

A Comparative Study of Working International Arbitration Centres Globally

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International Arbitration Institutions

- ▶ ICC International Court of Arbitration (ICC)
- ▶ Singapore International Arbitration Centre (SIAC)
- ▶ London Court of International Arbitration (LCIA)
- ▶ American Arbitration Association's International Centre for Dispute Resolution(AAA's ICDR)
- ▶ Hong Kong International Arbitration Centre (HKIAC)
- ▶ China International Economic and Trade Arbitration Commission (CIETAC)
- ▶ Kuala Lumpur Regional Centre for Arbitration (KLRCA)
- ▶ Permanent Court of Arbitration (PCA)

Topics for Discussion

- ▶ New Trends in International Arbitration
- ▶ Popular Arbitral Institutions in India – Bird’s Eye View

International Arbitration Institutions

International Chamber of Commerce's International Court of Arbitration (ICC)

- ▶ Established in 1923, the International Chamber of Commerce's International Court of Arbitration ("ICC") is the world's leading arbitral institution.
- ▶ The ICC is assisted by its Secretariat, made up of more than 80 legal professionals and support personnel, to ensure proper application of the ICC Rules, as well as assist parties and arbitrators in overcoming procedural obstacles.
- ▶ Headquartered in Paris. Also has Secretariat in Hong Kong; Proposed Secretariat in Singapore.

International Chamber of Commerce's International Court of Arbitration (ICC)

- ▶ The latest version of its Arbitration Rules came into force on 1 March 2017 .
- ▶ In 2016, 966 new cases were administered by the ICC Court— involving 3,099 parties from 137 countries.
- ▶ 60 cases involved Indian parties.

Singapore International Arbitration Centre (SIAC)

- ▶ Singapore International Arbitration Centre (“SIAC”) commenced its operations in 1991.
- ▶ Headquartered in Singapore. Representative offices in Mumbai, Seoul, Shanghai and GIFT City (Gujarat).
- ▶ SIAC’s case management services are supervised by the Court of Arbitration comprising eminent arbitration practitioners from around the world along with a multinational and experienced Secretariat.
- ▶ SIAC Secretariat supervises and monitors the progress of the case and also scrutinizes the draft arbitral award.

Singapore International Arbitration Centre (SIAC)

- ▶ The 6th edition of the Rules came into effect on 1 August 2016.
- ▶ In 2016, 343 new cases were filed, with the total stakes amounting to US\$11.85 billion.
- ▶ 153 cases involved Indian parties and 9% of total disputes (31 cases) were governed by Indian law in 2016.

Singapore as Seat of Arbitration

- ▶ Singapore adopted the UNCITRAL Model law on International Commercial Arbitration and enacted the International Arbitration Act (“**IAA**”) in 1995. The IAA is regularly updated to keep up with the best practices in International Arbitration.
- ▶ Maximum Court support and minimum judicial intervention.
- ▶ Maxwell Chambers - Asia’s first fully-integrated dispute resolution complex with state-of-the-art hearing facilities and support services such as transcription and translation.

London Court of International Arbitration (LCIA)

- ▶ The London Court of International Arbitration (“LCIA”) traces its roots to the year 1891.
- ▶ Headquartered in London. DIFC-LCIA Arbitration Centre in Dubai. LCIA-MIAC Arbitration centre in Mauritius.
- ▶ The Secretariat is responsible for the day-to-day administration of all disputes referred to the LCIA.

London Court of International Arbitration (LCIA)

- ▶ LCIA Rules - 2014
- ▶ Over 80% of parties in LCIA cases are not of English nationality.
- ▶ In 2016, 303 arbitrations were referred to the LCIA.
- ▶ 4.4% of the parties involved were Indian.

American Arbitration Association's International Centre for Dispute Resolution (ICDR)

- ▶ American Arbitration Association (AAA) was established in 1926, with its headquarters in New York.
- ▶ The International Centre for Dispute Resolution (“ICDR”) was established in 1996 as the global component of the AAA.
- ▶ Headquartered in New York. Overseas office in Singapore and Mexico City.
- ▶ ICDR Rules 2014
- ▶ In 2016, 1050 new cases were filed.

Hong Kong International Arbitration Centre (HKIAC)

- ▶ Hong Kong International Arbitration Centre (“HKIAC”) was established in 1985.
- ▶ Headquartered in Hong Kong.
- ▶ The HKIAC Secretariat is comprised of legal and administrative staff of diverse nationalities who can work in multiple languages.
- ▶ HKIAC Rules 2013

Hong Kong International Arbitration Centre (HKIAC)

- ▶ 460 new cases were filed at HKIAC in 2016 - 262 were arbitrations, 15 were mediations and 183 were domain name disputes.
- ▶ Total sum of all arbitration disputes was HK\$19.4 billion (approximately US\$2.5 billion).
- ▶ Parties from 39 jurisdictions participated in HKIAC arbitrations.
- ▶ Awards from China and Hong Kong can now be enforced in India after these jurisdictions have been notified in 2012 in the Official Gazette for the purpose of Section 44 of the Arbitration and Conciliation Act, 1996.

China International Economic and Trade Arbitration Commission (CIETAC)

- ▶ The China International Economic and Trade Arbitration Commission (CIETAC) was set up in 1956.
- ▶ Headquartered in Beijing.
- ▶ CIETAC has South China Sub-Commission in Shenzhen, Shanghai Sub-Commission, Tianjin International Economic and Financial Arbitration Center (Tianjin Sub-Commission), Southwest Sub-Commission in Chongqing, Zhejiang Sub-Commission in Hangzhou, Hubei Sub-Commission in Wuhan and Fujian Sub-Commission in Fuzhou. CIETAC set up its Hong Kong Arbitration Center in September 2012.
- ▶ CIETAC Rules 2015.
- ▶ CIETAC saw another record year with 2,183 new cases in 2016.

Kuala Lumpur Regional Centre for Arbitration (KLRCA)

- ▶ The Kuala Lumpur Regional Centre for Arbitration (KLRCA) was established in 1978 under the auspices of the Asian-African Legal Consultative Organisation (AALCO).
- ▶ Headquartered in Kuala Lumpur, Malaysia.
- ▶ KLRCA Rules 2017- effective from 1 June 2017.
- ▶ 522 cases were registered with the KLRCA in 2016- 443 for Adjudication, 62 for Arbitration, 12 for Domain name disputes and 5 for Mediation.
- ▶ Total sum in dispute for arbitration was around US\$ 295 million.

Permanent Court of Arbitration (PCA)

- ▶ Permanent Court of Arbitration (PCA) was established by treaty at the First Hague Peace Conference in 1899 in Hague, Netherlands.
- ▶ Administers international arbitrations concerning disputes arising out of treaties, including bilateral investment treaties and multilateral treaties, and other instruments.
- ▶ The UNCITRAL Arbitration Rules, adopted in 1976 and revised in 2010 and 2013, entrust the Secretary-General of the PCA with the role of designating an “appointing authority” upon request of a party to arbitration proceedings. In addition to the role of designating appointing authorities, the Secretary-General of the PCA will act as the appointing authority under the UNCITRAL Arbitration Rules when the parties so agree.
- ▶ The PCA administered 148 cases in 2016, 40 of which were initiated in 2016. The PCA received 49 requests relating to its appointing authority services.

New Trends in International Arbitration

Emergency Arbitrator

- ▶ An Emergency Arbitrator (“EA”) may be appointed under certain institutional arbitration rules for determination of applications for urgent interim relief as soon as request for arbitration has been filed and before the arbitral tribunal is constituted.

- ▶ Some examples of arbitral institutions that provide for EA:
 - ▶ ICDR
 - ▶ SIAC
 - ▶ ICC
 - ▶ LCIA
 - ▶ HKIAC
 - ▶ CIETAC
 - ▶ KLRCA

Emergency Arbitrator – SIAC Rules

- ▶ Rule 30.2 (read with Schedule 1) - a party may apply to the SIAC for the appointment of an EA for the purpose of grant of emergency interim relief. Such application must be made concurrent with or following the filing of a Notice of Arbitration but prior to the appointment of the Tribunal.
- ▶ Under SIAC Rules 2016, if the President determines that SIAC should accept the application for emergency interim relief, he shall appoint an EA **within one day** of receipt of the application by the Registrar and payment of the administration fee and deposit [Para 3 of Schedule 1]
- ▶ The seat of emergency interim relief proceedings will be the one agreed between the parties. Failing such agreement, the seat of emergency interim relief proceedings will be Singapore, without prejudice to the Tribunal's power to determine the seat of arbitration under Rule 21.1 [Para 4 of Schedule 1]
- ▶ Parties now have **two days** to challenge the appointment of the EA [Para 5 of Schedule 1]

Emergency Arbitrator – SIAC Rules

- ▶ The EA shall, as soon as possible but, in any event **within two days** of appointment, establish a schedule for consideration of the application for emergency relief. The EA shall have the powers vested in the Tribunal including the authority to rule on his own jurisdiction, without prejudice to the Tribunal's determination [Para 7 of Schedule 1]
- ▶ The EA shall have the power to **order or award** any interim relief that he deems necessary – he shall give reasons for his decision in writing [Para 8 of Schedule 1]
- ▶ SIAC Rules 2016 prescribes a time limit of **14 days** from the date of appointment of the EA for issue of an interim order or award unless extended by the Registrar in exceptional circumstances [Para 9 of Schedule 1]
- ▶ The Tribunal may reconsider, modify or vacate any interim order / award of emergency relief issued by the EA.

Emergency Arbitrator – SIAC Rules / (Singapore) International Arbitration Act

- ▶ Under the SIAC Rules 2016, EA's fees is fixed at S\$25,000 and deposits towards EA's Fees and Expenses is fixed at S\$30,000, unless the Registrar determines otherwise.
- ▶ As per the SIAC's Annual Report of 2016, between 2010-2016, all 53 applications for an EA under SIAC Rules have been granted by SIAC.
- ▶ Section 2(1) of the Singapore International Arbitration Act
 - ▶ “arbitral tribunal” means a sole arbitrator or a panel of arbitrators or a permanent arbitral institution, and includes an **emergency arbitrator** appointed pursuant to the rules of arbitration agreed to or adopted by the parties including the rules of arbitration of an institution or organisation;

Emergency Arbitrator under SIAC Rules – Indian Context

- ▶ Initial Case Studies when EA was introduced under SIAC Rules in 2010 are very instructive (*The EA provisions under the new 2016 Rules are largely similar to the 2010 and 2013 Rules*)
- ▶ In the first case (between two Indian parties), the Claimant sought emergency relief by way of an injunction to restrain the Respondent from invoking bank guarantees.
 - ▶ SIAC received this application at 9.30 pm Singapore time on a week day. The SIAC appointed an EA by 11.30 am the following day.
 - ▶ Within one day of his appointment, the EA established a schedule for consideration of the application for emergency relief. According to the directed schedule the parties made written submissions on the application and a hearing was conducted via telephone conference within a week of the appointment of the EA. The EA issued an interim order one day thereafter.
- ▶ In the second case (between an Indian party and a BVI party), the Claimant filed an application for emergency interim relief seeking an order restraining the Respondent from breaching certain provisions of the contract (as alleged by the Claimant).
 - ▶ Within 20 hours of the receipt of the application, the SIAC appointed an EA.
 - ▶ Within two days of appointment of the EA a hearing via telephone conference was held. The EA issued an interim order within three days of his appointment.

Expedited Procedure

- ▶ Arbitration institutions have introduced Expedited Procedure in order to conduct arbitration in an expedited or in a fast track manner.
- ▶ These provisions allow parties to resolve their disputes in a cost efficient and expeditious manner.
- ▶ Some examples of the arbitral institutions that provide for Expedited Procedure are :
 - ▶ ICDR
 - ▶ SIAC
 - ▶ HKIAC
 - ▶ ICC
- ▶ LCIA Rules do not provide for an Expedited Procedure but allows for an Expedited Formation of an Arbitral Tribunal

Expedited Procedure under SIAC Rules (Rule 5)

- ▶ An application to conduct the arbitral proceedings in accordance with the Expedited Procedure may be filed by a party to the Registrar if any of the following criteria is satisfied:
 - ▶ amount in dispute does not exceed **S\$6,000,000**;
 - ▶ the parties so agree; or
 - ▶ in case of exceptional urgency.

- ▶ The party filing the application shall send a copy of the same to the other party and shall notify the Registrar that it has done so [Rule 5.1]

Expedited Procedure under SIAC Rules (Rule 5)

- ▶ Under Rule 5.2 of the SIAC Rules 2016, if the application for Expedited Procedure is allowed by the President of the SIAC Court of Arbitration the following procedure shall apply:
 - ▶ Registrar of SIAC may shorten any time limits under the Rules;
 - ▶ The case shall be referred to a sole arbitrator, unless the President decides otherwise;
 - ▶ The Tribunal may, in consultation with the parties, decide if the dispute is to be decided on the basis of documentary evidence only, or if a hearing is required for examination of any witness and expert witness as well as for any oral argument.
 - ▶ The final award shall be made **within 6 months** from the date of constitution of the Tribunal unless, in exceptional circumstances, the Registrar extends the time for making such final award; and
 - ▶ The Tribunal may state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.

Expedited Procedure under SIAC Rules (Rule 5)

- ▶ If the arbitration proceedings are conducted in accordance with Expedited Procedure, the rules and procedure mentioned in Rule 5.2 shall apply even if the arbitration agreement contained contrary terms [Rule 5.3]

- ▶ Upon application by a party, and after giving the parties the opportunity to be heard, the Tribunal may, having regard to any further information as may subsequently become available, and in consultation with the Registrar, order:
 - ▶ that the arbitral proceedings shall no longer be conducted in accordance with the Expedited Procedure.
 - ▶ Where the Tribunal decides to grant such an application, the arbitration shall continue to be conducted by the same Tribunal that was constituted to conduct the arbitration in accordance with the Expedited Procedure [Rule 5.4]

- ▶ As per the SIAC's Annual Report of 2016, between 2010-2016, 307 Expedited Procedure applications were made to the SIAC, out of which 181 were accepted.

Popular Arbitral Institutions in India – Bird’s Eye View

Popular Arbitral Institutions in India

- ▶ Indian Council of Arbitration (ICA) – Established in 1965
- ▶ The International Centre For Alternative Dispute Resolution (ICADR) – Established in 1995
- ▶ Nani Palkhivala Arbitration Centre (NPAC) – Established in 2005
- ▶ Mumbai Centre for International Arbitration (MCIA) – Established in 2016
- ▶ Court annexed Arbitration Institution (For example, Delhi High Court- Delhi International Arbitration Centre, Madras High Court- The Madras High Court Arbitration Centre)

Thank You

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