰ Furthermore, the fees of the Tribunal as well as SIAC, ordinarily shall not exceed 50% of the maximum amount calculated under the Schedule of Fees.¹¹



*Chart- Represents the summary of the proceeding of the Streamlined Procedure.

In tandem with the introduction of the Streamlined Procedure, the threshold for the Expedited Procedure has been raised from SGD 6,000,000 to SGD 10,000,000¹² making it a viable option for more parties as an opportunity to save not only time but also costs. Besides the increment in the financial threshold, there has been no other significant proposed amendment to the Expedited Procedure.

i. *Difference between Streamlined Proceedings and Expedited Proceedings*

As stated above, one of the distinct reasons for introducing a separate Streamlined Proceeding was the lowering of the monetary threshold. Expedited procedure is expected to deliver the award within

⁸ SIAC Rules (7th Edition) (consultation draft), Schedule 2, Clause 8, Singapore International Arbitration Centre, 2023.
⁹ SIAC Rules (7th Edition) (consultation draft), Schedule 2, Clause 11, Singapore International Arbitration Centre, 2023.
¹⁰ SIAC Rules (7th Edition) (consultation draft), Schedule 2, Clause 12, Singapore International Arbitration Centre, 2023.
¹¹ SIAC Rules (7th Edition) (consultation draft), Schedule 2, Clause 14, Singapore International Arbitration Centre, 2023.
¹² SIAC Rules (7th Edition) (consultation draft), Rule 14.1(b), Singapore International Arbitration Centre, 2023.

6 months, whereas streamlined procedure has an even lower timeframe being three months. Compared to the tribunal limiting the number, length and scope of Written Submissions and Witness Evidence in an expedited proceeding, the parties under a streamlined procedure are not entitled to file any fact or witness evidence. With respect to the case management hearings, while it has not been given a fixed timeline under the expedited proceedings, the case management hearing must be conducted within three days of the appointment of the Sole Arbitrator in Streamlined Procedure.

While the monetary threshold for the Streamlined Procedure and the Expedited Procedure has been fixed as SGD 1,000,000 and SGD 10,000,000, respectively, the said procedures may be opted for even in disputes of higher value if the circumstances of the said disputes warrant the application of the same. What remains to be seen is whether the newly proposed to be introduced Streamlined Procedure is likely to be as popular as the Expedited Procedure introduced in 2010. The three-month period for the publishing of the award and the reduced fee structure are likely to entice smaller enterprises into having their disputes adjudicated under the aegis of the SIAC. The major concern, however, is that the ultimate discretion with respect to the grant of an application for Streamlined Procedure remains with the President of the SIAC as the same is likely to interfere with the concept of party autonomy. There is no clarity in the Draft Rules, as to the factors to be considered by the President while making such determination thus leaving the parties in a shadow.

ii. The objective of introducing a Streamlined Procedure

This procedure aims to provide an even faster track procedure compared to an expedited procedure, targeted at small-value disputes. This procedure ultimately also targets bridging the gap in the issue of age diversity in arbitration, by promoting the practice of younger practitioners in the role of Arbitrators.¹³ It attempts to target disputes of not very high monetary value or disputes which require in-depth analysis of the issue of facts and law, enabling parties to resolve disputes at the earliest.

iii. Shortcomings of the Expedited Procedure

While the Streamlined Procedure ensures quicker resolution of disputes, the following issues, as set out hereinafter would require further clarifications from SIAC as the same could lead to a breach of the principles of natural justice.

¹³ Julie Raneda and Alvin Tan, *SIAC's new 'Streamlined Procedure': an innovative proposal for even faster-track arbitration*, LEXOLOGY (August 31, 2023), <https://www.lexology.com/library/detail.aspx?g=a1838c68-8262-4506-b1fb-cfadbb325767>.

As per Rule 13.1 of the Draft Rules, an application for Streamlined Procedure can be made by either Party at any point in time before the constitution of the arbitral tribunal. Further, Rule 13.1 sets forth three situations where such an application can be made. However, it is to be noted, that two out of the said three situations, namely (a) when the dispute amount does not exceed SGD 1,000,000; and (b) the circumstances of the case warrant the application of the Streamlined Procedure; do not warrant the consent of the opposite party. As a result, on an Application being made by either Party along with their Notice of Arbitration or Response thereto, the opposite Party would be forced to decide whether they would want to opt for the said Procedure without having enough time to study and analyse their case, the issues therein, and any counterclaims that could be raised. As a result, the parties are solely at the discretion of the arbitral tribunal, which shall be unappealable, thus stripping away the concept of party autonomy from the entire procedure.

Another shortcoming is that there is no guaranteed right to a hearing. As per Clause 11 of Schedule 2, the arbitration is to be decided only based on written submissions and documentary evidence subject to any variations at the discretion of the arbitral tribunal. Thus, there is no guaranteed right to a hearing and no possibility to obtain or rely on any evidence, including but not limited to expert witnesses, should a party opt for the Streamlined Procedure.

Another aspect which requires a certain amount of clarity is the applicability of the Streamlined Procedure to arbitration agreements entered into prior to the introduction of the said procedure. This would apply not only to the Streamlined Procedure but to other new features sought to be introduced by the Draft Rules as well. It would be a violation of the rights of the parties, who negotiated with each other before entering into an arbitration agreement (prior to the introduction of the 7th Edition of the SIAC Rules), to force the parties into a procedure which did not exist at the time of the arbitration agreement.

Lastly, the language deployed in Rule 13.1(c) of the Draft Rules provides for the application of the Streamlined Procedure where the circumstances of a case warrant so. However, there is no clarification as to what are the said circumstances which would warrant the application of the Streamlined Procedure. This vague wording once again leaves the parties at the discretion of the arbitral tribunal, which may not always be used appropriately and may lead to forcing either party into accepting something it did not sign up for while entering into the arbitration agreement.

II. THIRD-PARTY FUNDING

A third-party funding arrangement is one in which an unaffiliated party (i.e., none of the disputed parties) offers to pay all or a portion of one of the parties' expenses, including the costs of expert

testimony, institutional advances, and/or legal representation. Such funding can be viewed as an investment, with the funder receiving payment in the form of a success fee, an agreed-upon percentage of the award earnings, a combination of the two, or through an even more complex financial structure. The flexibility of third-party finance, which can be customized to the unique risks of each case since different funders have varying risk tolerances, is one of its appeals.

Until now, third-party funding or external funding under the SIAC was regulated by the Practice Note PN – 01-17 dated 31.03.2017, which set forth the standards of practice and conduct to be observed by arbitrators in proceedings involving an external funder.¹⁴ However, the Draft Rules seek to introduce specific rules to regulate the same.

As per Rule 38 of the Draft Rules, a party is required to disclose any agreement relating to third-party funding along with the identity of the said funder in its notice of arbitration, the response thereto or on immediately concluding any such agreement.¹⁵ Further, the Tribunal has the authority to order the disclosure of details of the funder's interest in the proceedings including but not limited to the liabilities of the funder in respect of adverse costs.¹⁶ However, once the Tribunal is constituted, there is a bar on either party from entering into a funding agreement, which may give rise to a conflict of interest with any member of the tribunal.

III. PRELIMINARY DETERMINATION AND EARLY DISMISSAL OF CLAIMS AND DEFENSES

Under Section VII of the Draft Rules, the concept of Preliminary determination has been introduced through Rule 46, which is a tool that would allow parties to request the tribunal to decide on one or more issues or points of law without going through every procedural step.¹⁷ This is not the first time this has been introduced in an institutional rule.¹⁸ Under the SCC arbitration rules, the preliminary determination and early dismissal of proceedings have been combined within Article 39 of the SCC Arbitration Rules, which is comprised of the Summary Procedure.

¹⁴ Practice Note (PN)- 01/17 for administered cases under the Arbitration Rules of the Singapore International Arbitration Centre, on *Arbitrator Conduct in Cases Involving External Funding*, Singapore International Arbitration Centre, <https://siac.org.sg/wp-content/uploads/2022/08/Practice-Note-for-Administered-Cases-%E2%80%93-On-Arbitrator-Conduct-in-Cases-Involving-External-Funding.pdf>.

¹⁵ SIAC Rules (7th Edition) (consultation draft), Rule 38.1, Singapore International Arbitration Centre, 2023.

¹⁶ SIAC Rules (7th Edition) (consultation draft), Rule 38.3, Singapore International Arbitration Centre, 2023.

¹⁷ UNCITRAL Working Group II - A/CN.9/WG.II/WP.212 (Dispute Settlement), Feb. 3-7, 2020, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/V19/110/68/PDF/V1911068.pdf?OpenElement>.

¹⁸ Amanda Lees et al., *Proposed new rules for the SIAC - improved procedures for small disputes, new preliminary determination rule and enhanced powers for the Registrar and President*, LEXOLOGY, (Nov. 7, 2023) <https://www.lexology.com/library/detail.aspx?g=3ffd7d20-f144-4f87-b815-1e1b48a8179a>

As discussed during Working Group II, the introduction of preliminary determination and early dismissal was brought forth with the paramount reason being the intention to discourage frivolous claims.¹⁹

As per Rule 46.1, a party may apply to the tribunal for the preliminary determination of any issue²⁰:

- a) Where the parties agree that the tribunal may determine such an issue on a preliminary basis;
- b) Where the applicant can demonstrate that the determination is likely to contribute to the saving of time and costs and a more expeditious and efficient resolution of the dispute; OR
- c) Where the circumstances of the case warrant a preliminary determination.

On an Application under Rule 46.1 being allowed, the Tribunal shall, after allowing the parties to be heard, make a decision, ruling, order or award within 45 days from the date of filing of the said application subject to any extension of time granted by the Registrar.²¹

Preliminary Determination coupled with Early Dismissal of the proceedings under Rule 47 of Draft Rules allows the tribunal to rule on certain issues of fact or law without delving into a thorough assessment of the facts of the case. In comparison to Rule 47, which requires the tribunal to determine whether or not the claim or defence is manifestly without legal merit or outside the jurisdiction of the tribunal, the threshold for Article 46 is lower, wherein the tribunal would determine the case, if proven it is likely to save time and costs or provide a decision in a more expeditious or efficient manner.

Such a feature enables the parties to bring matters to the tribunal's attention separately to obtain an early decision on a few claims involved in the dispute.

In comparison with the early disposal of the procedure or claims, the time frame for Articles 46 and 47 under the current draft rules are the same, i.e., 45 days, as opposed to the 2016 rules wherein an application for Early Dismissal of the cases had to be made within 60 days.²² One of the common criticisms of this procedure points towards the abuse of the process by parties to the dispute as a tactic to delay proceedings. It is further believed that the tribunal has power throughout the arbitral proceeding to determine issues, thus not a requirement to spell it out which would avoid the abuse of the process.²³

¹⁹ *Ibid* at 17.

²⁰ SIAC Rules (7th Edition) (consultation draft), Rule 46, Singapore International Arbitration Centre, 2023.

²¹ *Ibid*.

²² SIAC Rules (6th Edition), Rule 29.4, Singapore International Arbitration Centre, 2016.

²³ Giuditta Cordero-Moss, *UNCITRAL Working Group II: Early Dismissal and Preliminary Determination in Expedited Arbitration?*, KLUWER ARBITRATION, (Sept. 19, 2020)

<https://arbitrationblog.kluwerarbitration.com/2020/09/19/uncitral-working-group-ii-early-dismissal-and-preliminary-determination-in-expedited-arbitration/>.

While this provision is not contained in all the institutional rules across the world, this provision is called for amendment, which will help enhance the institution's expedited arbitral procedure.²⁴

A. SIAC Gateway

With the technology of the world only moving forward, it has become crucial that arbitral institutions keep up to date with technological advances and proceed with introducing newer technologies to facilitate the conduct of arbitral proceedings.

i. Centralised case filing platform:

- (i) Rules 4.2 and 4.3- provide for the uploading of all communications between the parties to the Gateway, thus significantly reducing the burden of case administration.²⁵
- (ii) Rule 6.1- The claimant would be able to file the Notice of Arbitration online through the online platform gateway.²⁶

ii. Hybrid hearings:

Rule 39.2- In conformance with the current practice of the legal system worldwide, which has accepted the norm of hybrid and online hearings. This now is also being confirmed in the SIAC new rules, under Rule 39.2 wherein the tribunal may be conducted in-person, in hybrid form, or by videoconference, teleconference or any other form of electronic communication.²⁷

iii. Cybersecurity measures:

Under Rule 61, the Tribunal, on the first case management hearing, shall in accordance with the parties' opinions, decide on the procedure to be followed for the protection of the information, which also includes cybersecurity and cyber reliance.²⁸

IV. CONCLUSION

In the last 2 decades, SIAC has consistently managed to enhance the rules of the institution by making certain of the fact that the rules do not become stale. Through the mode of introducing Public Consultations during every institutional rule amendment they bring forward, they further attempt to ensure that their amendments are in tune with the arbitration community of the world while at the same time, providing the same community to also participate in the building up of one of the most successful institutions in the world. With the introduction of the Streamlined Procedure,

²⁴ *Id.*

²⁵ SIAC Rules (7th Edition) (consultation draft), Rule 4, Singapore International Arbitration Centre, 2023.

²⁶ SIAC Rules (7th Edition) (consultation draft), Rule 6, Singapore International Arbitration Centre, 2023.

²⁷ SIAC Rules (7th Edition) (consultation draft), Rule 39, Singapore International Arbitration Centre, 2023.

²⁸ SIAC Rules (7th Edition) (consultation draft), Rule 61, Singapore International Arbitration Centre, 2023.

SIAC has sought to introduce a new mechanism for the quicker resolution of disputes in a more cost-efficient manner, thus encouraging more entities to submit their disputes to arbitration to SIAC.

On the scrutiny of the Streamlined Procedure, one can safely arrive at the conclusion that with the changes being aimed at, SIAC is successfully evolving and is ensuring that its rules are in conformity with the changing practices. As Charles Darwin rightfully said, *“It is not the strongest of the species that survives, not the most intelligent that survives. It is the one that is the most adaptable to change.”* SIAC has established its dominance in the field of International Arbitration, not merely by the quality, but also through its willingness to adapt constantly.