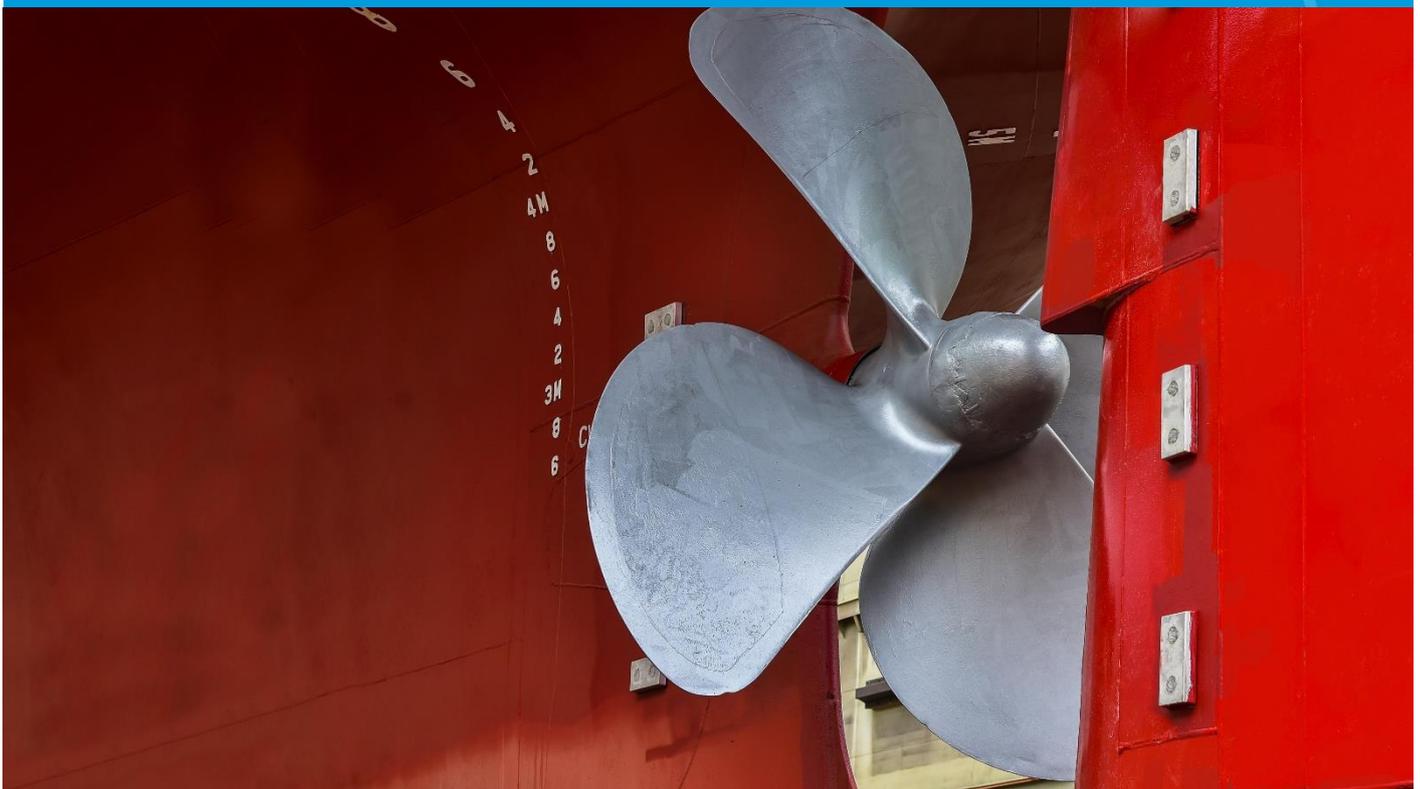


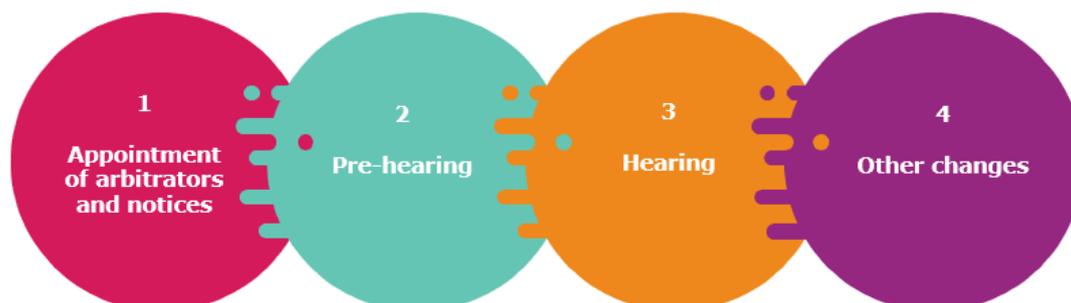
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The fourth time is the charm: The implications for maritime and international trade arbitrations in Singapore under the Fourth Edition of the SCMA Rules



The Singapore Chamber of Maritime Arbitration (the "**SCMA**") has, in its commitment to provide a "neutral, cost-effective and flexible framework for maritime and international trade arbitrations", released the Fourth Edition of the SCMA Rules (the "**Fourth Edition**") in December 2021. The Fourth Edition will be applicable to all arbitrations commencing on or after 1 January 2022 (unless agreed otherwise).

This article considers the changes brought about by the Fourth Edition in comparison to the Third Edition of the SCMA Rules, which was introduced in October 2015 (the "**Third Edition**"). With reference to both the Third Edition and the Fourth Edition (collectively, the "**Rules**"), this article addresses the following changes:



1. Appointment of arbitrators and notices:

- (a) Appointment of the Tribunal and the power of two arbitrators to make awards (currently Rule 8; formerly Rule 6)
- (b) Introduction of the Standard Terms of Appointment for the appointment of arbitrators (newly introduced in the Fourth Edition)
- (c) Notices and introduction of "designated electronic mailing address" (Rule 3 of both Rules)

2. Pre-hearing:

- (d) Notice of Arbitration and new requirements (Rule 6; formerly Rule 4)
- (e) Response to the Notice of Arbitration and new requirements (Rule 7; formerly Rule 5)
- (f) Restrictions concerning change of Party Representatives during arbitration (Rule 4; formerly Rule 27)
- (g) Case Management Meetings (newly introduced in Rule 17 of the Fourth Edition)

3. Hearing:

- (h) Hearings (Rule 25; formerly Rule 28)
- (i) Default closure of proceedings (Rule 27; formerly Rule 32)

4. Other changes:

- (j) Expedited Procedure (Rule 44; formerly Rule 46)

We elaborate further below.

1. Appointment of arbitrators and notices:

(a) Appointment of the Tribunal and the power of two arbitrators to make awards (currently Rule 8; formerly Rule 6)

The default number of arbitrators to be appointed remains as three (Rule 8.2 of the Fourth Edition). However, the strictness of Rule 6.4 of the Third Edition, which required the two arbitrators (appointed by parties) to appoint a third arbitrator within 14 days of their appointment, is now reduced, having been replaced by Rule 8.4(c) of the Fourth Edition.

Under the Fourth Edition, the date of appointment of the third arbitrator may be pushed down the schedule to right before any substantive hearing, or where the two arbitrators are unable to agree on a matter relating to the arbitration.

Furthermore, should a third arbitrator not be appointed, or should that position become vacant, two arbitrators will also have the power to make decisions, orders, and awards on any matter (Rule 33.2 of the Fourth Edition).

(b) Introduction of the Standard Terms of Appointment for the appointment of arbitrators (newly introduced in the Fourth Edition)

The newly introduced Standard Terms of Appointment touches on matters such as cancellation costs and security for arbitrator fees, lending more transparency to the SCMA arbitration process in Singapore.

Under Rule 40.2 of the Fourth Edition, parties are deemed to have agreed to the Standard Terms of Appointment, unless the arbitrator and parties agree otherwise.

(c) Notices and introduction of "designated electronic mailing address" (Rule 3 of both Rules)

While the Third Edition had recognised "electronic transmission" as a form of "written communication" (Rule 3.1 of the Third Edition), the Fourth Edition goes further to expressly state that any notice or communication would be effectively served if it is delivered with proof of delivery or proof of receipt to the addressee's "designated electronic mailing address" (Rule 3.1(c) of the Fourth Edition).



An electronic mailing address would be "designated" if:

- (i) Parties have agreed in writing that correspondence between them is to be sent to such electronic mailing address; or
- (ii) If such electronic mailing address has been used habitually and effectively between parties in the course of business relating to the dispute in which the arbitration is commenced.

Such transmissions will be deemed to have been received on the date as indicated on the proof of delivery or proof of receipt (Rule 3.2 of the Fourth Edition). This provides more certainty to the arbitration process in Singapore as the Fourth Edition is arguably more restrictive in interpretation than the Third Edition, which provided that the transmission would be deemed to have been received "on the day of transmission".

Given the new rules in the Fourth Edition, it would be useful to always request for a 'delivery' receipt or a 'read' receipt when dealing with communications related to an arbitration.



2. Pre-hearing:

(d) Notice of Arbitration and new requirements (Rule 6; formerly Rule 4)

A Notice of Arbitration under the Fourth Edition would require the following (Rule 6.1 of the Fourth Edition):

- (i) A request that the dispute be referred to arbitration;
- (ii) The identity of the parties, including the identity of their representatives (if any), to the dispute;
- (iii) A reference to the arbitration clause or any separate arbitration agreement that is invoked,

or alternatively, a copy of such clause or agreement;

- (iv) A reference to the contract out of, or in relation to, which the dispute arises, including any choice of law clause, or alternatively, a copy of such contract;
- (v) Where a sole arbitrator is to be appointed, the name and contact details of the nominated arbitrator;
- (vi) Where three arbitrators are to be appointed, the name and contact details of the Claimant's party-appointed arbitrator;
- (vii) A brief statement describing the nature of the claim and where possible, an indication of the amount of the claim; and
- (viii) A statement as to whether the Expedited Procedure in Rule 44 is intended to apply.

Under Rule 6.1 of the Fourth Edition, several new requirements have been introduced, further than what had been previously required under Rule 4 of the Third Edition. For example, the requirement of (i) a reference to the choice of law clause; (ii) the contact details of nominated arbitrators; and (iii) a statement as to whether the Expedited Procedure is intended to apply.

The Claimant would also need to send a copy of the Notice of Arbitration to the Secretariat at secretariat@scma.org.sg or as otherwise directed by the Registrar as set out in any Practice Note (Rule 6.2 of the Fourth Edition).

(e) Response to the Notice of Arbitration and new requirements (Rule 7; formerly Rule 5)

Some of the requirements under Rule 7.1 of the Fourth Edition which go beyond that required under Rule 5 of the Third Edition are set out in summary below:

- (i) Comments in response to "all" proposals or statements as contained in the Notice of Arbitration are required, as opposed to "any" proposals under the Third Edition;
- (ii) Comments on whether the Expedited Procedure is intended to apply is required;
- (iii) The name and contact details of any nominated arbitrator, as opposed to just the names of any such arbitrator under the Third Edition; and

- (iv) The response now requires, rather than suggests, that a brief statement describing the Respondent's defence and counterclaim (as well as indication of counterclaim quantum) be included.

Similar to the procedure relating to the Notice of Arbitration, the Respondent would need to send a copy of the Response to the Notice of Arbitration to the Secretariat electronically (Rule 7.2 of the Fourth Edition).

(f) Restrictions concerning change of Party Representatives during arbitration (Rule 4; formerly Rule 27)

While parties generally retain a large discretion in the initial appointment of their representatives in the arbitration under the Rules, in order to prevent an abuse of process by the late change of representatives in the arbitration, any changes by a party to its authorised representative is subject to more limitations under the Fourth Edition.

Under Rule 4.4 of the Fourth Edition, any change to representatives is now subject to the approval of the Tribunal. Such approval may be withheld if there is a "substantial risk that such change might prejudice the conduct of the proceedings or the enforceability of any Award".

(g) Case Management Meetings (newly introduced in Rule 17 of the Fourth Edition)

The newly introduced Rule 17 of the Fourth Edition provides guidance on the conduct of Case Management Meetings.

The purpose of such a meeting is varied and may include:

- (i) Enabling parties and the Tribunal to set out the procedure of the arbitration;
- (ii) Reviewing the progress of the arbitration;
- (iii) Reaching an agreement in preparation for the conduct of the hearing; and
- (iv) Where an agreement cannot be reached by parties on any matter, the Tribunal is able to give directions as it deems fit.

Such a meeting may be held "in person, by telephone, by video-conference" or in any other manner by which the Tribunal deems appropriate (Rule 17.2 of the Fourth Edition).



3. Hearing:

(h) Hearings (Rule 25; formerly Rule 28)

The position under the Third Edition was that parties should hold a hearing unless parties agreed on a documents-only arbitration or that no hearing should be held (Rule 28.1 of the Third Edition).

There has now been a shift under the Fourth Edition such that the Tribunal shall itself decide if the matter is to proceed by way of hearing or documents only, i.e., without the need for parties to agree on this point (Rule 25.1 of the Fourth Edition). Nevertheless, should any party request for a hearing, such a hearing should still be held (Rule 25.2 of the Fourth Edition).

As with Case Management Meetings, a hearing may likewise be held in person, remotely, or in any other manner deemed appropriate by the Tribunal (Rule 25.3 of the Fourth Edition).

(i) Default closure of proceedings (Rule 27; formerly Rule 32)

The point at which proceedings were deemed closed was previously left relatively open, with no suggested periods and merely that the Tribunal was to "declare the proceedings closed" (Rule 32.1 of the Third Edition). The Fourth Edition now provides that, save for directions from the Tribunal to the contrary, proceedings should be deemed closed after the lapse of 3 months from the date of any final written submission or final hearing (Rule 27.1 of the Fourth Edition).

That the Tribunal shall make its award within 3 months from the date on which proceedings are closed remains unchanged (Rule 34.1 of the Fourth Edition, formerly Rule 36.1 of the Third Edition).

All of the above assists to provide more concrete timelines to the post-hearing arbitration process, by providing parties with greater certainty on the

length of the arbitral process, and further enhancing the smooth running of SCMA arbitrations.

4. Other changes:

(j) Expedited Procedure (Rule 44; formerly Rule 46)

The Small Claims Procedure under the Third Edition has been replaced by the new Expedited Procedure under the Fourth Edition, which has an increased threshold dispute value from US\$150,000 to US\$300,000 (exclusive of interest and costs). Where parties agree, the procedure may also be applied to matters above US\$300,000.

Pursuant to the new Rule 44.7 of the Fourth Edition, arbitrations governed by the Expedited Procedure will be resolved by a sole arbitrator who will issue their award within 21 days of receipt of the parties' statements of case, or from the conclusion of the oral hearing where one has been fixed, with the time for service of statements of case being reduced to 14 days instead of 30 days (Rule 44.2 read with Rule 18 of the Fourth Edition).

Rule 44 of the Fourth Edition also encourages summary determination, with the Tribunal empowered to proceed without an oral hearing and to limit the disclosure process to the areas that they deem fit (Rule 44.5 of the Fourth Edition).

Conclusion

The changes outlined above show clear steps to further streamline and modernise the arbitration process under SCMA Rules, strengthening the efficiency, fairness, and certainty of future arbitrations.

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