INTERNATIONAL ARBITRATION AND THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE

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Singapore International Arbitration Alert

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International arbitration is widely accepted as a preferred method of resolving cross-border commercial disputes, whether on a stand-alone basis or in conjunction with other alternative dispute resolution methods, including mediation and conciliation.

The top five preferred seats for arbitration are Singapore, London, Hong Kong, Paris, and Geneva. Of these, Singapore is ranked jointly with London as the most popular seat in the world, and it is the most preferred seat in the Asia-Pacific region.[1]

There are a number of catalysts for Singapore's popularity as an arbitral seat, including (a) the Singapore courts' reputation for integrity and impartiality and their strong support for arbitration, (b) Singapore's strategic geographical location with excellent connectivity to other countries in Southeast Asia and the Asia-Pacific region, and (c) Singapore's business-friendly environment and position as a global hub for businesses and headquarters for leading companies.

We set out below the main reasons for Singapore's and the Singapore International Arbitration Centre's (SIAC) appeal and popularity vis-à-vis other arbitral seats/institutions, as well as suggested arbitration clauses, which can be incorporated in agreements where parties intend for any disputes arising out of the agreements to be resolved under the auspices of the SIAC Rules.

WHY CHOOSE SINGAPORE OR SIAC?

Singapore Is a Reliable Dispute Resolution Hub

Singapore has established its reputation as a transparent, independent, and neutral third-country venue for dispute resolution:

- Singapore is ranked 17th globally, and it is the top-ranked Asian country, in the World Justice Project's Rule of Law Index 2021—affirmation of Singapore's adherence to the principles of accountability, just law, open government, and accessible and impartial justice.[2]

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- Singapore is ranked fourth globally, and is the top-ranked Asian country, in the Corruption Perceptions Index 2021.[3]

Singapore Is an Arbitration-Friendly Jurisdiction

Singapore legislation and its judiciary strongly support arbitration.

Singapore International Arbitration Act

Singapore has enacted the United Nations Commission on International Trade Law (UNCITRAL) Model Law (the Model Law) and accords the Model Law force of law. This, in itself, evinces Singapore's recognition and adoption of internationally accepted rules for arbitration.

Singapore recognizes the finality of arbitral awards and limits the grounds for appeal (e.g., no right of appeal based on question of law). This reduces a successful party's risk of having the arbitral award set aside/reversed on appeal and also allows the successful party to proceed with enforcement of the arbitral award expeditiously upon the issuance of the arbitral award.

Singapore Judicial System

Singapore courts offer maximum judicial support and minimum intervention in international arbitration proceedings and are inclined to uphold the sanctity of an arbitration agreement entered into between parties. It would take "something substantial" for the courts to relieve the parties of their obligation to arbitrate; Singapore has a good track record in enforcing arbitration agreements and arbitral awards, for example, enforcement of a foreign award can be resisted on public policy grounds only where there are "exceptional circumstances" that would justify the court in refusing to enforce the award or where there was a violation of "the most basic notions of morality and justice."

The Singapore International Commercial Court is empowered to hear proceedings under the International Arbitration Act, including applications to set aside awards, jurisdictional challenges, and enforcement applications. Parties can avail to themselves a ready and efficient forum to resolve disputes arising out of arbitration proceedings. The judges are drawn from various jurisdictions, including the United States, the United Kingdom, Australia, Hong Kong, Japan, and India.

Respect for Diversity and Procedural Efficiencies

SIAC arbitration holds a global standard:

- The SIAC Court of Arbitration is international in composition. The president is Lucy Reed from the United States, the vice presidents are Cavinder Bull S.C. of Singapore and Toby Landau QC of the United Kingdom. Members of the SIAC Court of Arbitration come from different countries, including India, Peru, Nigeria, Japan, Switzerland, and the United Arab Emirates.
- Arbitrators appointed by SIAC in 2021 come from 28 different countries (see below).
- The governing laws of 21 different jurisdictions were applied in disputes referred to SIAC in 2021 (see below).
- In August 2021, the Indian Supreme Court issued a decision (in *Amazon.com NV Investment Holdings LLC v Future Retail Limited & Ors*) where it allowed the enforcement of an order passed by an

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emergency arbitrator under SIAC in an arbitration seated in New Delhi. This demonstrates the Indian courts' recognition of SIAC as an arbitral institution.

SIAC has the international reach and capacity to handle high-value, multi-sectoral, cross-border disputes:

- SIAC received 469 new cases in 2021, out of which 446 were SIAC-administered cases and 23 were ad hoc appointments. The total sum in dispute was US$6.54 billion (approximately SGD8.85 billion). The average value for all new case filings was US$21.81 million (approximately SGD29.49 million), and the average value for new SIAC-administered cases was US$22.84 million (approximately SGD30.89 million). The highest sum in depute for a single administered case was US$1.95 billion (approximately SGD2.64 billion)
- Of the new cases filed with SIAC in 2021, 86% were international in geographical origin and the number of jurisdictions involved came up to 64. India is the top foreign user at SIAC in 2021, with 187 cases being filed with SIAC.[4]
- The governing laws of 21 different jurisdictions were applied in disputes referred to SIAC in 2021. The 21 jurisdictions included the United Kingdom, India, the United States (California and New York), the Cayman Islands, countries in the Asia-Pacific region (China, Hong Kong, and South Korea), and countries in Southeast Asia (Malaysia, Indonesia, Philippines, Thailand, and Vietnam). The most commonly applied governing laws were those of Singapore, the United Kingdom, and India.[5]
- SIAC is able to, and has, administered arbitrations seated outside of Singapore in various jurisdictions. In 2013, SIAC established its first overseas representative office in Mumbai, India. A second representative office in India was opened in Gujarat International Finance Tec-City, India, in 2017. The offices embody SIAC's firm commitment and close ties to India and are purposed to interact closely with the business and legal communities in India and develop greater awareness of institutional arbitration.[6]
- The claims filed with SIAC spanned a broad range of sectors, with trade, commercial, corporate, and maritime/shipping taking up a majority of the claims. The remaining claims arose out of many other sectors, including construction/engineering, agriculture, arts/entertainment, aviation, banking/financial services, commodities, education, employment, energy, health care/pharmaceuticals, hospitality/travel, insolvency, insurance/reinsurance, intellectual property/information technology, media/broadcasting, real estate, technology/science, and telecommunications.

SIAC has committed to appointing diverse arbitrators. The institution recognizes there is a co-relation between the diversity in a tribunal's composition and the tribunal's impartiality and independence. For the year 2021:

- SIAC made a total of 179 individual appointments of arbitrators to 144 sole arbitrator tribunals and 35 appointments to three-member tribunals. Of these arbitrator appointments, 160 were appointments made under the SIAC Rules, six appointments were made in a case administered under other rules, and the remaining 13 were made in ad hoc arbitrations.
- Arbitrators appointed in 2021 came from 28 different countries, including Australia, Austria, Bulgaria, Germany, India, Iran, South Korea, Sweden, the United Kingdom, the United States, and Vietnam. There were a total of 18 Indian arbitrators appointed by SIAC in 2021.
- Out of the 179 arbitrators appointed by SIAC, 35.8% were female.

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SIAC provides state-of-the art administrative and technical support for hearings:

- State-of-the-art onsite hearing facilities and support services (e.g., transcription, translation, and interpretation services) at Maxwell Chambers, Asia's first-integrated dispute resolution complex.
- In recent years, and especially since the COVID-19 pandemic, SIAC has promoted a move toward remote arbitration hearings. In August 2020, SIAC released the “SIAC Guides – Taking Your Arbitration Remote,” a checklist to assist users when considering conducting arbitral proceedings via audio conference, videoconference, or other nonphysical means of communication. SIAC's move toward remote hearings has brought costs savings and convenience (in the form of increased availability for hearings) to parties, their witnesses, and arbitrators.

The SIAC Rules 2016 are cost-effective, flexible, and transparent:

- Parties have complete freedom of choice of counsel in arbitration proceedings.
- Parties are permitted to receive third-party funding for arbitration and arbitration-related court proceedings. Note: In the context of international investment arbitration, arbitral tribunals are empowered under the SIAC IA Rules 2017 to order the disclosure of third-party funding arrangements and to take such arrangements into account when apportioning costs.
- To promote transparency in its fees, SIAC has released a schedule of fees that sets out the fees payable by parties to an arbitration. The fees are determined by the aggregate of parties' claim amounts.

CONTRACTING FOR SIAC ARBITRATION

Where parties negotiating a contract wish to have any disputes that may arise out of or in connection with their contract subsequently referred to SIAC, we strongly recommend that an arbitration agreement in the contract be based on the SIAC model dispute resolution clauses. Such model clauses may be accessed at the following links:-

- SIAC Model Clause
- UNCITRAL Model Clause
- Expedited Procedure Model Clause
- The Singapore Arb-Med-Arb Clause

Should you have any queries on the above or wish to find out more about the drafting of dispute resolution clauses in contracts to provide for arbitration under the auspices of SIAC, please feel free to contact us.

FOOTNOTES

1. https://www.straitstimes.com/singapore/courts-crime/singapore-clinches-top-spot-as-preferred-arbitration-hub-for-first-time

2. https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf

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3. https://www.transparency.org/en/cpi/2021

4. https://www.siac.org.sg/images/stories/articles/annual_report/SIAC-AR2021-FinalFA.pdf

5. *Id.*

6. https://www.siac.org.sg/about-us/about-us/siac-india-representative-offices

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