

International Arbitration | Shipping

## Streamlining of Maritime Arbitration Proceedings under Fourth Edition of SCMA Rules

### Introduction

The Singapore Chamber of Maritime Arbitration ("**SCMA**") is a specialist arbitration institution that aims to promote maritime arbitration in Singapore. Since its formation, it has established a solid presence in the region, with the quantum of claims handled reaching approximately US\$120 million in 2019.

Amidst a constantly evolving maritime arbitration landscape, SCMA continues to keep itself current by updating its rules with the launch of the [Fourth Edition of the SCMA Rules](#) on 1 December 2021. The Fourth Edition seeks to reflect current shipping arbitration practices, reduce costs, and streamline arbitral proceedings.

Below, we look at the following key changes:

1. Streamlining arbitral proceedings by:
  - a. Permitting two arbitrators to see an arbitration and an award to their conclusion;
  - b. Removing the mandatory requirement for oral hearings;
  - c. Implementing a default time limit for the close of proceedings;
  - d. Requiring the Tribunal's approval for change of counsel;
2. Adoption of electronic methods, namely:
  - a. Electronic service of documents;
  - b. Electronic signing of awards;
  - c. Virtual case management meetings and hearings;
3. Other amendments, namely:
  - a. Increasing the monetary threshold for the Expedited Procedure; and
  - b. Application of the SCMA Standard Terms of Appointment by default.

The Fourth Edition will apply to all arbitrations commencing on and after **1 January 2022**.



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## (1) Streamlining of Proceedings

### Allowing two arbitrators to constitute the Tribunal

Where parties have agreed that three arbitrators are to be appointed, the default procedure is for each party to appoint one arbitrator. The two arbitrators will then jointly appoint the third arbitrator.

Reflecting current shipping arbitration practice, the new amendments address the period prior to the appointment of the third arbitrator in two ways:

1. During this period, the two arbitrators will be able to constitute the Tribunal. The third arbitrator must be appointed only: (a) before any substantive hearing; or (b) without delay if the two arbitrators cannot agree on any matter (Rule 8.4(c)). This enables the arbitration to continue prior to the third arbitrator's appointment, as long as the first two arbitrators can agree on all matters.
2. During this period, or if the third arbitrator's position becomes vacant, the two arbitrators may make decisions, orders, and awards if they agree on any matter (Rule 33.2). Coupled with Rule 8.4(c) above, this means that for a documents-only arbitration, a third arbitrator need not be appointed.

### Oral hearings no longer mandatory

Under the Third Edition of the SCMA Rules, an oral hearing was to be held unless the parties agreed otherwise.

Per the new Rule 25.1, the Tribunal shall decide if a hearing should be held or if the arbitration will be a documents-only arbitration. However, a hearing must be held if any party so requests.

### Default time limit for close of proceedings

The Fourth Edition implements a new default time limit for proceedings to be declared closed. Unless the parties agree or the Tribunal directs otherwise, proceedings will be deemed closed three months from the date of any final written submission or final hearing (Rule 27.1).

### Tribunal's approval required for change of counsel

The new Rule 4.4 requires that once the Tribunal is constituted, its approval is required for any change of a party's authorised representative. Such approval can only be withheld if there is a substantial risk that the change might prejudice the conduct of proceedings or enforceability of the award.

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This is to prevent any abuse of process where a party may deliberately change their counsel at a late stage to derail or delay proceedings.

### (2) Adoption of Electronic Methods

The COVID-19 pandemic has greatly accelerated the adoption of virtual hearings in light of global travel restrictions. Accordingly, the Fourth Edition adopts the following changes:

1. Electronic service of documents – Documents will be deemed as effectively served and received when sent to the addressee's designated electronic mailing address (Rule 3.1(c)).
2. Electronic signing of awards – Arbitral awards may be signed electronically and/or in counterparts (Rule 34.4).
3. Virtual hearings and conferences – Case management meetings and hearings may be conducted in person, by telephone, by video-conference, or in any other manner the Tribunal deems appropriate (Rules 17.3 and 25.3).

### (3) Other Amendments

#### Increase in monetary threshold for Expedited Procedure

Previously known as the Small Claims Procedure under the Third Edition, the Expedited Procedure allows for a quick and cost-effective resolution of a dispute by way of a sole arbitrator. Case statements must be served within 14 days instead of 30 days, and the arbitral award must be issued within 21 days if no oral hearing is required.

The Expedited Procedure will now apply to disputes where the aggregate amount of the claim and counterclaim in dispute is US\$300,000 and below (Rule 44). This is an increase from the previous threshold of US\$150,000.

It is worth noting that the Expedited Procedure can be applied to disputes which quantum exceeds the threshold, subject to the parties' agreement.

#### Default application of Standard Terms of Appointment

The SCMA Standard Terms of Appointment ("**Standard Terms**") sets out the terms on which arbitrators may be appointed. In brief, the Standard Terms cover matters such as independence and impartiality, fees and expenses, and exclusion of liability.

Under Rule 40.2, the Standard Terms will now apply to all arbitrations by default unless otherwise agreed. This helps to ensure greater certainty and transparency in the appointment of arbitrators.

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## Concluding Words

Overall, the Fourth Edition is a welcome update to the SCMA Rules that streamlines arbitral proceedings, adapts to the new normal by encouraging electronic service and virtual hearings and enables a quicker resolution of disputes. Additionally, it improves the cost efficiency of SCMA arbitrations through changes such as allowing for arbitration to proceed with two arbitrators and removing the requirement for oral hearings. The Fourth Edition was preceded by a public consultation held from June 2020 to August 2020, reflecting SCMA's practical approach towards keeping abreast of current practices.

Leong Kah Wah, Rajah & Tann Singapore's Head of Dispute Resolution, is a member of SCMA's Board of Directors and provided guidance on the formulation of the Rules. Please feel free to contact our team below, who are well-placed to assist on any query you may have.

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