



YONG PUNG HOW SCHOOL OF LAW

Year 2022/2023 Term 2

LAW4043 THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE (SIAC) AND INSTITUTIONAL ARBITRATION: LAW AND PRACTICE (1 COURSE UNIT)

(Short title: SIAC and Institutional Arbitration: Law & Practice)

Course Convenor and Instructor: Associate Professor of Law (Practice) Darius Chan

Guest Instructors (subject to change): Mr. Davinder Singh, SC, Mr. Daryl Chew, Ms. Wendy Lin, Ms. Lijun Chui, Ms. Gerui Lim, Ms. Kate Apostolova, Mr. Kevin Nash, Ms. Thea Elyssa Vega, Ms. Lynnette Lee, Mr. Pranav Budihal, Mr. Rishabh Malaviya, Mr. Vakhtangi Giorgadze, Ms. Wang Xuanzhong

A. 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.

In this connection, SIAC has grown to be one of the most popular arbitral institutions not just in Asia, but the world. The course involves a study of SIAC processes as well as related case law emanating therefrom. Participants will learn not just *what* the relevant rules, procedures and processes are, but more importantly, participants will gain insight into *why* those rules exist, and *how* those rules are implemented in practice.

Participants will be taught by experienced guest instructors from the Singapore International Arbitration Centre (SIAC) and by other leading arbitration practitioners, who will share their unique, practical perspectives on administering or advancing a particular case. After each session involving SIAC instructors, participants will solidify their understanding through a review of case law and class presentations. Participants keen on developing a practice in international dispute resolution will find this course of direct relevance.

B. PRE-REQUISITE/MUTUALLY EXCLUSIVE COURSE(S)

Pre-requisite: None, but it is strongly recommended that students complement this course with the course in international commercial arbitration (LAW406).

Mutually Exclusive: LAW4020 SIAC and Institutional Arbitration

C. RECOMMENDED TEXT AND READINGS

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 Rules on the Taking of Evidence in International Arbitration (2020)
6. IBA Guidelines on Conflicts of Interest in International Arbitration (2014)

Recommended Textbook

Students are strongly recommended to purchase the following text:

Darius Chan, Paul Tan, Nicholas Poon, The Law and Theory of International Commercial Arbitration in Singapore (Academy Publishing)

Supplementary Readings

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

Additional materials will be provided on the eLearn platform.

D. ASSESSMENT METHOD

Class attendance and participation	10%
Class exercise / activity / presentation	30%
Research Paper (3000 to 3,500 words, excluding footnotes)	60%

There is no sit-down or take-home exam for this course.

IMPORTANT: Plagiarism is strictly forbidden and will result in a failed grade or worse, as detailed below. All materials and ideas gleaned from other sources must therefore be appropriately attributed.

Academic Integrity

All acts of academic dishonesty (including, but not limited to, plagiarism, cheating, fabrication, facilitation of acts of academic dishonesty by others, unauthorized possession of exam questions, or tampering with the academic work of other students) are serious offences.

All work (whether oral or written) submitted for purposes of assessment must be the student's own work. Penalties for violation of the policy range from zero marks for the component assessment to expulsion, depending on the nature of the offence.

As a reminder on how to avoid plagiarism, students are encouraged to refer to this Library guide at: <https://library.smu.edu.sg/elearn>

When in doubt, students should consult the instructor of the course. Details on the SMU Code of Academic Integrity may be accessed at:

<http://smustudentcouncilofdiscipline.weebly.com/resources.html>

E. SCHEDULE (SUBJECT TO CHANGE)

Week 1: 9 January 2023 (Monday) 7pm – 10pm (SGT)

Guest Instructors: Mr. Davinder Singh, SC, Mr. Kevin Nash, Mr. Rishabh Malaviya

❖ Introduction to institutional arbitration ecosystems and SIAC

- The importance of the ecosystem
- 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

Week 2: 16 January 2023 (Monday) 7pm – 10pm (SGT)

Guest Instructors: Mr. Kevin Nash, Mr. Pranav Budihal

❖ 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

Week 3: 23 January 2023 (Monday) 7pm – 10pm (SGT)

Instructor: Mr. Darius Chan

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

- Review of case law and principles on nomination, appointment, confirmation of arbitrators; conflict of interest; challenge of arbitrators; SIAC's statutory appointing role
- Class Activity/Presentation

Week 4: 30 January 2023 (Monday) 7pm – 10pm (SGT)

Guest Instructors: Ms. Wendy Lin, Mr. Kevin Nash, Ms. Wang Xuanzhong

❖ **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

Week 5: 6 February 2023 (Monday) 7pm – 10pm (SGT)

Instructor: Mr. Darius Chan

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

- Review of case law and principles on jurisdictional objections; multiple contracts; multiple parties; emergency arbitration
- Class Activity/Presentation

Week 6: 13 February 2023 (Monday) 7pm – 10pm (SGT)

Guest Instructors: Mr. Daryl Chew, Ms. Lijun Chui

❖ **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 Rules 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

Week 7: 20 February 2023 (Monday) 7pm – 10pm (SGT)

Instructor: Mr. Darius Chan

❖ **The Arbitral Proceedings**

- Review of case law and principles on seat of arbitration; third party funding; pleadings; witnesses; hearings; document production
- Class Activity/Presentation

Week 8

Mid-Term Break

Week 9: 6 March 2023 (Monday) 7pm – 10pm (SGT)

Guest Instructors: Ms. Kate Apostolova, Mr. Kevin Nash, Ms. Thea Vega, Mr. Vakhtangi Giorgadze

❖ **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

Week 10: 13 March 2023 (Monday) 7pm – 10pm (SGT)

Guest Instructors: Ms. Gerui Lim, Mr. Kevin Nash, Ms. Lynnette Lee

❖ **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

Week 11: 20 March 2023 (Monday) 7pm – 10pm (SGT)

Instructor: Mr. Darius Chan

❖ Award (I)

- Review of case law and principles on awards, including costs.
- Class Activity/Presentation

Week 12: 27 March 2023 (Monday) 7pm – 10pm (SGT)

Instructor: Mr. Darius Chan

- Class Activity/Presentation (to be confirmed)
- Research and consultation week for Final Research Assignment

Week 13

Reading week

Week 14

Submission of Final Research Assignment

Accessibility: SMU strives to make learning experiences accessible for all. Students experiencing or anticipating physical or academic barriers due to disability should inform the instructor without delay. All communications regarding disabilities of any nature will be kept confidential. Students may also contact the university's disability services team with any questions or concerns about academic provisions or accommodations at the following address: included@smu.edu.sg.

Emergency Preparedness for Teaching and Learning (EPTL)

As part of emergency preparedness, instructors may conduct lessons online via the Zoom platform during the term, to prepare students for online learning. During an actual emergency, students will be notified to access the Zoom platform for their online lessons. The class schedule will mirror the current face-to-face class timetable unless otherwise stated.

Dropping A Course

Students are reminded to follow the dates and procedures of add/drop modules found in <https://oasis.smu.edu.sg/Pages/RO/All-About-BOSS.aspx#parentHorizontalTab5>

UG and JD students need to drop the electives via BOSS unless otherwise instructed by the School for specific electives (e.g. Moots).

Students who fail to follow the correct procedures and stipulated timelines for dropping their modules will obtain a “W” or “F” grades as indicated on OASIS.

Do note that a “W” and ‘F’ grade is reflected **permanently** on a student’s transcript.

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