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What's in it for me?

SCMA 4th Edition Rules from a practical user's viewpoint

Article by Punit Oza, Executive Director of Singapore Chamber of Maritime Arbitration (SCMA)

This article looks at the commercial and practical aspects of the [4th Edition](#) of SCMA Rules, which will be effective from 1st January 2022. Multiple insights have been shared by law firms highlighting the legal aspects, but I will concentrate on the practical aspects for potential users.

The very first thing that grabs your attention as you look at the 4th edition of the SCMA Rules is the freshness of its layout and the clarity that it brings to the arbitration process. This has always been the key focus for the revision, and we are extremely thankful to the SCMA Procedure Committee, the SCMA Board members and everyone who contributed with feedback and suggestions in the public consultation and subsequent discussions.

Can you clarify the Rules please?

A few words about the purpose behind the SCMA Rules. The Rules underpin the self-administered model of arbitration which is followed by nearly all maritime arbitration centers be it London, Singapore, Hong Kong, or New York. The key pillar of this model is party autonomy and the degree of control they have over the arbitration process. Due to this, a robust set of Rules are essential. SCMA's 4th Edition Rules are the most user-friendly to date and are a do-it-yourself manual to the SCMA Arbitration Process, equipping the parties with all the tools, so that they can manage the arbitration in the most user-friendly and cost-effective manner.

This boilerplate looks new – it is!

The new SCMA model clauses appear right at the beginning. Please do take note of these clauses and update the “boilerplate” clauses in your contracts. The SCMA [website](#) has been updated with these new model clauses.

Everything in maritime is index linked!

Let us start with the index. The SCMA 3rd edition Rules simply listed all the rules numerically. However, the rules in the 4th edition are divided systematically and logically, into subsections dealing with various stages and aspects of the arbitration. This will help users and the parties immensely. An example would be a clear guidance on how to commence an SCMA arbitration including distinct items in a notice of arbitration (Rule 6). Another simple change made was adding tabs on the top right-hand corner of each page, advising you on which part of the Rules you are in. These may be simple changes but are extremely useful.

Let us start from the start!

Rule 3 clarifies the notice requirement in great detail. An interesting (though often not highlighted) rule is 4.2 which allows the party to be represented by any authorized representative (whether or not that person is a legal practitioner). We have seen a CEO argue a case in front of a tribunal, so it is possible.

Where are the 3 Wise Men (or Women)?

Rule 6 helpfully lists out all the items to include in a notice of arbitration, a copy of which shall be sent electronically to SCMA. This is an eco-friendly solution that will SCMA immensely in maintaining and updating arbitration statistics speedily. I must clarify here that not copying the notice to SCMA does not affect the validity of the notice and that is clear in the Rule.

The clear timeline of each stage of the SCMA Arbitration process is retained and that provides greater clarity and certainty to the Tribunal as well as the parties. With a clear timeline, you can map out the entire expected timeline of the case.

The default number of arbitrators remains unchanged at 3. There was considerable opinion that preferred to set it to 1, but perhaps, the time for that has not yet come. This is what may happen in real life – each party appoints an arbitrator but there is a delay in appointing the third arbitrator by the two arbitrators. What happens then? The SCMA Rules 4th Edition allow the two arbitrators to proceed with the conduct of the arbitration and a third arbitrator does not need to be appointed, unless there is a substantive hearing or lack of agreement between the two arbitrators and the two arbitrators, in

this case, also have the power to make decisions, orders and awards. This will help parties, for sure.

Another common challenge is a non-responsive respondent. Will your case get stuck due to this? Not at all. The Rule 8.8(b) ensures that there is no delay in appointment of the Tribunal due to a non-responsive respondent.

Clear emphasis is maintained on the independence and impartiality of the Tribunal and the SCMA Rules 4th Edition also clarify the procedures to challenge an arbitrator's appointment. The Secretariat as well as the Chairperson of SCMA can actively support the process, if requested.

When the road is smooth, it drives like a breeze!

Section III consolidates all the aspects of managing the case. The tribunal is empowered regarding case management meetings and the SCMA Rules 4th Edition provide clear guidance on what these case management meetings entail, and the timeline involved. The users will find it extremely helpful. The SCMA Rules 4th Edition incorporate the virtual meetings as well. Once again, what happens if the other party simply does not turn up? Will that drag the case even longer? Not at all. Rule 21.2 allows the Tribunal to proceed with the arbitration and make an award even if the respondent fails to submit his defence.

Clear Rules on Fact Witnesses and Experts underline the authority of the Tribunal, who, I again remind you, are mostly appointed by the parties themselves. Oral hearings are no longer mandatory (Rule 25.1) and Virtual Hearings are allowed (Rule 25.3). This is a welcome and much needed change which will make SCMA arbitrations more cost-effective and efficient.

The SCMA Rules 4th Edition resolves another key challenge for the users – the clarity as to when the case is closed. In practical terms, the other party, even though it may be responding occasionally to keep things going, may simply keep quiet to delay the inevitable. This has now been resolved by Rule 27.1 which stipulates that, unless the parties agree or the Tribunal otherwise directs, proceedings shall be deemed to be closed after a lapse of 3 months from the date of any final written submission or final hearing. This is a welcome change.

May the force be with you, Tribunal!

Section IV of SCMA Rules 4th Edition deals with powers of Tribunal and Arbitral Procedures. Rule 28.2 reaffirms that the Tribunal has the widest discretion and a new Rule 29 deals with Joinder and Related Arbitrations, which will again help parties save costs and time. The degree of party autonomy and the powers of tribunal extend even to agreeing to have physical hearings outside Singapore. SCMA truly caters for a global audience.

And the Award goes to.....

Two main aspects to highlight about the Award. Rule 34.1 stipulates a deadline for the Tribunal to make its final award – 3 months from the date of the closure of proceedings. This makes the Rule 27.1 extremely relevant. Also Rule 34.4 caters for electronic signature of the awards – something which will help parties tremendously. I recently heard of a case where 4 weeks elapsed by the time the three arbitrators could physically sign the award which travelled across three continents.

There are also provisions dealing with submission of awards, including consent awards, to the Secretariat as well as default permission to publish redacted awards. It is especially important for SCMA to compile anonymized data using the information in an award and publish redacted awards to raise awareness of the principles clarified in awards. This will help the industry eventually.

So, what is so unique about you, eh?

I have always believed that SCMA's unique offerings are its Small Claims Expedited Procedure, Singapore Bunker Claims Procedure Terms (SBC Terms) and SCMA Expedited Arbitral Determination of Collision Claims (SEADOCC Terms). While the latter two have been retained and work to improve them is happening in the background, the former is now rechristened as "Expedited Procedure" (Rule 44). The auto-application of this procedure is a real benefit to the parties as this takes you into a fast-track arbitration with no oral hearings, a sole arbitrator, quicker exchange of case statements (14 days instead of usual 30) and quicker issuance of awards (21 days instead of 3 months). To add to this, the arbitrator's fees and legally recoverable costs are capped. The threshold has been doubled from US\$ 150,000 to US\$ 300,000.

Now, you do not have to leave money on the table or agree to 50/50 split on a case due to the “high cost of arbitration”. Get a quick, cost-effective, and final resolution of your dispute and ensure that you get your due!

So, what is it going to cost me?

The SCMA Rules 3rd Edition had various fees and costs strewn all over them and the users struggled to get the “full picture.” The Secretariat has now taken all the fees and costs and placed them independently on SCMA’s Website and you can always find the [latest version](#) there. This will help the parties and users.

Over and above the fact that there are no filing or administrative fees charged by SCMA, we have kept our fees for all SCMA Secretariat services unchanged. This will ensure that we remain cost-effective and attractive to the users.

And finally....

Just a small note to mention that the updated and much more current and relevant questionnaire includes Mediation, leading into the SCMA Arbitration-Mediation-Arbitration Protocol. This is an extremely useful tool for the parties who can change their mind midway through the arbitration and pause it to mediate. If it works out, you can get a consent award and if not, you can simply restart the paused arbitration. A true win-win for the parties.

The final additions are the SCMA Standard Terms of Appointment for Arbitrators – a very useful tool for parties not familiar with appointing an arbitrator in past – which apply as a default and a [trio of practice notes](#) dealing with Reporting of Cases under Rules 6 and 7, Reasonableness of Security under Rule 41 and Fund Holding under Rule 42. These bring a greater degree of transparency and clarity for the parties and arbitrators as well.

The bottom line is that the SCMA Rules 4th Edition will help parties resolve their disputes in an easy, transparent, clear, and cost-effective manner. The parties will have much better understanding of the various stages of the arbitration process and as they learn from past experiences, which they will hopefully share with SCMA, we will also learn and improve to serve them better. We are all in this together. There cannot be better endorsement for the New Rules than greater adoption, use and feedback on them.

About the Author

Mr. Punit Oza is currently the Executive Director of Singapore Chamber of Maritime Arbitration (SCMA) and has worked in commercial shipping for last 27 years. Punit holds a Masters in Shipping, Trade and Finance from CASS Business School (now BAYES Business School) and an LLB from University of London. He is a fellow of the Institute of Chartered Shipbrokers (ICS), UK and is currently the Vice Chairman of the Singapore Branch.