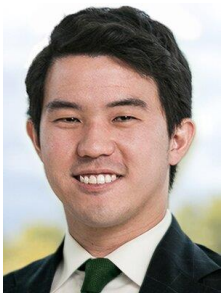
A Deep Dive Into Singapore's New Int'l Arbitration Rules

By **Jonathan Lim and Zeslene Mao** (January 30, 2025)



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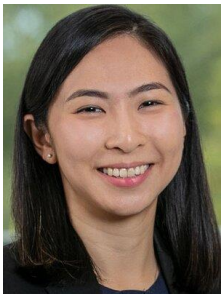

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The Singapore International Arbitration Centre, or SIAC, has published the latest edition of its arbitration rules, which came into effect on Jan. 1.[1] This is the seventh edition of the SIAC's arbitration rules, which have seen five prior amendments — in 1997, 2007, 2010, 2013 and 2016 — since the SIAC was first established in 1991.

Background

The SIAC announced its intention to update the SIAC Rules 2016 in 2020, forming six subcommittees on (1) multiple contracts, consolidation and joinder; (2) expedited procedure and emergency arbitration; (3) appointment and challenges; (4) arbitral procedure and powers of the tribunal, including early dismissal; (5) new technology and procedures; and (6) drafting.[2]

In August 2023, a draft edition was published for public consultation.[3] A period of extensive public consultation took place, and a wide range of stakeholders provided feedback, including the SIAC users council, arbitration practitioners, business entities, in-house counsel, government representatives, academics and students. Following the public consultation exercise, the SIAC officially published the SIAC Rules 2025 on Dec. 9, 2024.[4]

The SIAC Rules 2025 reflect SIAC's broad case management experience administering more than 3,000 international cases under the 2016 rules. The new rules aim to increase efficiency and lower arbitration costs, while ensuring fairness and enhancing the enforceability of arbitration awards. Major changes from the prior edition include significant innovations concerning third-party funding, coordinated proceedings and emergency arbitration.

In this update, we review key changes in the 2025 rules and their potential implications for parties conducting SIAC arbitrations.

Rule 12 and Schedule 1: Emergency Arbitrator Procedure

One of the key changes in the rules is the enhancement to the emergency arbitrator, or EA, procedure with the rules on ex parte "protective preliminary order application" — which makes the SIAC one of the first major international arbitration institutions to expressly permit ex parte emergency relief.[5]

Notably, this new protective preliminary order, or PPO, procedure was not present in the draft version of the SIAC Rules 2025 and appears to have been included in the final version of the rules after taking into account feedback raised by users during the public consultation phase.

Under the new PPO procedure, a party may file an application without notice to the other parties, i.e., on an ex parte basis, for an EA to be appointed to consider the party's request

for an interim measure. The ex parte PPO application should also include an application for a preliminary order directing a party not to frustrate the purpose of the emergency interim measure requested.[6]

An ex parte PPO application is available to parties who arbitrate under the SIAC Rules 2025, unless there is a contrary agreement between the parties.

The timelines applicable to the ex parte PPO application are extremely swift: If the SIAC accepts the PPO application, an EA will be appointed within 24 hours from the date of receipt of the application by the registrar or the date of receipt of the relevant filing fee and deposits, whichever is later.[7] The EA is then required to determine the PPO application within 24 hours of his or her appointment.[8]

The ex parte PPO application represents a significant step by the SIAC to broaden and strengthen the scope of an EA's powers. It showcases the SIAC's willingness to pioneer procedural mechanisms to address the needs of arbitration users.

At the same time, the SIAC Rules 2025 ensure that due process is safeguarded through the provision for rules that counterbalance against the ex parte nature of the PPO application:

- Within 12 hours after receiving the EA's order, the applicant is required to deliver a copy of all case papers filed in the arbitration, the EA's order, and all other communications, including the content of any oral communication at the hearing between the applicant and the EA, to all parties and provide a statement certifying that it has done so, or otherwise, provide an explanation of the steps it has taken to do so.[9]

- If the applicant does not comply with the above requirements, any PPO granted by the EA would expire three days after the date it was issued.[10]

- The EA is required to provide an opportunity to any party against whom a PPO is directed to present its case at the "earliest practicable time," and the EA must decide promptly on any objection to the PPO.[11]

- In any event, any PPO would expire 14 days after the date it was issued.[12] The EA may issue an order or award adopting or modifying the PPO, or granting such other emergency interim relief as appropriate, provided that all parties have been given an opportunity to present their cases.[13]

In view of the very short timelines applicable to objections to an ex parte PPO, and the challenges posed by potential due process concerns, it would be important for any EA employing such a procedure to issue clear and prompt directions and establish a procedure for submissions by the parties and a follow-up hearing. In practice, the management of such a procedure can be challenging and may require the appointment of EAs with case management experience.

The new ex parte PPO procedure is likely to be welcomed by arbitration users as there are circumstances where the objective of seeking interim emergency relief to urgently preserve the status quo can be prejudiced if the application is brought to the attention of the opposing party. With the SIAC Rules 2025, arbitration users now have the choice of seeking ex parte emergency interim relief either before an EA, or before national courts — insofar as that is available from the applicable forum.

It should be noted, however, that there remains some uncertainty as to whether ex parte orders made by arbitrators are enforceable.[14] This is a developing area of arbitration law where there is not yet an international consensus, and there is a dearth of precedent considering the enforceability of ex parte arbitral decisions.[15] There is thus some risk that PPOs made on a purely ex parte basis may face issues with enforcement before a national court as such orders may violate a party's opportunity to present its case.

That said, the SIAC rules make provision for hearing the party against whom an ex parte order is made, and to the extent that an order is maintained after the EA has given all parties a reasonable opportunity to be heard, then it is more likely to be enforceable.[16] The ex parte PPO mechanism in the SIAC Rules 2025 therefore seeks to balance between the need for urgent ex parte orders against ensuring due process for the opposing party.

Apart from the new PPO mechanism, the emergency arbitration procedure has also been updated to permit an EA application to be filed prior to the filing of the notice of arbitration. Under the 2016 rules, such an application had to be filed concurrently with, or following, the filing of the notice of arbitration.[17]

Where an EA application is filed prior to the filing of a notice of arbitration, parties should note that they are required to file the notice of arbitration within seven days from the registrar's receipt of the EA application. Failing to do so would result in the deemed withdrawal of the EA application on a without prejudice basis, unless the registrar extends the time for the filing of a notice of arbitration.[18]

Rule 13 and Schedule 2: Streamlined Procedure

The streamlined procedure contained in Rule 13 and Schedule 2 to the SIAC Rules 2025 is a new procedural innovation by the SIAC. The streamlined procedure applies in addition to the already established expedited procedure contained in Rule 14 and Schedule 3 of the SIAC Rules 2025 and is intended to be a faster and more cost-efficient option for the resolution of disputes below 1 million Singapore dollars (approximately $735,000).

The streamlined procedure applies to arbitrations where (1) the parties have agreed to its application prior to the constitution of the tribunal; or (2) where the amount in dispute does not exceed the equivalent amount of SG$1 million prior to the constitution of the tribunal.[19] Parties may agree in writing to exclude the application of the streamlined procedure.[20]

Under the streamlined procedure:

- All arbitrations are to be conducted by a sole arbitrator;
- The parties are required to nominate the sole arbitrator jointly within three days after being notified that the streamlined procedure will apply to the arbitration;
- If the parties are not able to jointly nominate a sole arbitrator, the president of the SIAC will appoint a sole arbitrator as soon as practicable;
- A case management conference to discuss the timetable for the conduct of the proceedings is to be held within five days after the constitution of the tribunal;

- The default position is that the arbitration will be decided on the basis of written submissions and documentary evidence, no document production requests will be permitted, and no fact or expert witness evidence will be filed;

- No hearing will be conducted unless the tribunal determines that a hearing should be conducted;

- The reasons for the award will be rendered in summary form, unless the parties agree that no reasons need to be given;

- The final award is to be made within three months from the date of the constitution of the tribunal, unless the registrar extends the time for the making of the award; and

- The tribunal's fees and the SIAC's fees shall not exceed 50% of the maximum limits based on the amount in dispute in accordance with the schedule of fees, unless the registrar determines otherwise.

Barring exceptional circumstances, parties can therefore expect disputes heard pursuant to the streamlined procedure to be resolved in a matter of months and in a cost-effective manner.

Given the swiftness of the streamlined procedure as well as the default absence of a document production phase, witness evidence and hearings, the streamlined procedure is likely to be suited to lower value disputes that do not give rise to complicated legal or factual issues, thereby enhancing access to justice.

The streamlined procedure may also be favored by parties to long-term contracts where occasional operational disputes may arise. The streamlined procedure provides an avenue for such discrete disputes to be resolved speedily and economically, without prejudicing the parties' long-term cooperation. The expedited procedure — which envisages a final award being made six months after the constitution of the tribunal — remains another option for parties who are seeking a quicker resolution of their disputes.

Rule 17: Coordinated Proceedings

Rule 17 on coordinated proceedings is a new provision in the SIAC Rules 2025.

This rule provides that where the same tribunal is constituted in two or more arbitrations, and a common question of law or fact arises out of or in connection with all the arbitrations, a party to the arbitrations may apply to the tribunal for the arbitrations to be coordinated, such that (1) the arbitrations are conducted concurrently or sequentially; (2) the arbitrations are heard together and any procedural aspects are aligned; or (3) any of the arbitrations are suspended pending a determination in any of the other arbitrations.

Unless parties agree otherwise, the coordinated arbitrations will remain separate proceedings with the tribunal issuing separate decisions, rulings, orders and awards in each arbitration. This distinguishes coordinated arbitrations from consolidated arbitrations, where two or more arbitrations are consolidated into a single arbitration.

The rules on coordinated proceedings will enhance the efficiency of the arbitral process for related arbitrations that are not amenable to either consolidation or joinder, likely

minimizing the prejudice arising from inconsistent decisions on connected issues, and avoiding duplicative processes and hearings.

It should be highlighted that the rules on coordinated proceedings apply only where the same tribunal is constituted in the related arbitrations. Parties that intend to take advantage of these rules should therefore keep in mind to nominate the same tribunal to each arbitration.

At the same time, as the coordinated proceedings remain separate arbitrations, the tribunal must ensure that it considers and decides on each arbitration independently as substantially reproducing portions of awards, even between related arbitrations, may provide grounds for a potential setting aside application.[21]

Rule 38: Third-Party Funding

Rule 38 on third-party funding is a new addition to the SIAC Rules 2025.[22] It is a significant development from the third-party funding rule found in the SIAC Investment Rules 2017 — developed for international investment arbitration — which only provide that the tribunal "may take into account any third-party funding arrangements in ordering in its Award that all or a part of the legal or other costs of a Party be paid by another Party."[23] In contrast, Rule 38 of the SIAC Rules 2025 is much more detailed and comprehensive, and provides, among other things, that:

- A party shall disclose the existence of any third-party funding agreement and the identity and contact details of the third-party funder in its notice or response or as soon as practicable upon concluding a third-party funding agreement;

- After the constitution of the tribunal, a party shall not enter into a third-party funding agreement that may give rise to a conflict of interest with any member of the tribunal and the tribunal may direct a party to withdraw from a third-party funding agreement in circumstances of such conflict;

- The tribunal may order disclosure of a third-party funding agreement including orders for disclosure in respect 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;

- The tribunal may take into account any third-party funding agreement in apportioning costs;

- The tribunal may take appropriate measures, including issuing an order or award for sanctions, damages or costs, if a party does not comply with any obligations or orders for disclosure.

The comprehensiveness of Rule 38 demonstrates the robustness of the SIAC's approach toward third-party funding, which is timely given the prevalence of third-party funding and the fact that it is now expressly permitted in many jurisdictions, including Singapore.[24] It gives the tribunal wide-ranging powers to require parties to disclose the existence and details of third-party funding arrangements and allows the tribunal to take into account such arrangements in exercising its discretion in relation to the issue of costs.

In comparison, other institutional rules deal with third-party funding only briefly, if at all.

For example, the International Chamber of Commerce Rules 2021 only require limited disclosure of "the existence and identity" of a third-party funder for the purpose of assisting prospective arbitrators and arbitrators in complying with their duties to disclose potential conflicts of interest.[25]

Similarly, the Hong Kong International Arbitration Centre Rules 2024 only require parties to disclose "(a) the fact that a funding agreement has been made; and (b) the identity of the third party funder" and any changes to this information that occurs after the initial disclosure.[26] The HKIAC Rules 2024 also state that the tribunal may take into account a third-party funding arrangement in exercising its discretion on costs.[27]

The London Court of International Arbitration Rules 2020 are silent on the issue of third-party funding.

Unlike the SIAC Rules 2025, none of these institutional rules expressly empower a tribunal to direct that a party withdraw from a third-party funding agreement if such an agreement may give rise to a conflict of interest with a tribunal member.

The broad rules on third-party funding arrangements under the SIAC Rules 2025 mean that parties must now be alert to the need to actively disclose the existence of third-party funding arrangements in any SIAC arbitration, and ensure that any third-party funding arrangements entered into after the tribunal's constitution do not create a risk of conflict of interest.

Parties must also be prepared to disclose the details of such arrangements to the arbitral tribunal and other party to avoid costly procedural skirmishes on this issue or adverse orders or awards by the tribunal.

On the other hand, parties who are aware that the counterparty has entered into a third-party funding arrangement should consider whether to apply for security for costs. The security for costs provisions are contained in Rule 48 of the SIAC Rules 2025 and provide that a party may apply to the tribunal for an order that any party asserting a claim, counterclaim or cross-claim provide security for legal costs and expenses and the costs of the arbitration.

While a third-party funding arrangement generally does not per se indicate a lack of funds on the part of a claimant, as funding arrangements may be entered into by solvent parties to share risk and maintain liquidity, a third-party funding arrangement may be a relevant consideration in a security for costs application if there is other independent evidence that indicates that the claimant is impecunious.[28]

Where a third-party funding arrangement exists together with other evidence of impecuniosity, a tribunal may be inclined to award security for costs unless the funding agreement clearly provides that the funder agrees to pay any adverse cost award.[29] It will be interesting to examine whether the increased transparency over third-party funding arrangements brought about by Rule 38 will lead to an increase in security for costs applications.

Finally, although the 2025 rules allow tribunals to take into account any third-party funding agreement in apportioning costs, it remains to be seen whether this will in fact affect how SIAC tribunals apportion costs. In the investor-state context, numerous tribunals have held that third-party funding arrangements should not affect the determination of a claimant's cost recovery.[30]

It is also generally accepted that a third-party finder, which is not a party to the arbitration agreement or arbitral proceedings, cannot be made liable for an adverse costs order unless the funder can be brought within the tribunal's jurisdiction under a nonsignatory theory.[31] The SIAC Rules 2025 will enable SIAC tribunals to further develop international arbitration law and practice on this front.

Other Notable Amendments

Challenge of Arbitrators

Rule 26.1(c) of the SIAC Rules 2025 adds a new ground on which an arbitrator may be challenged: if the arbitrator becomes de jure or de facto unable to perform his or her functions.

While how the SIAC will interpret an arbitrator becoming "unable to perform [one's] functions" remains to be seen, it is possible that this rule may be invoked by parties in circumstances where an arbitrator is unable to exercise his or her adjudicatory functions in a timely fashion, whether due to illness, incapacity or scheduling difficulties.

As parties are deemed under the rules to have agreed that the SIAC may publish any decision of the SIAC court on a challenge — with the names of the parties and all other identifying information redacted[32] — it will be interesting to observe how the interpretation of this new rule will be developed by the SIAC court.

Issues for Determination

Rule 34.1 of the SIAC Rules 2025 is a new provision that requires tribunals to, in consultation with the parties and at the appropriate stages of the arbitration, use reasonable efforts to identify the issues to be determined in the arbitration and record them in a procedural order. This rule places the obligation on the tribunal to use "reasonable efforts" to sieve out the issues in dispute and to record them in a procedural order.

It is likely that this rule was added to support the enforceability of awards as awards would be less susceptible to challenge on the grounds of lack of jurisdiction or breach of natural justice if the award addresses and determines the issues previously set out in a procedural order. Parties will therefore have to be astute in ensuring that the issues they want a determination on are included in the relevant procedural order.

To ensure that all relevant issues are included in the procedural order, an appropriate time for the recording of such an order may be prior to the hearing — to ensure that all issues in the parties' pleadings and submissions are captured.

Witnesses

Rule 40.5 of the SIAC Rules 2025 is a new provision that provides detailed guidance on the permitted interactions between a party, its representatives and its witnesses. Rule 40.5 states that a party and its representative: (1) may interview any witness; (2) assist such witnesses in the preparation of a witness statement or expert report; and (3) meet such witness prior to their appearance to give oral evidence at any hearing.

It adds that a party and its representatives should seek to ensure that the evidence of fact witnesses reflects their own account of the relevant facts and that the evidence of experts

reflects their genuinely held opinions. As ethical rules over a party's interactions with witnesses may differ between jurisdictions, this new rule provides important clarity over the permissible scope of interactions and will help build common transnational standards.

Conclusion

Since its establishment 34 years ago, the SIAC has grown from strength to strength, last reporting 663 cases being filed in 2023.[33] The SIAC Rules 2025 contain numerous innovative and industry-leading updates that will continue to place the SIAC at the forefront of international dispute resolution in the 21st century.

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[1] SIAC, SIAC Rules 2025 (available at https://siac.org.sg/siac-rules-2025).

[2] SIAC, "SIAC Announces Commencement of Revisions for SIAC Arbitration Rules" (available at https://siac.org.sg/siac-announces-commencement-of-revisions-for-siac-arbitration-rules).

[3] SIAC, "SIAC Announces Public Consultation on the Draft 7th Edition of the SIAC Rules" (available at https://siac.org.sg/siac-announces-public-consultation-on-the-draft-7th-edition-of-the-siac-arbitration-rules).

[4] SIAC, "SIAC Announces the Official Release of the 7th Edition of the SIAC Rules 2025" (available at https://siac.org.sg/siac-announces-the-official-release-of-7th-edition-of-the-siac-rules-2025).

[5] Other institutions such as the LCIA, HKIAC and ICC do not presently permit parties to file ex parte applications for emergency relief. Other arbitral institutions that provide for ex parte emergency relief are the Swiss Arbitration Court (see the Swiss Rules of International Arbitration, Article 29(3) read with Article 43) and the Arbitrators' and Mediators' Institute of New Zealand (see the AMINZ Emergency Arbitration Protocol, Articles 1.2 and 3.2).

[6] SIAC Rules 2025, Schedule 1, at paras. 25-34.

[7] SIAC Rules 2025, Schedule 1, at paras. 7, 26.

[8] SIAC Rules 2025, Schedule 1, at para. 27.

[9] SIAC Rules 2025, Schedule 1, at para. 29.

[10] SIAC Rules 2025, Schedule 1, at para. 30.

[11] SIAC Rules 2025, Schedule 1, at paras. 31, 32.

[12] SIAC Rules 2025, Schedule 1, at para. 33.

[13] SIAC Rules 2025, Schedule 1, at para. 33.

[14] For example, the 2006 amendments to the UNCITRAL Model Law which expressly permit ex parte provisional measures in limited circumstances were widely found to be controversial and were not adopted by many jurisdictions, including Singapore: G. Born, International Commercial Arbitration, 3rd edition, at para. 17.02[G][10].

[15] G. Born, International Commercial Arbitration, 3rd edition, at para. 17.02[G][10] ("there have been virtually no instances of [ex parte provisional measures] being granted (much less of such measures being effective).").

[16] See e.g., Decision of the High Court of Singapore, CVG v CVH [2022] SGHC 249.

[17] SIAC Rules 2016, Schedule 1, at para. 1 compared with SIAC Rules 2025, Schedule 1, at para. 2(a).

[18] SIAC Rules 2025, Schedule 1, at para. 6.

[19] SIAC Rules 2025, at Rule 13.1.

[20] SIAC Rules 2025, at Rule 13.3.

[21] See e.g., Decision of the High Court of Singapore, DJO v DJP and others [2024] SGHC(I) 24, where an arbitral award was set aside on the basis that substantial copy-and-pasting from a related award demonstrated that the Tribunal had not applied its mind to the issue in the arbitration in an independent, fair and impartial manner.

[22] Previously, the standards of practice and conduct to be observed by arbitrators in SIAC arbitrations involving third-party funding were set out in the SIAC's Practice Note on Arbitrator Conduct in Cases involving External Funding, dated 31 March 2017.

[23] SIAC Investment Rules 2017, at Article 35.

[24] See e.g., Civil Law (Third-Party Funding) Regulations 2017.

[25] ICC Rules 2021, at Article 11(7).

[26] HKIAC Rules 2024, at Article 44.

[27] HKIAC Rules 2024, at Article 34.4

[28] ICCA, "Report of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration", 2018, at PDF pp. 180-183 (available at https://cdn.arbitration-icca.org/s3fs-public/document/media_document/Third-Party-Funding-Report%20.pdf).

[29] ICCA, "Report of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration", 2018, at PDF pp. 180-183 (available at https://cdn.arbitration-icca.org/s3fs-public/document/media_document/Third-Party-Funding-Report%20.pdf).

[30] See e.g., Ioannis Kardassopoulos and Ron Fuchs v. The Republic of Georgia, ICSID

Case Nos. ARB/05/18 and ARB/07/15, Award, dated 3 March 2010, at para. 691 ("… the Tribunal knows of no principle why any such third party financing arrangement should be taken into consideration in determining the amount of recovery by the Claimants of their costs."); ATA Construction, Industrial and Trading Company v. The Hashemite Kingdom of Jordan, ICSID Case No. ARB/08/2, Order Taking Note of the Discontinuance of the Proceeding, dated 11 July 2011, at para. 34.

[31] ICCA, "Report of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration", 2018, at PDF pp. 161 (available at https://cdn.arbitration-icca.org/s3fs-public/document/media_document/Third-Party-Funding-Report%20.pdf); Decision of Delhi High Court, Tomorrow Sales Agency Private Limited v. SBS Holdings, Inc. and Ors. (2023 DHC 3830); G. Born, International Commercial Arbitration, 3rd edition, at para. 10.02[Q].

[32] SIAC Rules 2025, at Rule 28.7.

[33] SIAC, SIAC Annual Report 2023 (available at https://siac.org.sg/wp-content/uploads/2024/04/SIAC_AR2023.pdf).