
Kluwer Arbitration Blog

SIAC Symposium 2023 Part 1: Charting the Future of International Arbitration – Geopolitics, the Next Generation of Dispute Resolution, and Draft 7th Edition of the SIAC Rules

Jennifer Lim (Sidley Austin LLP) and Jae Hee Suh (Allen & Overy LLP) · Saturday, September 30th, 2023 · YSIAC

The Singapore International Arbitration Centre (“SIAC”) held the [SIAC Symposium](#), its flagship conference, during the Singapore Convention Week on 28 August 2023. The SIAC Symposium featured a conversation with Minister K Shanmugam, SC (Minister for Home Affairs and Minister for Law, Singapore) and a plenary address by Justice Judith Prakash (Justice of the Court of Appeal, Supreme Court of Singapore). These sessions were followed by two panel discussions on the next generation of disputes in international arbitration and the [draft 7th Edition of the SIAC Rules](#) (“Draft SIAC Rules”) in the morning, as well as six technology-driven and interactive panel discussions exploring regional and topical developments, trends and forecasts in the afternoon. This Part reports on the morning events, while [Part 2](#) pertains to the afternoon sessions.

Opening Remarks & Welcome Address

Opening the symposium, Ms Gloria Lim (Chief Executive Officer, SIAC) emphasised the importance that SIAC places on collaboration with its partners and users from all over the world, and expressed her hope that the SIAC Symposium would serve as a focal point for the global arbitration community to exchange ideas. Ms Lim also introduced the upcoming SIAC Gateway, a digital platform powered by Opus 2 that will enable online case filing and provide centralised real-time access to SIAC proceedings.

This was followed by the welcome address of Mr Davinder Singh, SC (Chairman, SIAC). He underscored SIAC’s commitment to keeping pace with the commercial world and meeting the challenges of contemporary arbitration. Mr Singh highlighted SIAC’s upcoming specialist arbitrator panels and the Draft SIAC Rules, which seek to further facilitate fast-track and cost-effective dispute resolution and to make the arbitrator community more inclusive to younger practitioners.

Conversation on the Geopolitics of International Commercial and Investor-State Arbitration

The conversation between Ms Lucy Reed (President, SIAC Court of Arbitration) and Minister Shanmugam, SC canvassed the geopolitical state of play and its influence on international commercial and investor-State arbitration.

Minister Shanmugam, SC noted that globalisation may be under threat and this could have an adverse impact on global supply chains and, consequently, on lawyers, including dispute resolution practitioners. In the meantime, he highlighted Asia's growth in the global economy: by 2030, Asia is expected to account for 50% of the world's economy, with the infrastructure needs of the Association of Southeast Asian Nations ("ASEAN") expected to reach approximately four trillion U.S. dollars, and the purchasing power of several cities in ASEAN expected to grow substantially. Singapore stands as a neutral and stable hub for businesses with a sophisticated judiciary and strong rule of law.

Ms Reed and Minister Shanmugam, SC also addressed the issue of sanctions, noting that, in the short to medium term, sanctions could give rise to an increase in commercial disputes, especially those concerning shipping and related services, as well as investor-State disputes.

The conversation then shed light on the challenges faced with the investor-State dispute settlement ("ISDS") mechanism. Minister Shanmugam, SC noted the current issue of balancing States' needs for regulatory space in protection of their sovereignty and public interest on the one hand and the protection of foreign investors on the other hand.

Plenary Address by Justice Judith Prakash – *"The critical role of the courts in arbitral disputes: Conceptualising the partnership between the courts and arbitration"*

Justice Prakash delivered the [plenary address](#) regarding the integral role that courts play in the arbitration process. Through the decisions of the courts, the basic features of arbitration are reinforced and arbitration is therefore able to function as an effective mode of dispute resolution.

Justice Prakash elaborated on this proposition by highlighting the three key roles played by the courts by reference to recent judgments of the Singapore courts: first, setting the boundaries of arbitration; second, supporting arbitration through interim orders; and third, enforcing arbitral awards based on a policy of minimal curial interference and declining to accept an overly broad concept of natural justice.

Justice Prakash concluded by noting that Singapore's ascendance as an arbitration hub is due in part to the strong support the Singapore courts give to arbitration. With the courts and the arbitration community each carrying out their roles and duties faithfully, Justice Prakash remains confident that Singapore will be able to maintain its position as a leading arbitration seat.

Panel Discussion: The Next Generation of Disputes in International Arbitration

The first panel of the day, moderated by Mr Kevin Nash (Registrar, SIAC), had the exciting and important task of looking into the future and considering whether arbitration is fit-for-purpose for the next generation of disputes.

Justice Christopher S. Sontchi (International Judge, Singapore International Commercial Court) kicked off the discussion by zooming in on disputes relating to cross-border insolvency. He observed that, while arbitration might not be suitable for some aspects of insolvency (for example, confirmation of a plan), it is a valid and potentially effective mode for resolving contractual disputes in insolvency situations.

Justice Kannan Ramesh (Judge of the Appellate Division, Supreme Court of Singapore) outlined four potential areas of disputes that are expected to generate significant opportunities for arbitration practitioners: namely climate change and related policy change; cryptocurrency; sanctions and related regulatory issues; and technology and artificial intelligence.

Mr Kelvin Poon, SC (Deputy Managing Partner and Head of International Arbitration, Rajah & Tann Singapore) shared that he is seeing some very significant disputes in the technology space, both with respect to new technologies, like cryptocurrency, and “greening” of old technologies, like shipping.

Moving on to ISDS, Dr Claudia Annacker (Partner, Dechert (Paris) LLP) singled out climate change and geopolitics as the key drivers of the next wave of investor-State disputes. She provided as illustrative examples disputes relating to host States’ measures that negatively affect energy investments, disputes arising out of renewable energy investments, disputes based on the host State’s failure to comply with environmental obligations, and disputes relating to the Russian-Ukraine conflict and sanctions against countries like Iran and Russia.

The panel considered the suitability of arbitration for dealing with these new disputes, highlighting that arbitration’s predictability, economic feasibility and speed would remain crucial in attracting new players and industries. The panel also drew attention to the need for specialist knowledge on the part of arbitrators to deal with disputes in the new frontiers and SIAC’s setting up of specialist arbitrator panels as a timely and welcome response to this issue.

Panel Discussion: Themes Arising from the Draft SIAC Rules

This panel, moderated by Mr Nash, consisted of Ms Judith Knieper (Legal Officer, UNCITRAL Secretariat), Mr Dheeraj Nair (Partner, JSA Advocates & Solicitors), Mr Paul Sandosham (Partner and Head of Energy, Infrastructure and Resources Disputes for Southeast Asia, Clifford Chance Asia), Mr Ramesh Selvaraj (Partner & Deputy Head of International Arbitration, Allen & Gledhill), and Ms Koh Swee Yen, SC (Head of the International Arbitration Practice and Partner in the Commercial & Corporate Disputes Practice, WongPartnership LLP). It focused on the Draft SIAC Rules, for which there is a [public consultation until 21 November 2023](#).

The panellists addressed the Expedited Procedure in Rule 14 of the Draft SIAC Rules. Mr Selvaraj welcomed the additional flexibility and discretion afforded to the tribunal in Rule 14.3, which empowers the tribunal to “*adopt any procedural mechanisms... taking into account the expedited nature of the proceedings*”. Mr Selvaraj commented on the revised grounds for adopting the expedited procedure, specifically the increase in the monetary limit of the amount in dispute to SGD 10 million (from SGD 6 million) and the new ground in Rule 14.1(c) that “*the circumstances of the case warrant the application of the Expedited Procedure*” which would allow appropriate disputes of all sizes to potentially be conducted under the Expedited Procedure. Ms Koh said that the new Rule 14.1(c) is “*what clients actually want*”. She observed that there were some cases that

did not meet the amount and consent criteria but were suitable for Expedited Procedure.

Next, the panel discussed the new Streamlined Procedure in Rule 13 and Schedule 2 of the Draft SIAC Rules for claims not exceeding SGD 1 million. The panellists noted that this procedure would proceed on a documents-only basis unless the tribunal determined otherwise, juxtaposed the Streamlined Procedure and Expedited Procedure, and commented on the fast-track feature of the Streamlined Procedure (i.e., the final award shall be made within three months from the constitution of the Tribunal). The 50 percent discount on SIAC's fees and the Tribunal's fees for cases conducted under the Streamlined Procedure was warmly welcomed by the panellists.

The panellists also addressed the appointment of arbitrators in Rule 19 of the Draft SIAC Rules. Mr Sandosham highlighted the new Rule 19.5 which requires the President of the SIAC Court to bear in mind principles of diversity and inclusion when appointing arbitrators and Rule 19.7 on appointing sole or presiding arbitrators with different nationalities from those of the parties. Mr Nash stated that SIAC values the criteria set out in the new Rule 19.5 and the new Rule 19.7 codifies SIAC's unwritten practice. Mr Sandosham then drew attention to Rule 19.8 setting out the option of using a list procedure to appoint arbitrators. He considered this rule to be innovative, but suggested that the "*mutual order of preference of the parties*" language in Rule 19.8(c) may be potentially unworkable in practice. The panel expressed their opinions and concerns about Rule 19.11 which is designed to address the circumstances where the appointment procedure agreed by the Parties might cause unequal treatment. The general takeaway was that Rule 19.11 would be a useful provision but it must be applied with prudence and care.

The panel also explored a number of other issues in the Draft SIAC Rules, such as the emergency arbitration procedure, the early dismissal procedure, preliminary determination under Rule 46 and multiple contracts, joinder and consolidation.

The panellists concluded the session by providing their final views on the Draft SIAC Rules. They considered that SIAC has done an excellent job in innovating and making arbitration better for users. The draft rules are progressive, with a sense of future proofing by accommodating developments in technology.

Conclusion

The morning sessions of the SIAC Symposium provided a unique opportunity to appreciate and celebrate SIAC and Singapore's position at the centre of the global dispute resolution landscape, and the strong judicial support and arbitration ecosystem that has provided the platform for the rise of SIAC. These sessions also highlighted and called for continued innovation amidst the growing economic heft of Asian economies, the evolving needs of businesses and the new generation of disputes.

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