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SIAC Rules 2025: Breaking New Ground in Emergency Arbitration with Protective Preliminary Orders

Rishabh Malaviya (Singapore International Arbitration Centre) · Monday, January 6th, 2025 · Singapore International Arbitration Centre (SIAC)

Emergency arbitration ("EA") was initially introduced as a procedural tool on an opt-out basis in arbitrations under the American Arbitration Association-International Centre for Dispute Resolution Rules. In 2010, the Singapore International Arbitration Centre ("SIAC") became the first institution based in Asia to introduce EA provisions in its arbitral rules. This has since been followed by most major international arbitral institutions worldwide.

The provisions remain a popular means for parties to obtain emergency interim relief. As SIAC's Annual Report 2023 notes, SIAC has accepted 152 EA applications since 2010, including 11 in 2023. The benefits are evident. Parties can obtain interim relief promptly, prior to the constitution of a tribunal, without subjecting themselves to potentially unfamiliar and/or ineffective court processes.

This development is consistent with a significant and continuing departure from the historical uncertainty around an arbitral tribunal's power to order interim relief. Legislatures and judiciaries in several jurisdictions are now alive to the realities of modern-day arbitration and are taking steps to give effect to EA provisions and enforce decisions of emergency arbitrators.

That said, the EA process is far from a panacea. Some of its drawbacks are discussed here. Relevant for this blog post, EA provisions as they usually stand, including under the 6th Edition of the Arbitration Rules of the SIAC ("SIAC Rules 2016"), do not allow a party to obtain *ex parte* relief, *i.e.*, no relief can be sought or granted without notifying all other parties to the dispute. Domestic courts however, with their inherent and coercive powers, typically possess the ability to order interim relief on an *ex parte* basis.

This situation has changed with the introduction of the 7th Edition of the Arbitration Rules of the SIAC ("SIAC Rules 2025"). The SIAC Rules 2025, which came into effect on 1 January 2025, permit parties to seek protective preliminary orders ("PPO") from an emergency arbitrator without notification to other parties (*i.e.*, *ex parte* preliminary orders, otherwise known as *ex parte ad interim* orders).

The Provisions

Schedule 1 of the SIAC Rules 2025 provides that a party may request the appointment of an emergency arbitrator along with filing an application for a PPO, without complying with the requirement to notify counterparties of the application.

If the President of the SIAC Court of Arbitration accepts such a request, an emergency arbitrator is appointed. The emergency arbitrator is required to consider the request for a PPO and determine the same within 24 hours of appointment. The order of the emergency arbitrator in respect of the application for a PPO is communicated to the SIAC Secretariat, which then transmits the order to all parties (including the party against whom the PPO was sought). The applicant is also required to transmit all case papers to the counterparties within 12 hours of the SIAC Secretariat's transmission of the order. If the applicant fails to transmit the case papers within the stipulated duration, the PPO expires 3 days after the date it was issued.

Thereafter, the emergency arbitrator is to provide an opportunity to all parties to present their case at the earliest practicable opportunity, with the rest of the EA procedure progressing as usual. The PPO will expire 14 days after the date it was issued.

Analysis

The phrase "*ex parte*" is absent from the SIAC Rules 2025, but that is what Schedule 1 effectively provides for. The provisions address those situations in which notification of the application for EA to counterparties could undermine the emergency interim relief sought in the application (*e.g.*, where the relief sought is likely to be frustrated by a recalcitrant respondent). Notification to counterparties would take place only after the order in respect of the PPO application has been secured.

While SIAC breaks new ground in international arbitration by being the first institution to introduce provisions that comprehensively provide for *ex parte* preliminary orders by emergency arbitrators, these provisions are not as radical as the phrase "*ex parte*" may suggest.

First, the EA framework under the SIAC Rules 2016 (and under the rules of other major institutions) effectively allows for the appointment of an emergency arbitrator on an *ex parte* basis. This is primarily because the appointment typically has to be carried out within 24 hours, which rarely gives a respondent enough time to respond substantively. As such, institutions generally would not have the benefit of hearing from all parties before proceeding to appoint an emergency arbitrator.

Secondly, emergency arbitrators are typically empowered to issue preliminary orders immediately upon appointment, at which stage a respondent may not be involved even after being notified of the appointment. Thus, early notification to all parties may be considered a mere formality given the urgency involved and the speed of the process.

Thirdly, SIAC's amendments are in line with the 2006 amendments to the UNCITRAL Model Law on International Commercial Arbitration ("Model Law"), and specifically, the introduction of Articles 17B, 17C, and 17D. These articles establish a regime for the consideration of requests for preliminary orders (as part of an underlying request for interim measures) by the *arbitral tribunal*, without notice to all parties. The arbitral tribunal can grant the preliminary order on an *ex parte* basis, if it considers that prior disclosure of the request to the party against whom it is directed

risks frustrating the purpose of the measure. The tribunal is then required to give notice of the request for interim measures and the preliminary order to all parties, and give all parties a chance to be heard as soon as practicable.

Jurisdictions such as Hong Kong have adopted these articles of the Model Law, while similar provisions (including in an emergency context) are also found in the Swiss Rules of International Arbitration 2021 and in the Dubai International Arbitration Centre Arbitration Rules 2022. However, Gary Born, at §17.02[G][10] of *International Commercial Arbitration*, describes the 2006 amendments to the Model Law as "controversial" and "ill-considered or, at least, ahead of their time." Born's "most fundamental" objection to *ex parte* relief in an arbitration context is that "it can virtually never accomplish any serious purpose under existing regimes," given arbitral tribunals lack coercive powers (for instance, an arbitral tribunal cannot compel freezing of bank accounts). Born's analysis is largely premised on what is called the "basic predicate" for the grant of *ex parte* relief, which is that one party cannot be trusted to comply with its obligations and must be coerced into taking certain actions without any opportunity to evade its obligations.

With respect, these concerns may be overstated. What the Model Law (and now the SIAC Rules 2025) contemplates is *not* interim relief being granted on an *ex parte* basis. It contemplates a *preliminary order* (or *PPO*) being granted on an *ex parte* basis, before the request for interim relief is considered with notice to all parties. Preliminary orders serve a limited objective—they are confined to the period until which an arbitrator can consider the request for interim relief and are aimed at ensuring that the underlying purpose of the request for interim measures is not frustrated. This limited objective does not typically require the preliminary order itself to have a direct coercive effect. Among other things, it might suffice that any contrary action would be in violation of an arbitrator's order. Further, the potential ramifications of the respondent's violation of the preliminary order on the respondent's case in the arbitration proceedings would likely provide sufficient incentive for voluntary compliance.

In any case, even if an *ex parte* preliminary order could be said to lack coercive force, this concern is arguably misplaced, especially when one considers how such criticism should then apply with equal force to any preliminary or interim order granted by an emergency arbitrator or arbitral tribunal. The party against whom any preliminary or interim order is made can always elect to violate the order (*e.g.,* by dissipating assets), given the lack of direct coercive effect of the order, until enforcement is granted by a court. However, this has not prevented parties from regularly seeking preliminary and interim orders in arbitration proceedings, with enforcement being a secondary consideration.

Further, EA provisions have been invoked consistently over the years, including in circumstances where enforcement of the emergency arbitrator's orders is uncertain. Increased legislative and judicial attention being paid to the enforcement of an emergency arbitrator's orders is a recent trend and has merely served to consolidate the early success of the EA regime. In any case, as jurisprudence in the EA field evolves, it will also become apparent that enforcement of a PPO will likely be subject to the same enforcement mechanism as any other order of an emergency arbitrator, thereby taking care of any concerns surrounding enforceability.

Conclusion

The PPO regime under the SIAC Rules 2025 is well placed to succeed. The EA provisions are structured in a manner to ensure that a counterparty against whom a PPO is sought is notified of the order and the application at the earliest possible instance. This strikes an adequate balance between fundamental due process considerations and the need for urgent relief.

Ultimately, much like EA itself, SIAC's PPO is not intended to be (and cannot be) a panacea. It remains one procedural tool among many in each party's arsenal to be deployed as required. Since EA's introduction, parties have recognised its value, and the overall arbitration ecosystem has responded organically to facilitate its success. This author believes that, for the reasons discussed above, the time is ripe for SIAC's introduction of the PPO.

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