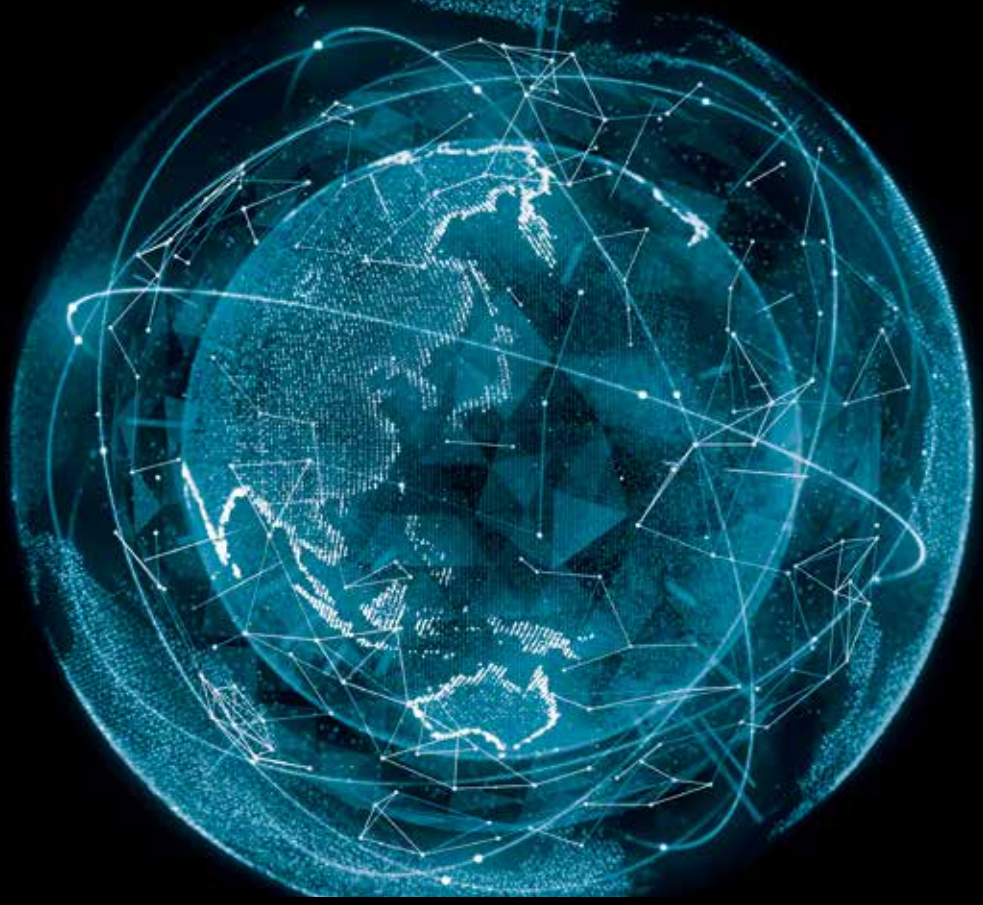

The Asia-Pacific Arbitration Review 2022

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The Asia-Pacific Arbitration Review 2022

A Global Arbitration Review Special Report

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Head of insight Mahnaz Arta
Account manager J'nea-Louise Wright

Production editor William Holt
Chief subeditor Jonathan Allen
Subeditor Tessa Brummitt
Head of content production Simon Busby
Senior content coordinator Hannah Higgins

Publisher David Samuels

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Subscription details
To subscribe please contact:
Global Arbitration Review
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL
United Kingdom
Tel: +44 20 3780 4134
Fax: +44 20 7229 6910
subscriptions@globalarbitrationreview.com

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Welcome to *The Asia-Pacific Arbitration Review 2022*, *a Global Arbitration Review* special report. For the uninitiated, *Global Arbitration Review* is the online home for international arbitration specialists the world over, telling them all they need to know about everything that matters.

Throughout the year, we deliver our readers pitch-perfect daily news, surveys and features; lively events (under our GAR Live and GAR Connect banners (GAR Connect for virtual)); and innovative tools and know-how products.

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It contains insight and thought leadership inspired by recent events, from 35 pre-eminent practitioners. Across 14 chapters and 92 pages, they provide us with an invaluable retrospective on the past year. All contributors are vetted for their standing and knowledge before being invited to take part.

The contributors' chapters capture and interpret the most substantial recent international arbitration events across the Asia-Pacific region, with footnotes and relevant statistics. Elsewhere they provide valuable background on arbitral infrastructure in different locales to help readers get up to speed quickly on the essentials of a particular country as a seat.

This edition covers Australia, Hong Kong, India, Malaysia, Singapore, Sri Lanka and Vietnam and has overviews on construction and infrastructure disputes in the region (including the effect of covid-19), the state of ISDS and what to expect there, and trends in commercial arbitration, as well as contributions by four of the more dynamic local arbitral providers.

Among the nuggets this reader learned is that:

- force majeure is not necessarily the only option for project participants affected by covid-19, especially if the FIDIC suite is in the picture;
- Korea's diaspora is known as its *Hansang* and more 'international' arbitrators are now accepting KCAB appointments (the number of KCAB 'first-timers' is up by 23 per cent);
- it has become far easier for foreign counsel and arbitrators to conduct cases in Thailand;
- there have been some strongly pro-arbitration decisions from the Philippines and Vietnam of late;
- Sri Lanka's courts also seem to have turned a corner on avoiding excessive interference; and
- improvements in the arbitral environment in Vietnam are part of a concerted effort that began in 2015.

I also found answers to some other questions that had been on my mind, such as whether an increase in case numbers in the SIAC in 2020 was matched by an increase in the total value at stake there (spoiler alert: no), and a number of components I plan to consult when the need arises – including a summary of key decisions in Singapore; a long explainer on the background to the Amazon-Future dispute in India; and a fabulous chart deconstructing the arbitral furniture in Uzbekistan.

I hope you enjoy the volume and get as much from it as I did. If you have any suggestions for future editions, or want to take part in this annual project, my colleagues and I would love to hear from you. Please write to insight@globalarbitrationreview.com.

David Samuels
Publisher
May 2021

Choosing an arbitration model – why flexibility is key

Damien Glenn Yeo
Singapore Chamber of Maritime Arbitration

In summary

This article provides clarity on the types of international commercial arbitration available in the market and evaluates why a flexible model is preferred for certain businesses. It also imparts potential disputants with a better understanding of the services provided by arbitral bodies.

Discussion points

- Clarifying terms that describe different arbitration models
- Perils of ad hoc arbitration
- Self-administered versus administered arbitration
- Overview of services provided by arbitral bodies
- Assessing quality, speed and cost of arbitration models
- Dispute resolution requirements of maritime and trade businesses

Overview

Many arbitral bodies provide a wide-ranging suite of services to disputants with one common goal – the ultimate resolution of a dispute. Like most businesses in the service industry, users generally demand three things – quality, speed and affordability. Potential disputants should be aware of the sort of arbitration services that are needed, wanted or perhaps just good to have. Above all, it is in a contracting party's interest to ensure that any dispute down the road is handled with certainty and in a manner that meets expectations.

In the legal sphere, quality is a feature in which there can be no compromise. The consequences of a poorly run arbitration or a badly drafted arbitral award can be devastating. This can lead to additional incursion of legal costs if the arbitral process or the award is otherwise challenged. The frustration that comes with this can also mean that any sliver of hope in salvaging a business relationship might be reduced to naught. If this is not enough to send shivers down your spine, if a substandard award is eventually unenforceable or set aside, this could potentially unravel years of effort and time.

Users are spoilt for choice when it comes to deciding on an arbitral body that will be involved in their dispute. There is a plethora of arbitration rules for users to choose from and write into dispute resolution clauses of their commercial contracts. Navigating this diverse landscape can be challenging.

To help potential disputants in arbitration make an informed decision as to what type of arbitration model should be adopted, this article explores the various forms of arbitration and the degree of involvement arbitral bodies might have in the arbitration process. Using the Singapore Chamber of Maritime Arbitration (SCMA) as an example, this article also explains why a flexible model of arbitration is preferred for maritime and trade businesses.

Types of international commercial arbitration in the market

One should be aware of the major distinctions between the terms 'ad hoc', 'self-administered', 'unadministered', 'non-administered' and 'administered'.

- 'Ad hoc arbitration' refers to a situation where contracting parties have specified that a dispute should be resolved by arbitration, but they have neither specified any arbitration rules that should apply nor referred to any arbitral body that will be involved in their dispute.
- 'Self-administered arbitration' means that arbitration rules are agreed by the parties and the body providing such rules might have varied or limited involvement with the arbitral process.
- 'Unadministered arbitration' and 'non-administered arbitration' have problematic definitions. It is probably best to avoid defining something by what it is not. Nevertheless, some publications refer to unadministered and non-administered arbitrations as synonymous with both ad hoc arbitration and self-administered arbitration, which has led to confusion. The terms 'ad hoc arbitration' and 'self-administered arbitration' are therefore preferred.
- 'Administered arbitration' is a curious term and raises the question as to who administers the arbitration. Typically, an arbitration institution administers various aspects of the arbitration, but this does not mean that its officers or employees do the tribunal's job in determining the merits of the dispute (although in some situations, this can occur). Nevertheless, administered arbitration refers to the scenario where contracting parties agree to a set of rules of an arbitration body (or the arbitration body itself), which is actively involved in all or most of the arbitral process.

It should be noted at this juncture that these terms are purely labels used as a matter of convenience. Like most things, nothing is truly black or white. In practice, the different types of arbitration models outlined above often overlap from one arbitral body to another and can straddle one or more of these terms.

Ad hoc arbitration

An arbitration is ad hoc if, for example, a contract simply states, 'Disputes arising out of this contract are to be resolved by arbitration in Singapore.' The parties in this situation have agreed to arbitration in Singapore, and nothing more. In such a case, disputants would look to the law of the seat[1] of the arbitration (in the example here, Singapore) to, among other things, support the appointment of the tribunal to conduct the ad hoc arbitration.

In Singapore, where there is a strong pro-arbitration regime, the appointing authority for ad hoc arbitration is the president of the Court of Arbitration of the Singapore International Arbitration Centre.[2]

In some other jurisdictions, the appointment of the tribunal according to the law of the seat might be a national or domestic court of that jurisdiction.[3] If you wish to choose a particular jurisdiction that is not commonly known for arbitration, you should take extra care to investigate if there are indeed some basic laws that support the arbitral process in that jurisdiction.

An easier approach to preserving the integrity of your arbitral process would simply be to pick a pro-arbitration jurisdiction. In other words, the safest bet would be to choose a popular arbitral seat in your region. A pro-arbitration jurisdiction generally means that the arbitration process is respected by the courts of that jurisdiction. Limited judicial interference will translate to a more reliable and certain arbitral process. On the flipside, if an arbitration is poorly run, the courts of a pro-arbitration jurisdiction would be expected to step in so that there is appropriate recourse for disputants.

With no involvement of any arbitral body in an ad hoc arbitration, overall financial costs could potentially be lower. Apart from costs paid to your representatives in arbitration, you would expect to incur (i) costs of the appointing authority of the seat for the appointment of the tribunal where applicable and (ii) fees and expenses of the tribunal.[4] As the fees and expenses of the tribunal are entirely dependent on negotiations between the parties and the tribunal,[5] this is one uncertainty that should be kept in mind.

When constituted, the tribunal in consultation with the parties may or may not decide to adopt arbitration rules to govern proceedings. An arbitration might start off ad hoc but may eventually adopt arbitration rules and continue as a self-administered or even in some cases as an administered arbitration. However, where no arbitration rules are agreed, a cynical description of such a situation would be to say that the parties are left, with the tribunal, to their own devices. While the arbitration can carry on flexibly and smoothly, the isolated nature of ad hoc proceedings carries with it a higher degree of risk and uncertainty in terms of quality and speed. This approach does not generally bode well for commercial businesses where a reasonable amount of predictability in outcome is important.

Unless contracting parties have a special relationship, understanding or expertise in the way they have agreed to resolve a dispute by ad hoc arbitration, it is probably not advisable. What might be an initial perceived financial savings can end up costing disputants much more – especially if the dispute is not as straightforward as first thought.

Given the perils of ad hoc arbitration, it is commonplace for disputants to agree on rules of arbitration whether contractually or post-contractually. To overcome the problems of ad hoc arbitration, the UNCITRAL Arbitration Rules were put together by UNCITRAL's member states in 1976 and updated in 2010.[6] These Rules provide a detailed framework for the arbitration process. However, they do not provide for any permanent arbitral body to assist with the administration of the arbitration.

Interestingly, many arbitral bodies offer to administer arbitrations under the UNCITRAL Arbitration Rules in addition to their own rules. This highlights that there is indeed value in choosing an arbitral body that provides some form of administrative assistance, and that the adoption of arbitration rules on their own may not be enough.

Why agree to arbitration rules?

Arbitration rules provide a detailed framework for the determination of the dispute. This can include the sorts of materials that need to be filed, the scope of powers the tribunal may have and, importantly, procedural timelines. Arbitration rules not only provide the parties with certainty as to how the arbitration should and will be run, they also greatly assist the tribunal in its conduct of the arbitration. Carefully thought-out rules also mean that processes are in place to ensure that the integrity of the proceedings and any award that is issued by the tribunal has less risk of coming undone – whether by setting aside proceedings in a court of the seat where the award was made,[7] or by resisting enforcement in a court of a jurisdiction where the award is sought to be enforced.[8]

Agreeing to a set of arbitration rules or specifying an arbitral body in the dispute resolution clause of a contract takes away the element of uncertainty that comes with ad hoc arbitration. To illustrate, we could provide the following in a contract: 'Disputes arising out of this contract are to be resolved by arbitration in Singapore in accordance with the SCMA Rules in force at the time of commencement of the arbitration.'[9] Depending on the set of rules or arbitral body that is specified, one could end up having an administered or self-administered arbitration. This is entirely contingent on the nature of the arbitral body or rules selected.

Self-administered arbitration versus administered arbitration

Arbitral bodies that do administer arbitration are usually referred to as arbitration institutions and typically have two main features. First, an arbitration is generally only allowed to commence through the lodging of a dispute with the institution in question. Second, the institution usually would have oversight over the costs and expenses of the arbitration. Many institutions even determine and fix the final costs of the tribunal. A third feature that varies between institutions is the scrutiny or review of awards. Some institutions provide this service mandatorily, but some do not.

In other words, an arbitration or various aspects of it would be considered 'administered' if the arbitration rules necessarily require the institution's involvement, failing which the arbitration cannot progress.

A self-administered arbitration on the other hand generally allows disputants to carry on with their arbitration without the assistance of the arbitral body unless the parties so request. In this regard, various arbitral bodies (and entities such as UNCITRAL) do make available extensive rules and procedures for disputants to adopt in their arbitration. In such situations, these entities, be it associations, arbitral institutions or otherwise, might simply provide a set of arbitration rules without any, or with very basic, services (again, think UNCITRAL Arbitration Rules). In practice, even arbitral bodies that do provide self-administered arbitration frequently administer at least one fundamental arbitral service – the appointment of the tribunal. It may also be the case that the entity providing the arbitration rules is not staffed with persons to assist with the administration of any part or the entirety of the arbitration. Arbitral bodies that allow for self-administered arbitration can take many different forms.

The important question is – how involved should an arbitral body be in your dispute? Unfortunately, there is no straightforward answer to this. It is impossible to determine with certainty what sort of dispute will arise, if one does arise. A dispute happens when it happens, and the arbitration procedure will need to accommodate the situation accordingly. Flexibility in the arbitration model chosen, therefore, can be especially crucial.

Services provided by arbitral bodies

The extent of services provided by self-administered and administered bodies is an area where things start to blur. Arbitral bodies may be involved in an arbitration in numerous ways, and this is where quality, speed and cost come to the fore. An outline of some of the services that may be provided are as follows.

Structural framework

- The provision, updating and interpretation of arbitration rules
- The curation of an accredited panel of arbitrators
- Provision of a secretariat to implement arbitration rules and assist with aspects of arbitration

Preliminary issues

- Serving as a gateway to the proper commencement of arbitration
- Flagging or settling preliminary procedural issues
- Deciding whether specialised arbitration rules should apply
- Determining the seat of the arbitration (in some instances)
- Deciding on consolidation of arbitrations where, for example, disputes may be closely connected through a series of contracts
- Deciding on joinder of additional parties to an arbitration where, for example, multiple parties might be involved in a common dispute through separate or a chain of contracts
- Constituting an emergency arbitrator empowered to issue interim or conservatory relief

Constitution of tribunal

- Conducting conflict checks with potential arbitrators prior to appointment
- Facilitating a list procedure of appointment based on parties' nominations
- Appointing arbitrators including assessing an arbitrator's expertise and suitability for the dispute in question
- Conducting background checks on qualifications of arbitrators based on parties' criteria
- Deciding challenges to arbitrators' appointments

Conduct of arbitration

- Conveying communications between the parties and the tribunal
- Managing a tribunal's timelines up to the award
- Providing a tribunal secretary to assist the tribunal with drafting and managing proceedings
- Recommending or appointing an expert
- In some cases, the arbitral body may even conduct the arbitration as the tribunal

Managing finances

- Fixing quantum of deposits and dealing with the parties directly on paying such deposits
- Holding deposits for administrative fees or the costs and expenses of the arbitration (or both)
- Releasing interim payments to the tribunal
- Holding monies as security for a claim
- Negotiating an arbitrator's rates on behalf of parties or otherwise implementing a predetermined fee scale
- Determining and fixing fees and expenses of arbitrators
- Fixing or placing a cap on recoverable legal fees and expenses of a parties' representatives against an opposing party

Award and termination of proceedings

- Scrutiny, review and proofreading of a draft award before its issuance
- Ensuring a dispute is properly concluded to ensure all outstanding issues are addressed
- Holding an award or termination order pending payment of fees by disputants
- Authentication of awards for enforcement proceedings or for other court-related proceedings

Other services

- Providing hearing room or virtual hearing facilities
- Offering or procuring real-time transcription services
- Providing an electronic repository system for filing and viewing of arbitration documents

The more services provided by an arbitral body, the more involved the body becomes in the conduct of the arbitration. All this can come at significant cost. Depending on the industry and nature of your business, some of these services might be integral to the conduct of the arbitration, while others might simply be extra costs with minimal added benefit.

That said, in theory, arbitral bodies that are involved in an arbitration whether peripherally or directly should increase the chances of an enforceable award. The quality of the arbitration process might also be smoother but, again, this can vary depending on the machinery of the arbitral body in question.

Arbitral bodies straddle administered, self-administered and ad hoc models of arbitration. For some, the key to a successful arbitral regime is a balance between all these models. Ultimately, it boils down to your business's assessment of quality, speed and affordability of an arbitral body and its rules. In this context, the nature of the maritime and trade industries is explored in relation to why a flexible approach to arbitration may be preferred.

The maritime and trade spaces

Roughly 90 per cent of the world's goods are transported by sea.[10] It is no wonder that maritime and trade disputes take up a substantive part of the international commercial arbitration scene. The globalised nature of maritime and trade has meant that arbitration has been the preferred choice for dispute resolution for many,[11] and this has been the case for decades.

The risk of being involved in a dispute is heightened in the maritime and trade spaces due to the high volume of transactions that take place, as well as the number of parties that can be involved directly or indirectly in a single commercial transaction. It is a fast-paced arena where deals are made and contracts are signed every day. On top of this, many maritime contracts involve huge upfront outlay and continuous expenditure, but with tight profit margins. For many businesses in maritime and trade that have a high operating leverage, liquidity is especially important. A dispute between two parties often means a major disruption not only to their businesses, but many other interconnected businesses. In high-risk environments like these, it is all the more crucial that the arbitration model that is chosen serves the acutely commercial nature of the industry in a cost-effective manner. Part of resolving a dispute quickly and cheaply also means that it is important to secure specialist arbitrators who understand the commercial businesses.

Much of the world's trade comes through the port of Singapore, which has been recognised as the world's busiest transhipment hub.[12] Singapore is in fact connected to 600 ports in

over 120 countries. On top of this, Singapore is one of the top bunkering ports in the world.[13] To cater to the transactions that occur in this hotspot of world trade, the SCMA is one arbitral body that aims to strike the right balance by presenting a flexible solution that blends the best aspects of administered, self-administered and ad hoc arbitration.

The SCMA arbitration model

The SCMA offers a principally self-administered arbitration model but with one very important feature – a dedicated full-time Secretariat that provides disputants and tribunals with on-demand services. The SCMA has also been described by some as a hybrid model.[14] This cost-effective approach streamlines the benefits of an impartial, neutral and independent institution as well as the flexibility of the ad hoc or self-administered models. Users only need to pay or ask for assistance when they need or want to. In remaining flexible, the SCMA Secretariat constantly consults and attends closely to its maritime and trade users and focuses its resources on what disputants demand in real time.

After all, one of the cornerstones of arbitration is the concept of party autonomy. In most cases, arbitration is a creature of contract that embodies the parties' agreement to resolve a dispute consensually through a fair and reliable process. To this end, the right balance for the conduct of the arbitration should not be too rigid, and neither should it be a free-for-all. The SCMA model embodies these ideas.

A truly flexible approach

Users are provided with all the tools required to self-administer their arbitration using the SCMA Rules. Given that there is no extra cost in keeping the Secretariat in the loop, many disputants choose to keep the SCMA copied in all correspondence in proceedings and request the Secretariat to assist when necessary.

Some disputants also prefer that the SCMA administer various aspects of their proceedings depending on their requirements and the nature of the dispute. In fact, the Secretariat frequently receives a myriad of on-demand service requests on varied aspects of the arbitration process.

Resources permitting, the Secretariat will consider administering any of the services generally provided by arbitral bodies as set out earlier in this article. However, the SCMA will only act in providing a tailored solution if it can ensure a value-added benefit for disputants. On occasion, the registrar and assistant registrar of the SCMA have even completely administered straightforward bunkering disputes as the tribunal.[15] Any service provided by the SCMA is only undertaken if the SCMA can ensure that the dispute is handled with quality and can be resolved quickly, at low cost.

Ensuring a quality arbitration process and award

Arbitral bodies achieve quality outcomes in various ways. Many offer scrutiny and review of awards but this comes at a greater cost and is also perceived by some industry users as unnecessary. The SCMA does not mandate the review of awards unless requested by the parties or the tribunal. Nevertheless, the SCMA is well acquainted with the quality of awards in SCMA arbitrations because it is a requirement under the SCMA Rules that awards are submitted to the Secretariat after being made.[16] Thereafter, the Secretariat regularly reviews, summarises and publishes redacted awards for the maritime and trade industries. This fosters knowledge sharing and awareness of maritime, trade and arbitration law.

Like many other arbitral bodies, the SCMA puts in place various mechanisms to achieve a quality arbitration.

First, the SCMA curates a specialist panel of arbitrators with technical, industry and legal experience. These arbitrators are experts in different types of maritime and trade disputes. The panel is diverse, with arbitrators from various jurisdictions that take important cultural business nuances into consideration. Given the flexible nature of the SCMA model, disputants are still free to appoint arbitrators from outside the panel.

Second, if the disputants require the SCMA to appoint an arbitrator, the SCMA's chairperson consults with members of the SCMA Appointments Committee and the Secretariat to ensure that the right arbitrator and skill set is matched to the dispute in question. This is one of the most important parts of the arbitral process, which dramatically improves the quality of the arbitration.[17]

Third, the SCMA maintains a tried and tested set of robust arbitration rules, and periodically updates them based on industry and user feedback. The SCMA conducted an extensive public consultation on the third edition of its rules in the second half of 2020. The SCMA has adopted much of its users' feedback and is implementing these changes in what will be the fourth edition of the SCMA Rules. The Rules ensure that disputants and the tribunal are aware of what is to be expected in the process, for example, how expert witnesses might be appointed[18] and how a hearing should be conducted.[19] The Secretariat may, when appropriate, also suggest the use of specialised arbitration rules. For example, the SCMA offers specialised procedures for expedited claims (the SCMA small claims procedure),[20] bunkering disputes (Singapore bunker claims procedure or 'SBC terms')[21] and collision matters (SCMA-expedited arbitral determination of collision claims terms).[22] These procedures are unique to the arbitration landscape and were developed and tailored to user requirements from various parts of the maritime industry.

Fourth, where applicable, the Secretariat flags basic procedural arbitral matters at the outset of the arbitration to ensure that problems do not arise later. Unless there are genuine procedural objections, the focus of any dispute should be on the determination of its merits.

Fifth, the availability of the SCMA as an institution also provides for greater certainty for enforcement of awards.[23] When a party requests for an award to be authenticated, the SCMA verifies the award with the tribunal and flags obvious issues that can then be ironed out by the tribunal.

Apart from the above, there are many other ways where an arbitral body can work with disputants to maintain a quality process. Tribunals and disputants regularly contact the SCMA requesting advice on many other aspects of arbitration, including interpretation of arbitration rules and even technical matters, such as how to conduct virtual hearings. In ensuring the quality of the arbitral process, the benefits of a full-time secretariat cannot be understated.

Speed and efficiency in resolving a dispute

The time taken to resolve a dispute by arbitration varies greatly from one arbitral body to another, and from each arbitration reference to another. Arbitral bodies are markedly aware of this and try to mitigate delay through various methods, including predetermined timelines in their rules. In some instances, institutions take a more hands-on approach and set deadlines as an arbitration progresses.

Unfortunately, the extensive and rigid machinery of some administered arbitrations can, ironically, slow down the arbitration process. For example, the scrutiny of awards is a double-edged sword that may in some instances sacrifice efficiency for quality. If

specialist arbitrators are appropriately appointed, then the scrutiny of an award with a fine-tooth comb might be of little added value and instead cause unnecessary delay.

The SCMA Rules contain built-in timelines that provide for efficient and swift conduct of the arbitration. For example, the parties need not wait for the tribunal to issue its first procedural directions before deciding when to file case statements – these are already predetermined.[24] There is also a deadline for the tribunal to draft its award,[25] as is the case in a number of other arbitral rules.

One unique offering in the SCMA is the SBC terms.[26] These terms are one of the swiftest arbitration procedures in the market. A bunkering dispute can be resolved by a reasoned award in fewer than 30 days from the commencement of arbitration. Also available and often used is the expedited track for proceedings that come under the small claims procedure. Both these offerings significantly reduce the arbitration timelines.

Where the SCMA is involved in the arbitral process, it has demonstrated a high degree of efficiency and responsiveness. Ninety per cent of all SCMA arbitrator appointments are made within two business days of the date of receipt of appointment service fees. The SCMA also provides a same-day response turnaround for most queries from disputants, tribunals and other interested users of SCMA arbitration.

The bottom line

The flexibility in being able to choose only the services one requires translates to a lighter bill. The biggest trade-off in a rigid administered approach to arbitration is costs. This does not come only in the form of administrative fees for various services that are mandatorily provided whether necessary or otherwise. Many administered arbitrations also require disputants to fork out huge sums of deposits at the commencement of the arbitration. Where a respondent in arbitration refuses to pay an upfront deposit, an institution may require that the claimant pay all of the respondent's share of the deposit to progress the arbitration. This can place a heavy financial burden on smaller businesses and impede the resolution of their disputes.

Being closely connected with maritime and trade users, the SCMA is on the same wavelength when it comes to commercial pressures and the realities of these disputes, which often result in a settlement. The SCMA does not charge any administrative fees for the bulk of its disputes. An arbitration can commence completely free of charge at the outset. The SCMA also does not require predetermined amounts of deposits before an arbitration can commence or for it to progress.

The flexible nature of the SCMA model also allows the parties to negotiate with arbitrators (whether directly or through the SCMA) on their fees, as well as the necessity of and the amount in deposits. To this end, disputants frequently use the SCMA's fund holding services, which are affordably priced when compared to many other arbitral bodies. This helps to, in part, take away the cumbersome administrative nature of finances so that the tribunal and parties can focus on the merits of the dispute.

Cost sensitivities are particularly important in cases where the quantum in dispute is not large. In this respect, the SCMA small claims procedure not only caps the fees of the tribunal, but also the recoverable legal costs against the parties' in relation to each other.[27] This resolves the entire dispute in a commercially predetermined pocket-friendly manner.

Apart from nominal fees for the appointment of arbitrators, holding deposits and authentication of awards, the SCMA generally does not charge for supporting other aspects of the arbitration. In cases where the registrar and assistant registrar do hear disputes as the tribunal, such fees are nominal. All of this is made possible by the support of the maritime and trade industries and the SCMA's wide membership base.

Conclusion

The type of arbitration you should choose for your business in the event of a dispute is just as much a commercial decision as a legal one. Disputants should be aware of their options and choose the most suitable arbitral body and rules for their type of dispute based on an assessment of how their business needs are met without compromise on quality, speed and cost. If an arbitral body falls short on any of these factors, disputants will certainly take their business elsewhere.

Disputes that arise in certain industries, such as maritime and trade, tend to involve specialist areas of industry knowledge and law, as well as unique business-centric considerations. Instead of paying for unnecessary mandatory services that may come prepackaged with some arbitral bodies, or having limited or no administrative support at all, some arbitration models let disputants have it both ways. This translates into maximum flexibility over the arbitration process while ensuring peace of mind that administrative assistance is always available at one's disposal.

The SCMA's unique blended offerings tailored to the maritime and trade industries present a balance between an unnecessarily and overly intrusive arbitral process while ensuring a quality outcome. Flexible arbitration models such as this aim to keep costs low while safeguarding the speedy resolution of a dispute so that businesses can move on quickly and get their next deal done.

Notes

1 Similar to a situation where contracts are governed by the laws of a specified jurisdiction, an international commercial arbitration requires a jurisdiction that supports the arbitration process. The former is known as the 'governing law' of the contract, while the latter is known as the 'seat' of the arbitration.

2 Section 8(2), International Arbitration Act (Singapore).

3 See for example, Section 11, The Arbitration and Conciliation Act, 1996 (India); Section 11, Commercial Arbitration Act 2011 (Victoria, Australia); Article 17, Arbitration Act (Japan).

4 In situations where the appointing authority of the seat is a domestic court, you may have to engage lawyers in that jurisdiction to make the application to such court. The upshot of this is that more costs might be incurred.

5 This is usually negotiated on an hourly rate that differs from arbitrator to arbitrator.

6 UNCITRAL General Assembly resolution 31/98 (1976); UNCITRAL General Assembly resolution 65/22 (2010).

7 For court proceedings to set aside an award in Singapore, see section 24, International Arbitration Act (Singapore) read with article 34(2) of the Model Law as found in the First Schedule of the said Act.

8 For foreign-seated awards sought to be enforced in Singapore, see section 31, International Arbitration Act (Singapore).

9 It is advisable to refer to the model clause that is provided by the arbitral body in question. For the SCMA, please see: https://scma.org.sg/model-clauses.

10 Maritime Singapore, What you may not know about Maritime Singapore (accessed on 26 March 2021) http://www.maritimesingapore.sg/about-maritime-singapore/.

11 Queen Mary University of London and White & Case LLP, 2018 International Arbitration Survey: The Evolution of International Arbitration, page 5.

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Damien Glenn Yeo
Singapore Chamber of Maritime Arbitration

Damien Glenn Yeo is the assistant registrar and legal manager of the Singapore Chamber of Maritime Arbitration. He oversees all legal and arbitration aspects of the Chamber. He has acted as arbitrator and was previously tribunal secretary to numerous international arbitral tribunals, with involvement in over 40 arbitrations with cumulative claims exceeding US$2.5 billion. His experience includes contracts in oil and gas, renewable energy, engineering and construction, maritime, hospitality and gaming, pharmacy, and international sale of goods. Damien is admitted as an advocate and solicitor of the Supreme Court of Singapore. He holds an LLB (Hons) from Monash University.

28 Maxwell Road #03-09
Maxwell Chambers Suites
Singapore 069120
Tel: +65 6324 0552

Damien Glenn Yeo
damien.yeo@scma.org.sg

www.scma.org.sg

The Singapore Chamber of Maritime Arbitration is a specialist arbitration institution that provides a neutral, cost-effective and flexible framework for maritime and trade arbitrations that is responsive to the needs of industry users. Its global and regional members hail from all sectors of maritime, trade and arbitration communities. The SCMA attracts disputants in the region by providing tailored solutions to suit the region's interests.

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