

SIAC AND INSTITUTIONAL ARBITRATION

Singapore Management University School of Law
Academic Year 2020 – 2021

COURSE CONVENOR AND CO-TEACHERS

Course Coordinator: Associate Professor of Law (Practice) Darius Chan

Course Convenor: Mr Gary Born

Co-Teachers: Mr Davinder Singh, SC, Mr Alvin Yeo, SC, Mr Chong Yee Leong, Mr Chan Hock Keng, Ms Kate Apostolova, Mr Daryl Chew, Mr Paul Tan, Ms Delphine Ho and Mr Kevin Nash

COURSE DESCRIPTION

Arbitral institutions are important stakeholders in the field of international arbitration, but the nature and importance of their role have often been overlooked. The course seeks to introduce participants to the role and function of arbitral institutions in guiding and shaping the practice and development of international arbitration, and to the complex issues that arbitral institutions face in the administration of arbitrations, including, among others, the appointment of arbitrators and the issuance of arbitral rules and practice notes. The course will be taught by visiting lecturers from the Singapore International Arbitration Centre (SIAC) Board of Directors, Court of Arbitration, Secretariat and Panel of Arbitrators.

OUTLINE OF SYLLABUS

Session 1: 3 May 2021 (Monday) 7pm – 10pm (SGT)

Lecturers: Mr Davinder Singh, SC and Mr Kevin Nash

❖ Introduction to SIAC

- Role of arbitral institutions in international arbitration
- Overview of leading arbitral institutions
- Institutional arbitration as opposed to *ad hoc* arbitration
- History of SIAC
- Role of SIAC Court of Arbitration, President of the SIAC Court, SIAC Registrar, SIAC Secretariat, and the interactions between them
- Overview of SIAC's Rules and Practice Notes – SIAC Rules 2016; SIAC Investment Arbitration Rules 2017

❖ Case Management Role of SIAC

- Notice of Arbitration
- Commencing the arbitration
- Response to Notice of Arbitration; Counterclaims
- SIAC Schedule of Fees

- Determining amount of deposits payable towards the costs of the arbitration; stages of deposit payment
- Provisional estimates of costs of arbitration
- Ensuring the smooth running of the proceedings; how to keep arbitrations on track
- SIAC's role in administering arbitrations under the UNCITRAL Arbitration Rules □
Class Exercise

Session 2: 4 May 2021 (Tuesday) 7pm – 10pm (SGT)

Lecturers: Mr Gary Born and Mr Kevin Nash

❖ **SIAC's role in the Constitution of the Arbitral Tribunal**

- Nomination; Appointment and confirmation of arbitrators
- Disclosure and conflicts of interest
- Qualifications of arbitrators
- Challenge of arbitrators
- Replacement of arbitrators
- IBA Guidelines on Conflicts of Interest in International Arbitration (2014)
- SIAC's statutory appointing role under the International Arbitration Act
- SIAC Code of Ethics for an Arbitrator
- Class Exercise

Session 3: 5 May 2021 (Wednesday) 7pm -10pm (SGT)

Lecturers: Mr Chan Hock Keng, Mr Paul Tan and Ms Delphine Ho

❖ **Jurisdictional Objections, Consolidation and Joinder, Emergency Arbitrator, Expedited Procedure, Early Dismissal**

- Jurisdictional Objections (Rule 28.1, SIAC Rules 2016)
- Multiple Contracts, Joinder of Additional Parties and Consolidation
- Emergency Arbitrator applications
- Expedited Procedure applications
- Early Dismissal applications
- Role of the SIAC Court of Arbitration, President of the SIAC Court, SIAC Registrar and the SIAC Secretariat
- Class Exercise

Session 4: 6 May 2021 (Thursday) 7pm – 10pm (SGT)

Lecturers: Mr Chong Yee Leong and Mr Daryl Chew

❖ **The Arbitral Proceedings**

- Procedural Order No. 1 / Procedural Timetable No. 1
- Seat of the arbitration – delocalisation of the seat in SIAC Rules 2016
- Conduct of the proceedings
- Language of the arbitration
- Party representatives
- Third Party Funding

- Pleadings
- Witnesses
- Document disclosure
- Hearings
- Role of Tribunal Secretaries
- IBA Guidelines on the Taking of Evidence in International Arbitration (2020)
- SIAC Practice Note for Administered Cases – On the Appointment of Administrative Secretaries (2 February 2015)
- SIAC Practice Note on Arbitrator Conduct in Cases involving External Funding (31 March 2017)
- Class Exercise

Session 5: 10 May 2021 (Monday) 7pm-10pm (SGT)

Lecturers: Mr Alvin Yeo, SC, Ms Kate Apostolova and Mr Kevin Nash

❖ **SIAC, Investor State Dispute Settlement and Alternative Dispute Resolution**

- SIAC Investment Arbitration Rules
 - Jurisdictional criteria
 - List procedure for appointment of sole or presiding arbitrator
 - Opt-in mechanism for appointment of Emergency Arbitrator
 - Challenges to arbitrators
 - Early dismissal of claims and defences
 - Written submissions by non-disputing parties
 - Third-party funding arrangements
 - Confidentiality and publication of key information relating to dispute
- SIAC-SIMC Arb-Med-Arb Protocol
- Class Exercise

Session 6: 11 May 2021 (Tuesday) 7pm – 10pm (SGT)

Lecturers: Ms Delphine Ho and Mr Kevin Nash

❖ **Award and Costs of the Arbitration**

- Close of proceedings and submission of draft awards
- Scrutiny of Awards
- Correction of Awards, Interpretation of Awards and Additional Awards
- Decision as to the Costs of the Arbitration
- Confidentiality of arbitration
- Publication of Awards
- Authentication and Certification
- Class Exercise

General Reading Materials

1. SIAC Arbitration Rules 2016
2. SIAC Investment Arbitration Rules 2017
3. SIAC Practice Notes

4. Singapore International Arbitration Act (Cap. 143A)
5. IBA Guidelines on the Taking of Evidence in International Arbitration (2020)
6. IBA Guidelines on Conflicts of Interest in International Arbitration (2014)

Supplementary Reading Materials

7. John Choong, Mark Mangan, and Nicholas Lingard, A Guide to the SIAC Arbitration Rules, 2nd ed., (Oxford University Press)
8. Paul Sandosham, Nish Shetty, Harpeet Singh Nehal SC, Kabir Singh, “A Practical Guide to the SIAC Rules”, (LexisNexis)
9. Gary Born, International Commercial Arbitration, 3rd ed, 2020, Kluwer Law International