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Institutional Arbitration Rules: A Comparative Analysis

A Cyril Amarchand Mangaldas Thought Leadership Publication

Institutional Arbitration Rules: A Comparative Analysis
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A Thought Leadership Publication

We now present this handbook to enable readers to have an overview of the systems and legal rules and regulations that are essential for business operations in India.

Content

Introduction

A direct consequence of the rise in cross-border transactions is the increased incidence of international disputes, and the growing popularity of international commercial arbitration as one of the more sought-after dispute redressal mechanisms. The growing significance given to the principle of party autonomy, as provided in the Model Law[1], as also the Indian Arbitration and Conciliation Act, 1996[2] (**Act**), plays a key role when it comes to transnational dispute resolution, the choice of dispute redressal mechanism, as well as the choice of a particular institution.

This being the case, parties are often faced with the dilemma of choosing between *ad hoc* and institutional arbitration mechanisms. In the event of the latter, a secondary dilemma follows, i.e., making a choice of appliable rules, amongst a host of arbitral institutional rules. While selecting an institution, a party must be mindful of the prevailing rules and procedures under each system in order to ensure that the selected institution not only supports, administratively, the sound and timely resolution of possible disputes but also has appropriate rules that are well suited to the specific nature of the dispute.

[1] Article 19, UNCITRAL Model Law: *"(1) – Subject to the provisions of this law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings."*

[2] Section 2 (6): *"Where this Part, except section 28, leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorise any person including an institution, to determine that issue".*

Further, parties must carefully draft their arbitration agreements, to clearly reflect their intention, and to avoid any future confusion or requirement for lengthy interpretation. Model clauses of the respective institutions may be resorted to, to minimize ambiguity or generality in construction of clauses[3].

Having emphasised the need to choose an institution carefully, the purpose of this comparative chart and analysis, is to serve as a ready reference for any party in understanding the applicable rules under some of the most popularly employed institutions[4] in resolving disputes through arbitration. The accompanying brief explains how the local as well as Indian courts have interpreted such rules and the underlying principles.

[3] *Jurong Engineering Ltd v. Black & Veatch Singapore Pte Ltd,* [2003] SGHC 292.

[4] Singapore International Arbitration Centre (**SIAC**), London Court of International Arbitration (**LCIA**), International Chamber of Commerce (ICC), Hong Kong International Arbitration Centre (**HKIAC**) and United Nations Commission on International Trade Law (**UNCITRAL**).

Comparative Chart

	SIAC Rules, 2016	LCIA Rules, 2020	ICC Rules, 2021	HKIAC Rules, 2018	UNCITRAL Rules, 2010	Indian Arbitration and Conciliation Act, 1996
Deemed Start Date of Arbitration	Rule 3.3: From the date of receipt of the notice of arbitration by the Registrar.	Articles 1.4 r/w 4.4: From the date on which the request is received by the Registrar.	Article 4.2: From date on which the request is received by the Secretariat.	Article 4.2: From the date on which a copy of the notice of arbitration is received by the HKIAC.	Article 3.2: From the date on which notice of arbitration is received by the respondent.	Section 21: From the date on which the request for referring the dispute to arbitration is received by the respondent.
Default Deadline for Response	Rule 4.1: Within 14 days of the receipt of the notice of arbitration.	Article 2.1: Within 28 days of the commencement date.	Article 5.1: Within 30 days from the receipt of the request from the Secretariat.	Article 5.1: Within 30 days from the receipt of the notice of arbitration.	Article 4.1: Within 30 days of the receipt of the notice of arbitration.	N/A
Default Number of Arbitrators	Rule 9.1: Sole arbitrator is appointed.	Article 5.8: Sole arbitrator is appointed.	Article 12.1 r/w12.2: Sole arbitrator is appointed.	Article 6.1: To be decided by the HKIAC.	Article 7.1: Three arbitrators are appointed.	Section 10: Sole arbitrator is appointed.

	SIAC Rules, 2016	LCIA Rules, 2020	ICC Rules, 2021	HKIAC Rules, 2018	UNCITRAL Rules, 2010	Indian Arbitration and Conciliation Act, 1996
Default Appointment of a Sole Arbitrator	Rule 10: Jointly by parties within 21 days after commencement, else by the President.	Article 5.6: By the LCIA after receipt of the response, or if there is no response, then within 28 days of the commencement date.	Article 12.3: Jointly by parties, within 30 days from the date of receipt of the claimant's request for arbitration by the other party(ies), or else by the ICC.	Article 7: Jointly by parties; (i) within 30 days from the date of receipt of notice of arbitration by the respondent; (ii) or within 15 days from the date of agreement by parties to refer the dispute to a sole arbitrator after the commencement of the arbitration. In case of failure by the parties, then by the HKIAC.	Article 8.1: Jointly by parties within 30 days, else by the appointing authority.	Section 11(4): Within 30 days upon the request of a party, else, by the Supreme Court/ High Court or person/ institution designated by such court.

	SIAC Rules, 2016	LCIA Rules, 2020	ICC Rules, 2021	HKIAC Rules, 2018	UNCITRAL Rules, 2010	Indian Arbitration and Conciliation Act, 1996
Default Appointment of Three-Member Tribunal	Rule 9 r/w 11: One arbitrator is appointed by each party within 14 days, or else by the President; presiding arbitrator appointed by the President.	Article 5: By the LCIA following delivery to the Registrar of the response, or within 28 days from the commencement date in case no response is received.	Article 12: One arbitrator is appointed by each party; President of the Arbitral Tribunal ("**AT**") is appointed by the ICC.	Article 8: One arbitrator is appointed by each party. Two arbitrators appoint the presiding arbitrator. If a party fails to designate an arbitrator, HKIAC shall appoint the arbitrator.	Article 9: One arbitrator appointed by each party; if a party fails to appoint within 30 days of notification, the appointing authority shall appoint on its behalf. The two arbitrators jointly appoint the presiding arbitrator within 30 days of the second arbitrator's confirmation.	Section 10 r/w 11: One arbitrator is appointed by each party, and the two arbitrators appoint the presiding arbitrator. If parties fail to appoint within 30 days of the receipt of the request, or the two arbitrators fail to appoint within 30 days from their date of appointment; by the Supreme Court/ High

	SIAC Rules, 2016	LCIA Rules, 2020	ICC Rules, 2021	HKIAC Rules, 2018	UNCITRAL Rules, 2010	Indian Arbitration and Conciliation Act, 1996
						Court or a person/ institution designated by such court.
Restriction on Appointment of Arbitrator *vis-à-vis* Nationalities of Parties	N/A	Article 6: Sole arbitrator or the presiding arbitrator cannot be of the same nationality as any party; unless agreed in writing by parties who are not of the same nationality as the arbitrator candidate	Article 13: Sole arbitrator or president of the AT cannot be of the same nationality as any party; except in suitable circumstances and if neither party objects within the fixed time limit.	Article 11: Sole arbitrator or the presiding arbitrator cannot be of the same nationality as any party, unless specifically agreed otherwise by all parties.	N/A	Section 11(1) r/w 11(9): A person of any nationality may be an arbitrator, unless otherwise agreed by the parties. However, in the case of sole or third arbitrator in international commercial arbitration, the Supreme Court or the person/ institution

	SIAC Rules, 2016	LCIA Rules, 2020	ICC Rules, 2021	HKIAC Rules, 2018	UNCITRAL Rules, 2010	Indian Arbitration and Conciliation Act, 1996
						designated by such court may appoint an arbitrator of a nationality other than the nationalities of the parties.
Time Limit for Challenging Appointment of Arbitrator	Rule 15: Within 14 days after the receipt of notice of appointment; or becoming aware of relevant circumstances, as enumerated under Rule 14 regarding circumstances which give rise to justifiable grounds which	Article 10: Within 14 days after the formation of the AT; or becoming aware of relevant circumstances.	Article 14: Within 30 days after the receipt of notification of appointment; or becoming aware of relevant facts and circumstances.	Article 11: Within 15 days after receipt of the confirmation or appointment of the arbitrator; or becoming aware of relevant circumstances.	Article 13: Within 15 days after being notified of the appointment; or becoming aware of relevant circumstances.	Section 12 r/w 13: Within 15 days of the constitution of the AT; or becoming aware of relevant circumstances.

	SIAC Rules, 2016	LCIA Rules, 2020	ICC Rules, 2021	HKIAC Rules, 2018	UNCITRAL Rules, 2010	Indian Arbitration and Conciliation Act, 1996
	give rise to justifiable grounds as to the arbitrator's impartiality, independence, and/or qualifications.					
Consolidation	Rule 8: Permitted prior to the constitution of the AT, subject to all parties consenting; all claims arising out of the same arbitration agreement; and the arbitration agreements being compatible.	Article 22A (22.7): Permitted with the prior approval of the LCIA, subject to the rules, upon the application of any party, provided that such consolidation of multiple arbitrations has been agreed to in writing; the arbitrations	Article 10: Permitted at the request of a party, provided all parties have agreed to the consolidation; all claims arise out of the same arbitration agreement or agreements; or the arbitrations are between the same parties,	Article 28: Permitted at the request of parties, provided parties have agreed for such consolidation; or the claims arise from the same arbitration agreement; or where a common question of law/ fact arises in all	N/A	Although the Act is silent as to the consolidation of arbitrations, the courts have laid down certain guiding principles which must be followed while permitting the consolidation of arbitral proceedings.

	SIAC Rules, 2016	LCIA Rules, 2020	ICC Rules, 2021	HKIAC Rules, 2018	UNCITRAL Rules, 2010	Indian Arbitration and Conciliation Act, 1996
		to be consolidated are commenced under the same arbitration agreement or any compatible arbitration agreement(s) and either between the same disputing parties or arising out of the same transaction or series of related transactions.	with disputes arising in connection with the same legal relationship, and the arbitration agreements are found to be compatible.	arbitrations, the rights to relief claimed pertains to the same transaction(s) and the arbitration agreements are compatible.		

	SIAC Rules, 2016	LCIA Rules, 2020	ICC Rules, 2021	HKIAC Rules, 2018	UNCITRAL Rules, 2010	Indian Arbitration and Conciliation Act, 1996
Seat	Rule 21: To be decided by parties, failing which the seat is to be determined by the AT.	Article 16: To be decided by parties, with the default seat being London.	Article 18 r/w 21: To be decided by parties, otherwise the place of arbitration is to	Article 14: To be decided by parties, otherwise the seat shall be Honk Kong.	Article 18: To be agreed upon by parties, otherwise the place of arbitration is to	Section 20: Parties are free to agree on the place for the arbitration, failing which
			be determined by the ICC.		be determined by the AT, having regard to the circumstances of the case.	the AT shall determine the same, having regard to the circumstances of each case.

	SIAC Rules, 2016	LCIA Rules, 2020	ICC Rules, 2021	HKIAC Rules, 2018	UNCITRAL Rules, 2010	Indian Arbitration and Conciliation Act, 1996
Interim Measures	Rule 30.1 r/w Rule 30.2: The AT may grant an injunction, or any interim relief it deems appropriate.	Article 25: To order providing security, preservation/ storage/ sale/ disposal of anything related to subject matter; any other provisional relief which the AT has the power to grant in an award.	Article 28: Any measures as the AT deems appropriate.	Article 23: Any measures as the AT deems appropriate or necessary.	Article 26: The AT may grant interim reliefs at the request of a party, for example: taking actions for (a) maintaining/ restoring the atus quo, pending arbitration; (b) preventing/ refraining from taking action that is likely to cause harm or prejudice to the arbitral process; (c) preserving assets for the	Section 17: Any reliefs that the AT may deem appropriate, for example: taking actions for (a) preservation, interim custody or sale of the subject-matter of the arbitration; (b) securing the amount in dispute; (c) detention, preservation or inspection of any property which is the

	SIAC Rules, 2016	LCIA Rules, 2020	ICC Rules, 2021	HKIAC Rules, 2018	UNCITRAL Rules, 2010	Indian Arbitration and Conciliation Act, 1996
					satisfaction of the award; or (d) preserving relevant and material evidence.	subject-matter of the dispute; or (d) interim injunction or the appointment of a receiver.
Summary/ Expedited Procedure	Rule 5: Permitted when specified criteria is met, prior to the constitution of the AT.	Article 9A: In case of exceptional urgency, a party can apply for expedited formation of AT.	Article 30 r/w Appendix VI: Permitted, and the same shall take precedence over the arbitration agreement.	Article 42: Permitted prior the constitution of the AT.	N/A	Section 29B: Fast track procedure is permitted prior to/ at the time of appointment of the AT, upon the parties agreeing to the same in writing.

	SIAC Rules, 2016	LCIA Rules, 2020	ICC Rules, 2021	HKIAC Rules, 2018	UNCITRAL Rules, 2010	Indian Arbitration and Conciliation Act, 1996
Emergency Arbitration	Rule 30.2 r/w Schedule 1: Allowed prior to the constitution of the AT, upon application by a party, the mandate of whom expires once the Tribunal is constituted.	Article 9B: Immediate appointment of sole arbitrator or appointment of a temporary sole arbitrator to conduct emergency proceedings pending the formation or expedited formation of the arbitral tribunal is permitted, upon application by a party.	Article 29 r/w Appendix V: Allowed, prior to the transmission of the file to the AT.	Article 23.1 r/w Schedule 4: Allowed prior to the constitution of the AT.	N/A	Although the Act does not provide for any mechanism of emergency arbitrations, the same has been recognised by courts, with emergency awards being treated on par with other awards under the Act in terms of enforcement.
Confidentiality	Rule 39: Confidentiality must be maintained of the award, as well as the	Article 30: Confidentiality must be maintained of awards, materials and documents	Article 22: Any party can apply for confidentiality of proceedings, or to protect	Article 45: Confidentiality must be maintained by parties/ their representatives,	Article 34: Subject to consent of the parties, award may be made public.	Section 42A: Confidentiality must be maintained of all arbitral proceedings

	SIAC Rules, 2016	LCIA Rules, 2020	ICC Rules, 2021	HKIAC Rules, 2018	UNCITRAL Rules, 2010	Indian Arbitration and Conciliation Act, 1996
	proceedings, unless agreed otherwise.	produced, barring limited permissible disclosures.	trade secrets or confidential information.	of the arbitration and award/ emergency decision unless agreed otherwise.		except award, where disclosure may be necessary for implementation and enforcement.
Cost Allocation	Rule 35: Subject to an agreement between parties, at the discretion of the AT.	Article 28: Subject to an agreement between the parties, to be determined by the AT.	Article 37: A party may be subject to a certain provisional advance corresponding to its claim, which amount may be subject to readjustment at any time during the arbitration.	Article 34: To be determined by the AT.	Article 40 r/w 42: To be borne, in principle, by the unsuccessful party, however, the AT may take into account the circumstances of the case, while apportioning the costs between parties, if it deems reasonable.	Section 31A: At the discretion of the AT, but the same shall be reasonable.

A detailed analysis of each of the headings in the chart above is set out hereinbelow.

Analysis of the Comparative Chart

Deemed Start Date of Arbitration		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	Rule 3.3: The date of receipt of the complete notice of arbitration by the Registrar shall be deemed to be the date of commencement of the arbitration.
2.	**LCIA**	Article 1.4: The arbitration shall be treated as having commenced for all purposes on the date upon which the request (including all accompanying documents) is received electronically by the Registrar (i.e. commencement date), provided that the LCIA has received the registration fee. Where the registration fee is received subsequently, the commencement date will be the date of the LCIA's actual receipt of the registration fee. Article 4.4: For the purpose of determining the commencement of any time limit, unless otherwise ordered by the AT or the Registrar acting on behalf of the LCIA, a written communication sent by electronic means shall be treated as having been received by a party on the day it is transmitted (such time to be determined by reference to the recipient's time zone). If delivery by any other means is permitted or directed under Article 4, a written communication shall be treated as having been received by a party on the day it is delivered (such time to be determined by reference to the recipient's time zone).
3.	**ICC**	Article 4.2: The date on which the request is received by the Secretariat shall be deemed to be the date of the commencement of the arbitration.
4.	**HKIAC**	Article 4.2: An arbitration shall be deemed to commence on the date on which a copy of the notice of arbitration is received by the HKIAC.

Deemed Start Date of Arbitration		
S.No.	**Rules**	**Particulars**
5.	**UNCITRAL**	Article 3.2: An arbitration shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.
6.	**Position in India**	Section 21 of the Act: Unless otherwise agreed by parties, arbitration in respect of a particular dispute shall commence on the date on which the request for that dispute to be referred to arbitration is received by the respondent.

Default Deadline for Response		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	Rule 4.1: The respondent shall file a response with the Registrar, and simultaneously serve a copy thereof on the claimant, within 14 days of receipt of the notice of arbitration.
2.	**LCIA**	Article 2.1: Within 28 days of the commencement date, or such lesser or greater period to be determined by the LCIA or upon application by any party or upon its own initiative. The respondent shall deliver a written response to the Registrar.
3.	**ICC**	Article 5.1: Within 30 days from the receipt of the request from the Secretariat, the respondent shall submit an answer.
4.	**HKIAC**	Article 5.1: Within 30 days from receipt of the notice of arbitration, the respondent shall communicate an answer to the notice of arbitration to the HKIAC and the claimant.
5.	**UNCITRAL**	Article 4.1: The respondent shall communicate a response to the claimant within 30 days of the receipt of the notice of arbitration.

Default Number of Arbitrators		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	Rule 9.1: The SIAC Rules provide for appointment of a sole arbitrator unless the parties have otherwise agreed or it appears to the Registrar, giving due regard to any proposals by the parties, the complexity, quantum involved or oth-er relevant circumstances of the dispute, warrants the appointment of three arbitrators.
2.	**LCIA**	Article 5.8: A sole arbitrator shall be appointed, unless the parties have otherwise agreed in writing or the LCIA determines that in the circumstances a three-member tribunal is appropriate (or exceptionally, more than three).
3.	**ICC**	Article 12.1 r/w Article 12.2: A sole arbitrator shall be appointed. However, where it appears to the ICC that the dis-pute is such that it warrants the appointment of three arbitrators, the ICC shall appoint three arbitrators.
4.	**HKIAC**	Article 6.1: If the parties have not agreed upon the number of arbitrators before the arbitration commences or within 30 days from the date the notice of arbitration is received by the respondent, the HKIAC shall decide whether the case shall be referred to a sole arbitrator or to three arbitrators.
5.	**UNCITRAL**	Article 7.1: The UNCITRAL Rules provides for the appointment of three arbitrators, provided parties have not agreed that there shall be only one arbitrator.
6.	**Position in India**	Section 10 of the Act: Parties are free to determine the number of arbitrator(s), provided that such number shall not be an even number. Section 10(2) of the Act provides that failing the determination referred in sub-section (1), the AT shall consist of a sole arbitrator.

Default Appointment of a Sole Arbitrator		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	Rule 10: If within 21 days after commencement of the arbitration or within the period otherwise agreed by parties/ set by the Registrar, parties have not reached an agreement on the nomination of a sole arbitrator, or if at any time either party so requests, the President shall appoint the sole arbitrator.
2.	**LCIA**	Article 5.6: The LCIA shall appoint the AT promptly following delivery to the Registrar of the response or, if no response is received, promptly after 28 days from the commencement date.
3.	**ICC**	Article 12.3: If parties fail to nominate a sole arbitrator within 30 days from the date when the claimant's request for arbitration has been received by the other party or parties, or within such additional time as may be allowed by the Secretariat, the sole arbitrator shall be appointed by the ICC.
4.	**HKIAC**	Article 7.1: a. Where parties have agreed before the arbitration commences that the dispute shall be referred to a sole arbitrator, they shall jointly designate the sole arbitrator within 30 days from the date the notice of arbitration was received by the respondent. b. Where parties have agreed after the arbitration commences to refer the dispute to a sole arbitrator, they shall jointly designate the sole arbitrator within 15 days from the date of that agreement. c. Where parties have not agreed upon the number of arbitrators and the HKIAC has decided that the dispute shall be referred to a sole arbitrator, the parties shall jointly designate the sole arbitrator within 15 days from the date of the HKIAC's decision was received by the last of them. Article 7.2: a. If parties fail to designate the sole arbitrator within the applicable time limit, the HKIAC shall appoint the sole arbitrator.

Default Appointment of a Sole Arbitrator		
S.No.	**Rules**	**Particulars**
		Article 7.3: a. Where parties have agreed on a different procedure for designating the sole arbitrator and such procedure does not result in a designation within a time limit agreed by them or set by the HKIAC, the HKIAC shall appoint the sole arbitrator.
5.	**UNCITRAL**	Article 8.1: If parties have agreed that a sole arbitrator is to be appointed, the same should be done within 30 days, failing which, the sole arbitrator shall be appointed by the appointing authority.
6.	**Position in India**	Section 11 of the Act: Section 11(2) of the Act provides that parties are free to agree on a procedure for appointing the arbitrator(s). Section 11(4) of the Act also provides that if parties fail to appoint the arbitrator or if two arbitrators fail to agree on the third arbitrator within 30 days, the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court, or any person or institution designated by such court. The Arbitration and Conciliation (Amendment) Act, 2019 provides that appointment shall be made by an arbitral institution designated by the Supreme Court, in case of international commercial arbitration or by the High Court, in case of arbitrations other than international commercial arbitration. The same, however, has not been notified yet.

Default Appointment of Three-Member Tribunal		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	Rule 9 r/w Rule 11: The SIAC appoints a sole arbitrator unless parties have otherwise agreed, or it appears to the Registrar that the complexity, quantum, or any other relevant circumstances would warrant a three-member tribunal. In the event of the latter, each party nominates an arbitrator within the prescribed time of 14 days, failing which the President shall appoint the arbitrator on its behalf. The President appoints the third arbitrator (the presiding arbitrator) unless the parties have agreed upon any different procedure for such appointment. Moreover, The Singapore International Arbitration Act, 1994, has been amended[5], to account for the default appointment of arbitrators in multiparty arbitrations. As per the said amendment, all claimants are to jointly appoint one arbitrator, while all respondents are to jointly appoint one arbitrator. Thereafter, the two arbitrators so appointed, appoint the Presiding arbitrator. Further, if the claimant(s) and/or the respondent(s) fail to appoint an arbitrator in the prescribed time period, the competent authority must, upon the request of any party, appoint all three arbitrators and designate any one of them as the presiding arbitrator. In the case of *Ncc International Ab v. Land Transport Authority of Singapore*[6], the arbitration agreement provided for the appointment of a sole arbitrator. However, the plaintiff had applied to the Registrar under Rule 5.1[7] of the 2007 SIAC Rules, seeking exercise of discretion to appoint three arbitrators. The Registrar, finding that Rule 5.1 does not grant discretion to the Registrar to vary

[5] https://sso.agc.gov.sg/Acts-Supp/32-2020/Published/20201111?DocDate=20201111

[6] [2008] SGHC 186

[7] Rule 5.1: "Unless the parties have agreed otherwise or unless it appears to the Registrar giving due regard to any proposals by the parties, the complexity, the quantum involved or other relevant circumstances of the dispute, that the dispute warrants the appointment of three arbitrators, a sole arbitrator shall be appointed."

Default Appointment of Three-Member Tribunal		
S.No.	**Rules**	**Particulars**
		the number of arbitrators where parties have agreed to the number, found no reason to exercise discretion. In a challenge to the Registrar's decision, the Singapore High Court found that the agreement to incorporate the SIAC Rules did not permit the SIAC Rules to override the express terms of the agreement, and held that the agreement would prevail over the rules.
2.	**LCIA**	Article 5: Ordinarily, the LCIA ordinarily appoints a sole arbitrator, unless parties have agreed otherwise. The LCIA shall promptly appoint the AT following the delivery to the Registrar of the response, or if no response is received, then after a period of 28 days from the commencement date. Moreover, it is provided that no party or third person is allowed to appoint an arbitrator under the arbitration agreement, and it is the LCIA alone who is empowered to appoint arbitrators.
3.	**ICC**	Article 12: Ordinarily, the ICC appoints a sole arbitrator, unless agreed upon otherwise, by the parties. In case of three-member tribunals, each party shall nominate an arbitrator, failure of which results in the appointment being made by the ICC. The Presiding Arbitrator is normally appointed by the ICC unless the parties have previously agreed upon a procedure for appointment of the same. In the case of *BKMI Industrienlagen GmbH et Siemens AG v. Dutco Construction Company Bull*[8], Dutco filed a joint request for arbitration against BKMI and Siemens. The ICC confirmed the arbitrator appointed by Dutco and re-quested both the other parties to jointly nominate one arbitrator. Upon the failure of the latter to jointly nominate one arbitrator, the ICC announced that it would appoint an arbitrator on their behalf. Eventually, BKMI and Siemens appointed their arbitrator under protest. Subsequently, an interim award was passed, which was challenged by BKMI and Siemens. Finally, the said award was set aside by the

[8] XVIII YBCA 140 (1993)

Default Appointment of Three-Member Tribunal		
S.No.	**Rules**	**Particulars**
		Cour de Cassation *inter alia* on the ground that the appointment of the AT was unfair and was opposed to French public policy, since it afforded Dutco a better position to influence the final outcome of the arbitration. Cour de Cassation observed that the right of equal treatment could not be waived through arbitration agreement and all parties to an arbitration agreement should have the same right to contribute to the constitution of the AT.
4.	**HKIAC**	Article 8: Where parties have agreed to refer the dispute to three arbitrators before the arbitration commences, each party shall designate one arbitrator in the notice of arbitration and answer to the notice of arbitration respectively. Where parties have agreed to refer the dispute to three arbitrators after the arbitration commences, the claimant shall designate an arbitrator within 15 days from the date of that Article 8: Where parties have agreed to refer the dispute to three arbitrators before the arbitration commences, each party shall designate one arbitrator in the notice of arbitration and answer to the notice of arbitration respectively. Where parties have agreed to refer the dispute to three arbitrators after the arbitration commences, the claimant shall designate an arbitrator within 15 days from the date of that agreement and the respondent shall designate an arbitrator within 15 days from receiving notice of claimant's designation. Where parties have not agreed upon the number of arbitrators and HKIAC decides that the dispute shall be referred to three arbitrators, the claimant shall designate an arbitrator within 15 days from receipt of HKIAC's decision and the respondent shall designate an arbitrator within 15 days from receiving notice of claimant's designation. The two arbitrators so appointed shall appoint the presiding arbitrator. In case a party fails to designate an arbitrator, HKIAC shall appoint the arbitrator.

Default Appointment of Three-Member Tribunal		
S.No.	**Rules**	**Particulars**
		Furthermore, in the case of multi-party arbitrations, claimants shall jointly designate their arbitrator, and similarly respondents shall jointly designate their arbitrator.
5.	**UNCITRAL**	Article 9: Each party shall appoint one arbitrator, and the two arbitrators shall further appoint the third arbitrator who shall act as the presiding arbitrator. Upon the failure of a party to appoint its arbitrator within 30 days of receipt of the other party's notification of the appointment of its arbitrator or if the two appointed arbitrators fail to appoint the third arbitrator, the adjudicating authority shall make the necessary appointments.
6.	**Position in India**	Section 10 r/w Section 11 of the Act: The Act provides that parties are free to determine the number of arbitrators, provided that such number is not an even number. However, failing such determination, the AT shall consist of a sole arbitrator. Moreover, in the event of failure of parties to agree upon the appointment of the arbitrator, recourse to the court may be taken under Section 11 of the Act, according to which each party must appoint one arbitrator each, and the two arbitrators so appointed, in turn appoint the presiding arbitrator. Moreover, the Supreme Court has held that Section 10 is a derogable provision[9]. The Arbitration and Conciliation (Amendment) Act, 2019 provides that appointment shall be made by an arbitral in-stitution designated by the Supreme Court, in case of international commercial arbitration or by the High Court, in case of arbitrations other than international commercial arbitration. The same, however, has not been notified yet.

[9] *Narayan Prasad Lohia v. Nikunj Kumar Lohia &Ors*, (2002) 3 SCC 572.

Restriction on Appointment of Arbitrator *vis-à-vis* Nationalities of Parties		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	N/A
2.	**LCIA**	Article 6: The sole arbitrator, or the presiding arbitrator cannot have the same nationality as that of any party, unless parties who are not of the same nationality as the arbitrator agree in writing.
3.	**ICC**	Article 13: The ICC shall not appoint the sole arbitrator or the president of the AT who is of the same nationality as any of the parties. However, in certain circumstances the same may be permitted, provided none of the parties object within the time limit fixed by the Secretariat.
4.	**HKIAC**	Article 11: Neither the sole arbitrator nor the presiding arbitrator shall have the same nationality as any of the parties to the arbitration, unless specifically agreed upon by parties. This restriction is, however, not applicable to the party designated arbitrators.
5.	**UNCITRAL**	N/A
6.	**Position in India**	Section 11 (1) r/w Section 11 (9) of the Act: The Act provides that a person of any nationality may be an arbitrator, unless otherwise agreed by the parties. However, in the case of appointment of sole or third arbitrator in an international commercial arbitration, the Supreme Court or the person or institution designated by the Supreme Court may appoint an arbitrator who is not of the same nationality as any of the parties, where the parties belong to different nationalities.

Time Limit for Challenging Appointment of Arbitrator		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	Rule 14.1: All parties are given the right to challenge the appointment of any arbitrator, if circumstances exist that may give rise to justifiable doubts as to the arbitrator's impartiality, independence or even qualifications. Rule 14.2: A party may challenge the appointment of the arbitrator, only for reasons of which they become aware, after such appointment had been made. Rule 15: A party may challenge the appointment of an arbitrator by filing a notice of challenge with the Registrar, stating the reasons for the same, within 14 days after receipt of the notice of appointment of the arbitrator who is being challenged or within 14 days after the circumstances for challenge became known or should have reasonably been known to that party. The Registrar has the power to suspend the arbitral proceedings until the challenge is resolved, and in the absence of any such direction, the challenged arbitrator is entitled to continue. Courts in Singapore have been reluctant from suspending the arbitral proceedings pending a challenge to the appointment of an arbitrator[10]. The Singapore International Arbitration Act has since been amended to allow Singapore courts to issue an interim injunction in relation to an arbitration. However, Section 12A(6) thereof provides that the High Court shall make such order only if or to the extent that the AT, and any arbitral/ 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[11].
2.	**LCIA**	Article 10: The LCIA may revoke an arbitrator's appointment by a written request by other members of the AT or upon a challenge by any party to arbitration. The time limit for challenging the appointment of the arbitrator is within 14 days of the formation of the AT, or within 14 days of the parties becoming aware of any grounds, as set out hereunder:

[10] *Mitsui Engineering and Shipbuilding Co Ltd. v. Easton Graham Rush and Anr.* [2004] SGHC 26

[11] https://sso.agc.gov.sg/act/iaa1994?ProvIds=pr12A-#pr12A-

Time Limit for Challenging Appointment of Arbitrator		
S.No.	**Rules**	**Particulars**
		Article 10.1: In the event the arbitrator gives written notice to the LCIA of his/her intent to resign as arbitrator; or the arbitrator falls seriously ill, refuses or becomes unable or unfit to act; or circumstances exist that give rise to justifiable grounds as to the arbitrators impartiality or independence. Article 10.2: In the event the arbitrator acts in deliberate violation of the arbitration agreement; or does not act fairly or impartially as between the parties; or does not conduct or participate in the arbitration with reasonable efficient, diligence and industry.
3.	**ICC**	Article 14: Any challenge to the appointment of an arbitrator, pertaining to alleged impartiality or independence or otherwise, may be made by submitting a written statement to the Secretariat within 30 days of (i) receipt of the notification of appointment or confirmation of the arbitrator; or (ii) the date of gaining knowledge of the facts and circumstances that lead to such challenge. The ICC, after affording the arbitrator and other concerned parties the opportunity to comment in writing, shall decide on the admissibility and, if necessary, merits of the challenge.
4.	**HKIAC**	Article 11.7: Any challenge to the appointment of an arbitrator must be sent within 15 days after the confirmation or appointment of that arbitrator has been communicated to the challenging party, or within 15 days after which the party may have become aware of any of the circumstances enumerated under Article 11.6. The HKIAC has the power to further extend or shorten this time. Article 11.6: Where circumstances exist to give rise to justifiable grounds as to the arbitrators impartiality or independence; or if the arbitrator does not possess qualifications as agreed by parties; or if the arbitrator becomes de jure or de facto unable to perform his/her functions or for other reasons fails to act without undue delay.

Time Limit for Challenging Appointment of Arbitrator		
S.No.	**Rules**	**Particulars**
		Further, either party may challenge an arbitrator appointed by them, or in whose appointment they have participated in, only for reasons of which they become aware after such appointment has been made.
5.	**UNCITRAL**	Article 13: A party may challenge the appointment of an arbitrator by sending a notice within 15 days after such appointment has been notified under Article 11, or within 15 days after the circumstances mentioned in Article 12 became known to the party. Article 12(2): The arbitrator's appointment may be challenged only if circumstances exist that give rise to justifiable grounds as to his/her impartiality or independence, or if he/she does not possess such qualifications as agreed by the parties. Further, a party may challenge an arbitrator appointed by them, or in whose appointment they have participated in, only for reasons of which they become aware after such appointment has been made. Ordinarily, the aforementioned time limit begins to run from the date of actual knowledge of any circumstances that may affect the arbitration, as opposed to the presumed knowledge on which a diligent party should have known the circumstances founding such a challenge. In the case of *Mitsui Enginreering and Shipbuilding Co Ltd. v. Easton Gaham Rush and Anr*[12] , Mitsui sought an injunction pending its challenge to the arbitrator appointed and the first interim award passed. This was done inter alia on the ground that the arbitrator had issued the interim award in which he allegedly dealt with matters outside the scope of the issues submitted for decision and had pre-judged issues which were to be dealt with at subsequent hearings. The Singapore High Court refused to grant the injunction, inter alia noting that the UNCITRAL Model Law provides that no court shall intervene "except where so provided" therein.

[12] [2004] SGHC 26

Time Limit for Challenging Appointment of Arbitrator		
S.No.	**Rules**	**Particulars**
		In *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited and Telecom Devas Mauritius Limited v. The Republic of India*[13], the appointing authority accepted the respondent's challenge to the appointment of a co-arbitrator, brought in furtherance of its actual knowledge of facts that could affect the arbitral proceedings. The claimants objected to such challenge on the ground that the respondent could have known such facts at the stage of appointment itself. However, the claimants' submission was rejected, as Article 11 contemplated actual knowledge of the fact(s) invoked as a basis of challenge to the arbitrator. Further, in the case of *Vito G Gallo v. Government of Canada*[14], the Deputy Secretary-General, while hearing a challenge to an arbitrator, squarely rejected the use of the doctrine of constructive knowledge while determining the timelines of challenge.
6.	**Position in India**	Section 12 r/w Section 13 of the Act: Under the provisions of Section 12 r/w Section 13 of the Act, parties are free to agree on a procedure for challenging an arbitrator, failing which such a challenge may be made within 15 days of the challenging party becoming aware of the constitution of the AT or the circumstances referred to u/s 12(3) of the Act. The circumstances enumerated under Section 12(3) are (a), where circumstances exist that give rise to justifiable grounds as to the arbitrator's independence or impartiality; or (b) where the arbitrator does not possess the qualifications agreed to by the parties. Further, a party may challenge an arbitrator appointed by them, or in whose appointment they have participated in, only for reasons of which they become aware after the appointment has been made.

[13] *PCA Case Nº 2013-09*, Decision dated September 30, 2013.

[14] https://www.italaw.com/sites/default/files/case-documents/ita0352.pdf. See paragraph 24 - "*24. Allowing the Respondent to invoke evidence of constructive knowledge (even if reasonably proved) would relieve the arbitrator of the continuing duty to disclose. This would unfairly place the burden on the Claimant to seek elsewhere the notice it should have received from the arbitrator. Of interest in this respect is the Respondent's statement that counsel for the Claimant were "almost certainly aware" of the "merger" shortly after it occurred in June 2008. Such speculative statements cannot replace proof of actual knowledge.*"

Time Limit for Challenging Appointment of Arbitrator		
S.No.	**Rules**	**Particulars**
		Moreover, by virtue of explanation 2 appended to Section 12(1) of the Act, the circumstances as enumerated under the Fifth Schedule to the Act serve as a guide in determining whether circumstances exist which give rise to justifiable grounds as to the independence or impartiality of an arbitrator. These reasons include cases where the arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party; where the arbitrator currently represents or advises one of the parties or an affiliate of one of the parties; where the arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties, etc.

Consolidation		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	Rule 8: Prior to the constitution of the AT, any party may make an application to the Registrar for consolidation of two or more arbitrations, provided the following conditions have been satisfied: i. all parties have consented to such consolidation; ii. all claims arise out of the same arbitration agreement; or iii. the arbitration agreements are compatible, i.e. the disputes arise fr e from one parent contract and its ancillary contra cts; or the disputes arise out of the same transaction or series of transactions.
2.	LCIA	Article 22A (22.7): The AT may order consolidation of two or more arbitrations, provided there is approval from the LCIA, arising from an application made by any party; and after according each of the parties a reasonable opportunity to state their views.

Consolidation		
S.No.	**Rules**	**Particulars**
		Further, there must an agreement in writing to effectuate such consolidation, which may be permitted before, or even after an AT has been constituted, provided that the arbitration agreements, or the arbitrations sought to be consolidated are compatible, in as much as they are between the same disputing parties and arise out of the same transactions/series of transactions. Although the previous rules considered a composite request impermissible[15], the 2020 Rules allow arbitrations to be initiated by a composite request. However, the rules stipulate that the claimant must pay registration fee for each individual arbitration, even in a composite reference.
3.	**ICC**	Article 10: The ICC may, at the request of a party, consolidate two or more arbitrations into a single arbitration, where: a. the parties have agreed to consolidation; or b. all claims arise out of the same arbitration agreement; or c. the claims in the arbitrations are not made under the same arbitration agreement or agreements, but the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the ICC finds the arbitration agreements to be compatible.
4.	**HKIAC**	Article 28:The HKIAC shall have the power, at the request of a party and after consulting with the parties and any confirmed or appointed arbitrators, to consolidate two or more arbitrations where: a. the parties agree to consolidate; or b. all the claims in the arbitrations are made under the same arbitration agreement; or

[15] *A v.* B, [2017] EWHC 3417 (Comm) wherein the English High Court found that the LCIA Rules treated a single request as giving rise to only a single AT, and hence any such composite request was ineffective.

Consolidation		
S.No.	**Rules**	**Particulars**
		c. the claims are made under more than one arbitration agreement, a common question of law or fact arises in all of the arbitrations, the rights to relief claimed are in respect of, or arise out of, the same transaction or a series of related transactions and the arbitration agreements are compatible. Further, where two or more arbitrations have been consolidated, the parties have been deemed to have waived away their right to designate an arbitrator. In any case, it has previously been held that consolidation cannot be ordered mechanically, and the HKIAC must consider whether such consolidation will lead to the most fair and efficient result, or whether separate proceedings ought to be commenced. Each request will of course depend on the merits of each case. This principle has been exemplified in the cases of *Alpha Building Construction Ltd. v. Best Partner*[16] where consolidation was refused as it would unnecessarily prolong a relatively straightforward decision and increase costs, and *Dickson Construction Co. Ltd. v. Schindler Lifts & Anr. (HK)*[17], where consolidation was refused as it would delay one arbitration, and also because there was insufficient factual and legal connection between the two arbitrations sought to be consolidated.
5.	**UNCITRAL**	N/A.
6.	**Position in India**	As regards the legal position of consolidation of several arbitrations in India, the Supreme Court has, in the case of *Chloro Controls India Private Limited v. Severn Trent Water Purification Inc.& Ors.*[18] ("**Chloro Controls**"), broadly enumerated certain factors that ought to be accounted for while allowing a composite reference to arbitration, which have been summarized as follows: a. the existence of a principle/ mother agreement to which all other ancillary agreements are linked.

[16] [2008] 2 HKLRD D4
[17] [1993] HKEC 337
[18] (2013) 1 SCC 641

Consolidation		
S.No.	**Rules**	**Particulars**
		b. whether the performance of one is so intrinsically interlinked with the other agreements that they are incapable of being beneficially performed without performance of others or severed from the rest c. the intention of the parties to constitute a common tribunal. Further, in the case of *Duro Felguera S.A. v. Gangavaram Port Limited*[19], the court had refused to refer parties to a single arbitration in a setup containing six inter-related contracts, even after having taking into consideration their own diktat in the case of Chloro Controls. While taking this course, the court found that in the case of Chloro Controls, the arbitration clause in the principal agreement was kept wide and comprehensive to include all disputes arising under all other agreements by respective parties, including non-signatories, so that all fell in line with the principle agreement. However, the present case stood on an entirely different footing with five pre-existing distinct agreements, each of which had a separate arbitration clause that were independent of the terms and conditions of the original agreement. In view of the same, the court further found that in a multi-contract setup, two agreements were for international commercial arbitrations, which permitted limited judicial intervention, while the four others were domestic arbitrations, wherein a relatively greater judicial interference was possible. In light of the same, the Supreme Court found that a composite reference would not be possible.

[19] (2017) 9 SCC 729

Seat		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	Rule 21: Parties may mutually agree upon any seat of arbitration. However, in the event no agreement is reached, the seat is determined by the AT, having regard to the circumstances of the case. The AT may conduct its proceedings at any location it considers convenient or appropriate.
2.	**LCIA**	Article 16: Parties may agree (in writing) on the seat or legal place at any time before the formation of the AT, and after the formation of the AT, with the prior written consent of the AT. The default seat for the arbitration shall be London, England unless another seat can be proved to be more appropriate by the parties. Regardless of the seat, the parties may agree upon any geographical location to hold its deliberations. However, the LCIA Rules are interpreted in accordance with the laws of England. It has been held by the courts that the choice of seat of the arbitration must be the choice of the forum for remedies seeking to attack the award. Therefore, an agreement as to the seat would be analogous to an exclusive jurisdiction clause, and any claim for a remedy is to be made only in courts of the place designated as the seat of the arbitration[20].
3.	**ICC**	Article 18 r/w Article 21: The place of arbitration may be agreed upon by parties, in the failure of which the same will be decided by the ICC. Further, after consulting the parties, the AT may conduct its hearings at any location it considers appropriate. In doing so, the ICC must be mindful of choosing such a place that may be neutral. However, in the event the parties have not themselves agreed upon the applicable rules of law, the AT shall choose those it considers to be appropriate.

[20] *C v. D*, [2007] EWCA Civ 1282

Seat		
S.No.	**Rules**	**Particulars**
4.	**HKIAC**	Article 14: Parties are free to agree upon the seat of the arbitration. In the event there is no such agreement, the seat of arbitration shall be Hong Kong. Further, with the consent of parties, the AT may meet at any location outside the seat, as it may consider appropriate. The choice of seat is critical since it determines the nationality of the award, the applicable procedural law, the supervisory jurisdiction of domestic courts in terms of interim measures, taking evidence, etc., as well as any challenge to the award. The seat has been held to be equivalent in law to an exclusive jurisdiction clause. The agreement gives exclusive jurisdiction to courts of the seat of arbitration as far as supervising the conduct of the relevant arbitration is concerned[21].
5.	**UNCITRAL**	Article 18: If the parties have not previously agreed upon the place of the arbitration, the same is to be determined by the AT having regard to the circumstances of the case. The AT may meet at any place it considers appropriate for deliberations. Subject to an agreement to the contrary between the parties, the AT may meet at any place it considers appropriate for any other purpose, including hearings. In the case of *Hiscox v. Outhwaite*[22], the award was signed in Paris, but the arbitration had been conducted in London, under English substantive and curial (seat) law. House of Lords held that the award was "made" in the place where it was perfected (being the place it was signed, i.e. Paris) and was, therefore, a convention (New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards) award. It also concluded, however, that the English High Court remained capable of exercising its supervisory and curial jurisdiction over the arbitration, which was governed by English law.

[21] *A v. R*, [2009] HKCFI 342

[22] [1992] 1 AC 562

Seat		
S.No.	**Rules**	**Particulars**
6.	**Position in India**	Section 20 of the Act: Section 20 of the Act provides parties the liberty to choose a place of arbitration, while they are free to conduct arbitration proceedings at any other place. In the landmark case of *Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.*[23] the Supreme Court held that Part 1 of the Act applied only to arbitrations that took place in India and could not be extended to foreign seated arbitrations. Therefore, parties opting for a foreign seat will in turn import the acceptance to the law of that respective country relating to the conduct and supervision of arbitral proceedings. The Supreme Court, in another landmark case of *BGS SGS SOMA JV v. NHPC Ltd*[24], laid down various tests to ascertain the intended seat of arbitration from the provisions of the arbitration agreement between parties, which *inter alia* are as under: i. whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. ii. this language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of arbitral proceedings, but only a convenient place of meeting.

[23] (2012) 9 SCC 552
[24] (2020) 4 SCC 234

Seat		
S.No.	**Rules**	**Particulars**
		iii. applying the Shashoua[25] principle, the court held that the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings. iv. in an International context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that "the venue", so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Act, as applying to the "stated venue", which then becomes the "seat" for the purposes of arbitration.

Interim Measures		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	Rule 30.1 r/w Rule 30.2: The AT may, at the request of a party, issue an order or an award granting an injunction or any other interim relief it deems appropriate. The party requesting interim relief may, however, be required to furnish appropriate security in connection with the relief sought.

[25] *Shashoua &Ors. v. Sharma,* [2009] EWHC 957 (Comm)

Seat		
S.No.	**Rules**	**Particulars**
2.	**LCIA**	Article 25: Upon application by a party, after giving all other parties a reasonable opportunity to respond to such application and on such terms as the AT considers appropriate in the circumstances, the AT has the power to order (i) any party to provide security for any amount in dispute; (ii) preservation, storage, sale or other disposal of anything related to the subject-matter of the arbitration; and (iii) any relief which the AT would have power to grant in an award. The AT may also order a party to provide or procure security for legal and arbitration costs. If a party does not comply with any order to provide security, the AT may stay that party's claims, or dismiss them by an award. Furthermore, a party may apply to a competent state court or other legal authority for interim or conservatory measures either (i) before the formation of the AT; and (ii) after the formation of the AT, in exceptional cases and with the AT's authorisation, until the final award. The Queen's Bench Division, in the case of *U & M Mining Zambia Ltd v. Konkola Copper Mines Plc*[26], the court was dealing with a contract between parties, which provided that (a) the disputes between the parties would be referred to institutional arbitration in the LCIA; (b) the "place" of arbitration would be England; and (c) the Zambian courts would have exclusive jurisdiction. The court, while adjudicating on the power of the Zambian courts to grant interim reliefs, observed *inter alia* as under: i. the judgment of *Econet Wireless Ltd v Vee Networks Ltd*.[27] shows that a party might, exceptionally, be entitled to seek interim relief in some court other than that of the seat of the arbitration if, for practical reasons, the application could only sensibly be made there, provided that the proceedings were not a disguised attempt to outflank the arbitration agreement.

[26] [2013] EWHC 260 (Comm)
[27] [2006] EWHC 1568 (Comm)

Seat		
S.No.	**Rules**	**Particulars**
		ii. the subject principle was correctly stated in *Dicey, Morris & Collins, The Conflict of Laws*, 15th Ed. (2012), Vol. 1, para 16-036, to the effect that "the courts of the seat will have the sole supervisory and primary supportive function in relation to the conduct of the arbitration". iii. in the present case, the parties were contractually entitled to apply to the Zambian courts for interim protective measures. Accordingly, the Zambian proceedings were not in breach of the arbitration agreement. The Queen's Bench Division, in the case of *VTB Commodities Trading DAC v. JSC Antipinsky Refinery (Petraco Oil Co SA intervening)*[28], was faced with the question whether the right to "apply" under Article 25.3 (to a competent state court or other legal authority for interim reliefs), should be interpreted as relating to the issuance of an application notice before the formation of the AT (even if the resulting court hearing is after its formation), or whether it relates to the making of the application in court. The Court observed that the latter is correct, for the following reasons: i. an application notice only gives notice of the intention to make an application. The application itself is made in court; ii. a rule which permitted a party to move an application in court long after the formation of the AT (even if a notice of the application notice was "issued" before its formation) would drive a coach and horses through the intended scheme of the rules; and iii. section 44 of the Arbitration Act, 1996 (to which the LCIA Rules plainly have regard in this respect) is expressed in terms of the jurisdiction of the court to "act" on an application, indicating that the application in question is that to be argued in court, not the notice of an application.

[28] [2020] EWHC 72 (Comm)

Seat		
S.No.	**Rules**	**Particulars**
3.	**ICC**	Article 28: Subject to an agreement between parties, the AT may, upon the request of a party, order any interim or conservatory measure it deems appropriate, subject to appropriate security being furnished by the requesting party. Further, before the file is transmitted to the AT, and in exceptional cases even thereafter, parties may apply to any competent judicial authority for the grant of such interim measure or even for the implementation of any such measures ordered by the AT. Such an application shall not be deemed to be an infringement or a waiver of the arbitration agreement and does not affect the relevant powers reserved to the AT.
4.	**HKIAC**	Article 23: At the request of any party, the AT may order interim measures which it deems necessary, subject to the provision of adequate security, in order to *inter alia* (a) maintain or restore the status quo pending determination of the dispute; or (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself; or (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or (d) preserve evidence that may be relevant and material to the resolution of the dispute. In granting the said interim reliefs, the AT shall take into account the circumstances of the case, including (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. Furthermore, the party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the AT later determines that, in the circumstances then prevailing, the measure should not have been granted.

Seat		
S.No.	**Rules**	**Particulars**
5.	**UNCITRAL**	Article 26: At the request of any party, the AT may grant interim measures subject to the provision of appropriate security, in order to *inter alia* (a) maintain or restore the status quo pending determination of the dispute; (b) take action that would prevent, or refrain from taking action that is likely to cause current/ imminent harm or prejudice to the arbitral process itself; (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or (d) preserve evidence that may be relevant and material to the resolution of the dispute. The party requesting an interim measure shall satisfy the AT that: (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed, if the measure is granted; and (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. It is pertinent to note that the party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the AT later determines that, in the circumstances then prevailing, the measure should not have been granted.
6.	**Position in India**	Section 17 of the Act: Section 17 grants the AT the power to order interim reliefs during the arbitral proceedings. As per the provisions of the Act, the AT is given the exclusive jurisdiction to grant interim reliefs post the constitution of the AT, unless the remedy under the said Section is rendered efficacious. In the event of the latter, the courts have jurisdiction to grant interim reliefs under Section 9 of the Act. An application for interim measures under Section 9 may be made before or during the arbitral proceedings or at any time after the making of an arbitral award, but before it is enforced. Any interim order issued by the AT under Section 17 is deemed to be an order of the court and enforceable under the Code of Civil Procedure, 1908, as if it were an order of the court.

Summary/ Expedited Procedure		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	Rule 5: Prior to the constitution of the AT, any party may file an application with the Registrar for the arbitral proceedings to be conducted in accordance with the expedited procedure, provided that the (a) the amount in dispute does not exceed an amount of S$ 6,000,000; or (b) parties so agree; or (c) in cases of exceptional urgency. The President may allow/ disallow the said application after considering the views of parties and having regard to the circumstances of the case. If the application is allowed, the following procedure is applicable (a) the Registrar may abbreviate any time limits; (b) the case may be referred to a sole arbitrator; (c) the dispute may be decided on the basis of documentary evidence only; (d) the final award may be made within six months of the constitution of the AT; and (e) the final award is based in summary form with reasons set out, unless parties have agreed otherwise. Further, upon an application, the AT may order that the proceedings shall no longer be conducted in accordance with the expedited procedure. The Singapore High Court has, in the case of *BXS v. BXT*[29], held inter alia that under the 2016 SIAC Rules, it has become clear that absent an explicit provision in an arbitration agreement negating the application of Rule 5.3, the latter has the effect of overriding a stipulation for three arbitrators when the SIAC President directs that the expedited procedure is to be used.
2.	**LCIA**	Article 9A: In case of exceptional urgency, any party may apply to the LCIA for expedited formation of the AT, setting out the specific grounds for such exceptional urgency. If the application is granted, the LCIA may set or abridge any period of time under the arbitration agreement or other agreement of parties.

[29] [2019] SGHC(I) 10- See paragraph 14- "*14. ..Under the 2016 Rules it has become clear that, absent an explicit provision in an arbitration agreement negating the application of Rule 5.3, the latter has the effect of overriding a stipulation for three arbitrators when the SIAC President directs that the Expedited Procedure is to be used. I note in passing that, in a similar situation, the Singapore court concluded that, even under the 2013 Rules, the SIAC President was empowered by Rule 5.2 to override a stipulation for three arbitrators and direct that the Expedited Procedure with a sole arbitrator be followed in a given case: AQZ v. ARA [2015] 2 SLR 972.*"

Summary/ Expedited Procedure		
S.No.	**Rules**	**Particulars**
3.	**ICC**	Article 30 r/w Appendix VI: The expedited procedure rules take precedence over any contrary terms of the arbitration agreement. The said procedure shall be (a) applicable if the amount in dispute does not exceed US$ 2,000,000 or US$ 3,000,000 (depending on whether the arbitration agreement was concluded before or after 1st January 2021), or parties so agree; (b) not applicable *inter alia* if (i) parties have agreed to opt out of it; or (ii) the ICC, upon the request of a party, before the constitution of the AT, or on its own motion, determines that it is inappropriate to apply the same.
4.	**HKIAC**	Article 42: Prior to the constitution of the AT, a party may apply to the HKIAC for the arbitration to be conducted in accordance with an expedited procedure where (a) the amount in dispute does not exceed the amount set by HKIAC; or (b) the parties so agree; or (c) in cases of exceptional urgency. In the event the said application is allowed, the HKIAC Rules apply, with *inter alia* the following changes (a) the case may be referred to a sole arbitrator; (b) if the agreement provides for three arbitrators, HKIAC shall invite parties to agree to refer the case to a sole arbitrator. In case parties do not agree, the case shall be referred to three arbitrators; (c) the HKIAC may shorten the time limits; (d) the AT may decide the dispute on the basis of documentary evidence only; (e) the award shall be made within six months; and (f) the award may be in summary form, unless the parties have agreed that no reasons are to be given. The article does not apply to any consolidated proceedings or to any single arbitration under multiple contracts.
5.	**UNCITRAL**	N.A.
6.	**Position in India**	Section 29B of the Act: Inserted *vide* the Arbitration and Conciliation (Amendment) Act, 2015, Section 29B provides for fast track procedure, whereunder the parties, before or at the time of appointment of the AT, may agree in writing to have their dispute resolved by fast track procedure. Under such procedure, the AT may consist of a sole

Summary/ Expedited Procedure		
S.No.	**Rules**	**Particulars**
		arbitrator, chosen by parties, and shall decide the dispute based on written pleadings, documents and submissions filed by parties without any oral hearing. However, in the event oral hearings take place, the AT may dispense with any technical formalities and ensure expeditious disposal of the case. The award under this section shall be made within a period of six months from the date the AT enters upon the reference.

Emergency Arbitration		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	Rule 30.2 r/w Schedule 1: A party may apply for emergency arbitration seeking emergency interim reliefs, prior to the constitution of the AT. The President of the SIAC has the discretion to accept/ reject the said application and appoint Emergency Arbitrator (**EA**). The EA has the same powers as are vested in the AT, including the authority to deal with its own jurisdiction and/or the authority to order preliminary reliefs pending hearing. The mandate of the EA expires after the constitution of the AT. The Singapore International Arbitration Act, 1994 was amended in 2012 to *inter-alia* expand the definition[30] of 'arbitral tribunal' to include an EA. To ensure that the emergency arbitration procedure is effective, an EA was given the same legal status and powers as ATs appointed under standard procedures[31].

[30] 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;

[31] International Arbitration (Amendment) Act 2012 - Singapore Statutes Online (agc.gov.sg)

Emergency Arbitration		
S.No.	**Rules**	**Particulars**
2.	**LCIA**	Article 9B: In the event of an emergency, prior to the formation of the AT, an application may be made to the LCIA for immediate appointment of a temporary sole arbitrator. The LCIA shall determine the application and in case the said application is granted, appoint the EA. The EA may determine its own procedure and has the option to not hold any hearing in person or virtually and decide the claim on the available documentation. Prior to the formation of the AT, the EA may confirm, revoke, vary, discharge, correct any error, or make an additional award. Parties also have the option to apply to a competent state court or legal authority for any interim measures and Article 9B shall not be treated as an alternative or substitute to such right. In the case of *Gerald Metals SA v. Timis &Ors*[32], the English High Court considered its power to grant urgent relief under Section 44(3) of the Arbitration Act 1996, in circumstances where timely and effective relief could have instead been granted by an expedited tribunal or EA under the LCIA Rules. The court held that where there is sufficient time for an applicant to obtain relief from an expedited tribunal or EA under the rules, it does not have the power to grant urgent relief. In this regard, the court, *inter-alia*, held that: a. the test of exceptional urgency must be to ascertain whether effective relief could not otherwise be granted within the relevant timescale i.e., the time which it would otherwise take to form an AT. b. likewise, under Article 9B, the test of what counts as an emergency must be whether the relief is needed more urgently than the time that it would take for the expedited formation of an AT.

[32] [2013] EWHC 260 (Comm)

Emergency Arbitration		
S.No.	**Rules**	**Particulars**
		c. Article 9B is not intended to prevent a party from exercising a right to apply to court, but it does not prevent the powers of the court, on such an application, from being limited as a result of the existence of Article 9B – as they are pursuant to the terms of Section 44 itself. In view of the aforesaid conclusions, given the facts of the said case, the court held that it did not have the power to grant freezing injunction as requested by the applicant, as the applicant's request for an emergency arbitrator under the LCIA Rules had already been considered and dismissed by the LCIA.
3.	**ICC**	Article 29 r/w Appendix V: Parties seeking urgent interim or conservatory measures that cannot await the constitution of the AT, may make an application to the Secretariat prior to the transmission of files to the AT. The EA's decision shall take the form of an order, which is binding on the parties and not the AT. The AT has the power to modify, terminate or annul the EA order. The EA provisions do not prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority and any such application shall not be deemed to be an infringement or waiver of the arbitration agreement. The ICC, in its report on emergency arbitration proceedings[34], relating to enforceability of emergency arbitration awards/ orders noted *inter alia* as under: a. most national laws seem to strictly apply to ATs only and not to EAs. b. the EA's decision may be given as an order rather than an award, and the decision of an EA may be viewed as lacking the finality requirement under the New York Convention. However, in most jurisdictions, in application of the principle of "substance over form", the form in which any type of interim measure has been rendered will be of little practical relevance.

[34] ICC Commission Report, Emergency Arbitrator Proceedings, 2019, Page No. 30-35

Emergency Arbitration		
S.No.	**Rules**	**Particulars**
		c. in the event of non-compliance of an EA's order/ decision, the successful applicant can attempt to seek support from local courts either in an enforcement action, or in a breach of contract claim. d. EA's decision, even if not complied with by the party against which the order is made, could influence local courts to support the decision of the EA when parties avail domestic remedies in respect to the same relief before them. e. in the event a party fails to comply with the EA's order, the aggrieved party may request that a constituted AT, deciding on merits, determine whether such failure caused an injury and whether it should be compensated.
4.	**HKIAC**	Article 23.1 r/w Schedule 4: Prior to constitution of the AT, a party requiring emergency relief may, submit to the HKIAC, an application for the appointment of an EA. The EA has the power to rule its own jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration clause(s) or of the separate arbitration agreement(s). The decision of the EA is binding on parties. The EA has no power to act once the AT is constituted. The EA is prohibited from acting as an arbitrator in any arbitration relating to the dispute that gave rise to the application, unless otherwise agreed by parties to the arbitration. The EA procedures under the rules are not intended to prevent any party from seeking urgent or conservatory measures from a competent judicial authority at any time.
5.	**UNCITRAL**	N.A.

[35] (2022) 1 SCC 209

Emergency Arbitration		
S.No.	**Rules**	**Particulars**
6.	**Position in India**	The Act does not provide for a specific provision for emergency arbitration. However, a Division Bench of the Hon'ble Supreme Court of India, in the landmark judgment of *Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd. &Ors*[35], has held that (a) an emergency arbitration award where the seat of arbitration is in India, is an order under Section 17(1) of the Act and can be enforced by Indian court under Section 17(2); (b) no appeal shall lie under the Act against the enforcement of such order made under Section 17(2) ; and (c) parties have the option to avail interim reliefs before the Indian courts under Section 9(3) or apply for emergency arbitration under institutional rules.

Confidentiality		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	Article 39: Unless otherwise agreed by parties, a party and any arbitrator including any EA, and any person appointed by the AT, including any administrative secretary and any expert, shall at all times treat all matter relating to the proceedings and the award as confidential. The discussions and deliberations of the AT shall be confidential.
2.	**LCIA**	Article 30: All awards in the arbitration, together with all materials in the arbitration created for the purposes of the arbitration and all other documents produced by another party are to be kept confidential by the parties, as has also been affirmed by English courts in cases of even ad hoc arbitrations[36].

[35] (2022) 1 SCC 209

[36] Halliburton Co. v. Chubb Bermuda Insurance Ltd., [2020] UKSC 48

Emergency Arbitration		
S.No.	**Rules**	**Particulars**
		In the case of *John Forster Emmott v. Michael Wilson & Partners Ltd*[37], upon considering the peculiar facts of the case, the English Court of Appeal permitted disclosure of requisite documents. The court while stressing on the importance of confidentiality of arbitral proceedings, held that there did in fact exist certain exceptions to this rule, as for instance, cases where there is implied or express consent, where there is leave of the court, in the interest of justice, or public interest demands such disclosure; etc.
3.	**ICC**	Article 22: Upon the request of any party, the AT may make orders concerning the confidentially of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.
4.	**HKIAC**	Article 45.1: Unless otherwise agreed by parties, no party or party representative can publish, disclose, or communicate any information related to the arbitration under the arbitration agreement or an award or emergency decision made in the arbitration. Article 45.2: Article 45.1 also applies to the AT, any EA, expert, witness, tribunal secretary and HKIAC.
5.	**UNCITRAL**	Article 34: An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
6.	**Position in India**	Section 42A of the Act: Inserted *vide* the Arbitration and Conciliation (Amendment) Act, 2019, Section 42A provides that the arbitrator, the arbitral institution and parties to the arbitration are in agreement to maintain confidentiality of all arbitral proceedings except where its disclosure is necessary for the purpose of implementation and enforcement of an award.

[37] [2008] EWCA Civ. 184

Cost Allocation		
S.No.	**Rules**	**Particulars**
1.	**SIAC**	Rule 35: Subject to an agreement between parties, the AT shall specify the costs of the arbitration and the apportionment thereof. The cost of arbitration shall be inclusive of the AT and EA's fees and expenses, SIAC's administration fees and expenses; and the cost of any expert and/or other assistance requited by the AT.
2.	**LCIA**	Article 28: Subject to the agreement between parties, the costs of the arbitration shall be determined by the LCIA in accordance with the schedule of costs. Parties are jointly and severally liable to the LCIA and the AT for such costs, which shall be awarded/ apportioned by the AT with reasons recorded in writing. The AT also has the power to award legal costs. The AT's decision is based upon the general principle that costs should reflect the parties' relative success and failure in the award or arbitration or under different issues, the conduct of parties and that of their authorised representatives.
3.	**ICC**	Article 37: After receipt of the request, the Secretary General may request the claimant to pay a provisional advance in an amount intended to cover the costs of the arbitration, which shall be considered as a partial payment by the claimant of any advance on costs fixed by the ICC. The said advance on costs shall be payable in equal shares by parties. Where counterclaims are submitted by the respondent, the ICC may fix separate advances on costs for the claims and the counterclaims and when the ICC has fixed separate advances on costs, each of the parties shall pay the advance on costs corresponding to its claims. The said advance on costs may be subject to readjustment at any time during the arbitration.
4.	**HKIAC**	Article 34: The AT shall determine the costs of the arbitration, which shall be inclusive of the (a) fees of the AT; (b) reasonable travel and other expenses of the AT and the expert advice and of other assistance required by it; (c) reasonable costs for legal representation and other assistance, including fees and expenses of any witnesses

Cost Allocation		
S.No.	**Rules**	**Particulars**
		and experts; and (d) registration fee and administrative fees payable to the HKIAC, and any expenses payable to the HKIAC. The AT may apportion all or part of the costs of the arbitration between parties, taking into account the circumstances of the case and any third-party funding arrangement. The AT, in consolidated arbitration, shall determine the costs of the arbitration and such costs include, the fees of any arbitrator designated, confirmed, or appointed and any other costs incurred in an arbitration that was subsequently consolidated into another arbitration.
5.	**UNCITRAL**	Article 40 r/w Article 42: The AT shall fix the costs of arbitration in the final award, which shall be inclusive of the (a) fees of the AT; (b) AT's travel and other expenses, (c) cost of expert advice and assistance required by the AT; (d) reasonable travel and other expenses of the witness as approved by the AT; (e) reasonable legal and other costs of the arbitration; and (f) fees and expenses of the appointing authority and the Secretary-General of the Permanent Court of Arbitration. The costs of the arbitration shall, in principle, be borne by the unsuccessful party(ies). However, the AT may, taking into account the circumstances of the case, apportion each of such costs between parties if it deems it reasonable. The AT shall, in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.
6.	**Position in India**	Section 31A of the Act: Inserted *vide* the Arbitration and Conciliation (Amendment) Act, 2015, Section 31A provides that the court or the AT, having due regard to the circumstanced of the case, shall have the power to determine the amount of cost payable by one party to another and the timing thereof. The cost of arbitration shall be reasonable and include (i) the fees and expenses of the arbitrators, courts and witnesses; (ii) legal fees and expenses; (iii) any administration fees of the institution supervising the arbitration; and (iv) any other related

Cost Allocation		
S.No.	**Rules**	**Particulars**
		It is a general rule that the unsuccessful party shall be ordered to pay costs of the successful party; but the court/ AT may make a different order for reasons to be recorded in writing. The Section also provides that an agreement having the effect that a party is to pay the whole or part of the costs of the arbitration, shall be valid only if it is made after the dispute has arisen. While interpreting the regime for costs, courts in India have held *inter-alia* as under: i. Section 31A not only provides for a regime of costs that may be awarded by the AT, but the court as well. The import of the non-obstante provision in Section 31A is that it has an overriding effect over any contrary provision contained in the CPC. The discretion of the court or the AT to award costs is not subject to the agreement between parties, unless that agreement is entered after the disputes have arisen[38]. ii. where the fee has been fixed by the court in terms of 4th Schedule to the Act, Sections 38(1), 31(8) and Section 31A would have no application. The term "*sum in dispute*" provided in the 4th Schedule to the Act has to be interpreted so as to include the aggregate value of the claims as well as counter claims[39]. iii. under Section 31A, it is the duty of the AT to quantify cost of arbitration proceedings and having failed to do so, the award suffered from vagueness and was liable to be set aside[40].

[38] *Union of India v. Om Vajrakaya Construction Company*, 2021 SCC OnLine Del 5434
[39] *Jivanlal Joitaram Patel v. National Highways Authority of India*, 2022 SCC OnLine Del 703
[40] *MMTC Ltd. v. M/s. Karam Chand Thapar & Bros (Coal Sales) Ltd.* 2018 SCC OnLine Del 12295
[41] *DDA v. K R Anand*, 2018 SCC OnLine Del 8466

Cost Allocation		
S.No.	**Rules**	**Particulars**
		iv. a party cannot be made to suffer a proceeding to claim what is otherwise found justified and also bear the cost of such proceedings. Equally, a party cannot without justification, withhold amounts otherwise payable to the other party, force it to initiate litigation and thereafter compel it to even bear the cost of such litigation and itself go scot-free[41].

[41] *DDA v. K R Anand*, 2018 SCC OnLine Del 8466

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