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# SIAC RULES 2025

## A new frontier in interim remedies?

The Singapore International Arbitration Centre's (SIAC) latest edition of its Arbitration Rules came into effect on 1 January 2025 (SIAC Rules 2025). This is the seventh iteration of the rules and replaces the SIAC Rules 2016 (*see Focus "Summary procedures in arbitration: making a long story short", www.practicallaw.com/3-636-2121*). The revisions in the SIAC Rules 2025 seek to increase the transparency, speed and cost-effectiveness of arbitration, and to provide parties and arbitrators with enhanced tools to resolve disputes efficiently (*see box "Key features of the SIAC Rules 2025"*). The SIAC Rules 2025 will apply to arbitrations commenced on or after 1 January 2025, unless otherwise agreed by the parties, and where the parties have agreed that the SIAC Rules will apply.

Of particular interest for the international arbitration community is the ability for parties to seek protective preliminary orders from an emergency arbitrator on an ex parte basis, which is a welcome and innovative development (*Rule 12 and Schedule 1*). It will be interesting to observe the approach that courts and tribunals take when interpreting and applying these provisions and the demarcation as to when an applicant will still need to apply to a court for effective relief.

### Emergency ex parte orders

An ex parte order is one that is issued by a court or tribunal without requiring all of the parties to be present or notified. This means that a party may request urgent relief without the other party being informed or given the opportunity to respond before the order is issued. The mechanism is particularly useful in situations where notifying the other party might result in irreparable harm or prejudice to the requesting party; for example, to preserve the status quo pending the grant of interim relief.

While institutions such as the International Chamber of Commerce, the London Court of International Arbitration and the Hong Kong International Arbitration Centre offer emergency arbitrator provisions to assist parties seeking urgent relief before the tribunal has been formed, these institutional rules do not provide in express terms that a party may seek an ex parte order. These new provisions in the SIAC Rules 2025 are therefore innovative and reflect SIAC's approach in developing rules that are supportive of international arbitration.

### Protective preliminary orders

The ex parte protective preliminary order procedure under the SIAC Rules 2025 is an expansion of the emergency arbitrator provisions under the SIAC Rules 2016. These provisions provide emergency arbitrators with greater powers to assist parties where an application on notice would be detrimental.

The SIAC Rules 2016 allowed parties to apply for emergency interim relief before the arbitral tribunal had been constituted, in the form of an emergency arbitrator. However, this relief could only be sought once a notice of arbitration had been filed and the application required a statement certifying that the parties had been provided with a copy or, failing this, an explanation of the steps taken in good faith to provide a copy or notification to the other parties.

The approach under the SIAC Rules 2025 differs in two fundamental ways:

- An application for the appointment of an emergency arbitrator can now be filed a maximum of seven days before the notice of arbitration is filed (*paragraph 6, Schedule 1*).
- A party may apply for the appointment of an emergency arbitrator to consider a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the emergency interim or conservatory measure requested without notice to the other parties (a protective preliminary order application) (*paragraph 25, Schedule 1*).

The emergency arbitrator must determine a protective preliminary order application within 24 hours of being appointed (*paragraph 27, Schedule 1*). The emergency arbitrator will then deliver their order to the SIAC Secretariat, who will transmit it to all of the parties (*paragraph 28, Schedule 1*). Within 12 hours of this transmission, the applicant must:

- Deliver the required records, such as the case papers, the order and all other communications, to the other parties (*paragraph 29, Schedule 1*).
- Provide a statement to the Registrar and the emergency arbitrator certifying that it has done so or, if unsuccessful, explaining the steps that it has taken to do so (*paragraph 29, Schedule 1*).

If the applicant fails to comply with paragraph 29 of Schedule 1, the order will expire within three days of its issuance (*paragraph 30, Schedule 1*).

The SIAC Rules 2025 require the emergency arbitrator to provide an opportunity to any party against whom a protective preliminary order is directed to present its case at the earliest practicable time, and the emergency arbitrator must decide promptly any objection made to the order (*paragraphs 31 and 32, Schedule 1*).

A protective preliminary order will expire 14 days after it is issued. However, the emergency arbitrator may issue an award or order adopting or modifying the protective preliminary order or granting any other emergency interim relief as they deem


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appropriate after all of the parties have been given the opportunity to present their cases (*paragraph 33, Schedule 1*).

### Practical implications

While parties can agree to disapply the protective preliminary order procedure, it is a useful and unique feature for arbitration users. As other major arbitration institutions do not cater expressly for emergency ex parte orders, parties usually have to seek assistance from the courts, where this is possible. However, the implications and utility of the procedure are yet to be tested in practice.

The Singapore High Court has the same powers to order interim injunctions or other interim remedies in an arbitration as it has in relation to an action before the Singapore courts (*section 12A(2), International Arbitration Act 1994*) (IAA). Section 12A(6) of the IAA provides that the court may act "only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively". This wording is identical to the equivalent provision in section 44(5) of the Arbitration Act 1996 (1996 Act) in England and Wales and the English courts have the general power to grant injunctive relief under section 37(1) of the Senior Courts Act 1981. Accordingly, a Singapore court is likely to have regard to English case law even though the IAA is based on the UNCITRAL (United National Commission on International Trade Law) Model Law on International Commercial Arbitration, whereas the 1996 Act is not (*paragraph 12.46, Tan P, Goh N, Lim J, The Singapore International Arbitration Act: A Commentary (2023)*).

In both England and Singapore, parties to an arbitration are required to use any emergency or expediting procedures that are available under applicable institutional rules where possible. If these procedures do not allow for the relevant relief to be ordered, or for the relief to be ordered within the required timescales, the parties are entitled to seek assistance from the courts (*Gerald Metals SA v Timis and others [2016] EWHC 2327 (Ch); see News brief "Urgent interim relief: LCIA Rules limit court's powers", www.practicallaw.com/5-636-2356*). As the majority of the emergency arbitration procedures in institutional rules require urgent relief to be made on notice, this means that parties seeking emergency orders on an ex parte basis or that would impact third parties, such as freezing orders, would have to seek assistance from the courts.

It remains to be seen whether the new protective preliminary order procedure has the potential to limit parties' ability to seek recourse to the courts under section 12A(6) of the IAA as, arguably, certain forms of urgent ex parte relief may now be sought from an emergency arbitrator. Parties that prefer to limit the need to seek court assistance may welcome this, especially in emergency situations where giving notice to other parties may cause irreparable harm. However, if a party needs an order that is effective against third parties, such as a freezing order, it will still need to seek relief from the court as these orders only bind third parties with notice of the order. In the authors' view, the SIAC Rules 2025 would not prevent any such application being made to the court as section 12A(6) of the IAA and, indeed the UNCITRAL Model Law, make clear (*Article 17J*).

A protective preliminary order may still be of use where a party is seeking to terminate an agreement or taking some other irrevocable step and there is not enough time to wait for a typical interim order from an emergency arbitrator. A protective preliminary order may be granted to order a party to preserve the status quo in order to preserve the remedial authority of the emergency arbitrator and, ultimately, the tribunal. When viewed through this lens, the new provisions are less radical than they first appear, but also have the advantage of not substantially impugning due process. Parties are likely to seek relief in these situations, as opposed to those where a counterparty is dissipating assets and a court order is necessary to bind third parties, such as banks.

Nonetheless, the enforceability of ex parte orders of any type by arbitrators is a developing area of law and there is uncertainty as to whether these orders would be enforced by national courts. Indeed, there was considerable controversy when amendments to the UNCITRAL Model Law permitted ex parte provisional measures in limited circumstances. National courts may take issue with the fact that the party against whom the order is made did not have a reasonable opportunity to present its case. Arguably, the ability for all parties to be heard under the SIAC Rules 2025 at relevant stages in the process mitigates this concern to some extent. However, whether all parties are, in fact, given a reasonable opportunity to be heard will depend on the case. Parties,

## Key features of the SIAC Rules 2025

The key features of the 2025 Rules are:

- The streamlined procedure (*Rule 13 and Schedule 2*).
- Provisions for preliminary determination (*Rule 46*).
- Enhancements to the emergency arbitrator procedure and the introduction of preliminary order applications (*Rule 12 and Schedule 1*).
- Provisions for co-ordinated proceedings (*Rule 17*).
- Administrative conferences (*Rule 11*).
- The promotion of mediation (*Rules 32.4 and 50.2*).
- Provisions in respect of third-party funding arrangements (*Rule 38*).

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and emergency arbitrators hearing ex parte protective preliminary order applications, should bear this in mind so as to reduce the scope of issues for parties seeking to enforce their orders.

### Other changes

Additional changes of note in the SIAC Rules 2025 include the following:

- Parties may agree to apply the streamlined procedure in disputes where the amount disputed is below S$ 1 million. An award must be made within three months of the date on which the tribunal is constituted, and the tribunal's and SIAC's fees are capped at 50% of the maximum limits under the schedule of fees (*Rule 13 and Schedule 2*).

- The threshold for parties to apply the expedited procedure has been raised from S$ 6 million to S$ 10 million (*Rule 14 and Schedule 3*). An award must be made within six months of the date on which the tribunal is constituted.

- The tribunal's power to make a final and binding determination of any issue in an arbitration at a preliminary stage is clarified and made explicit. An application for preliminary determination may be made where: the parties agree, the applicant can demonstrate that the determination would save time and costs or expedite the resolution of the dispute, or the tribunal determines that the circumstances warrant it (*Rule 46*).

- Co-ordinated proceedings can be ordered where there are multiple arbitrations involving common legal or factual issues and the same tribunal has been appointed. The mechanism allows parties to request that co-ordinated proceedings be conducted concurrently or sequentially, be heard together with aligned procedural steps, or that one of the arbitrations be suspended pending the determination of any of the other arbitrations (*Rule 17*).

- Before the tribunal is constituted, the Registrar may conduct administrative conferences with the parties to discuss any procedural or administrative directions to be made by the Registrar under the SIAC Rules 2025 (*Rule 11*).

- Parties are prompted to consider amicable dispute resolution methods, such as mediation under the SIAC-SIMC Arb-Med-Arb Protocol, at various stages of the arbitration, including at its inception (*Rules 6.4 and 7.2*). The SIAC Rules 2025 suggest that tribunals raise this prospect at the first case management conference (*Rule 32.4*). Tribunals are also empowered to make directions, including to suspend proceedings, to allow parties to adopt amicable dispute resolution methods (*Rule 50.2*).

- Parties must disclose the existence of any third-party funding agreement and the identity and contact details of the third-party funder. Tribunals may take into account third-party funding agreements in apportioning costs. Once the tribunal is constituted, a party may not enter into a third-party funding agreement that may give rise to a conflict of interest with any member of the tribunal (*Rule 38*).

- Before the tribunal is constituted, the Registrar may refer an issue of jurisdiction to the SIAC Court for a prima facie determination where a party is not participating in proceedings or objects to the existence, validity or applicability of an arbitration agreement (*Rule 8.1*).

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