



# EFFECTIVE RESOLUTION OF CROSS BORDER DISPUTES IN ASEAN 12 OCTOBER 2016



**KEVIN NASH** DEPUTY REGISTRAR & CENTRE DIRECTOR, SIAC



# AGENDA

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## SINGAPORE'S INTERNATIONAL ARBITRATION FRAMEWORK

## ARBITRATION UNDER THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE

- OVERVIEW OF SIAC
- ADMINISTRATION OF CASES UNDER THE SIAC RULES
- HOW WE CALCULATE COSTS
- INSTITUTIONAL MEASURES FOR CONTROLLING COSTS AND TIMELINES
- SIAC MODEL CLAUSE

## SIAC'S PEOPLE

## ASEAN PARTIES AT SIAC

## RECENT TRENDS AT SIAC

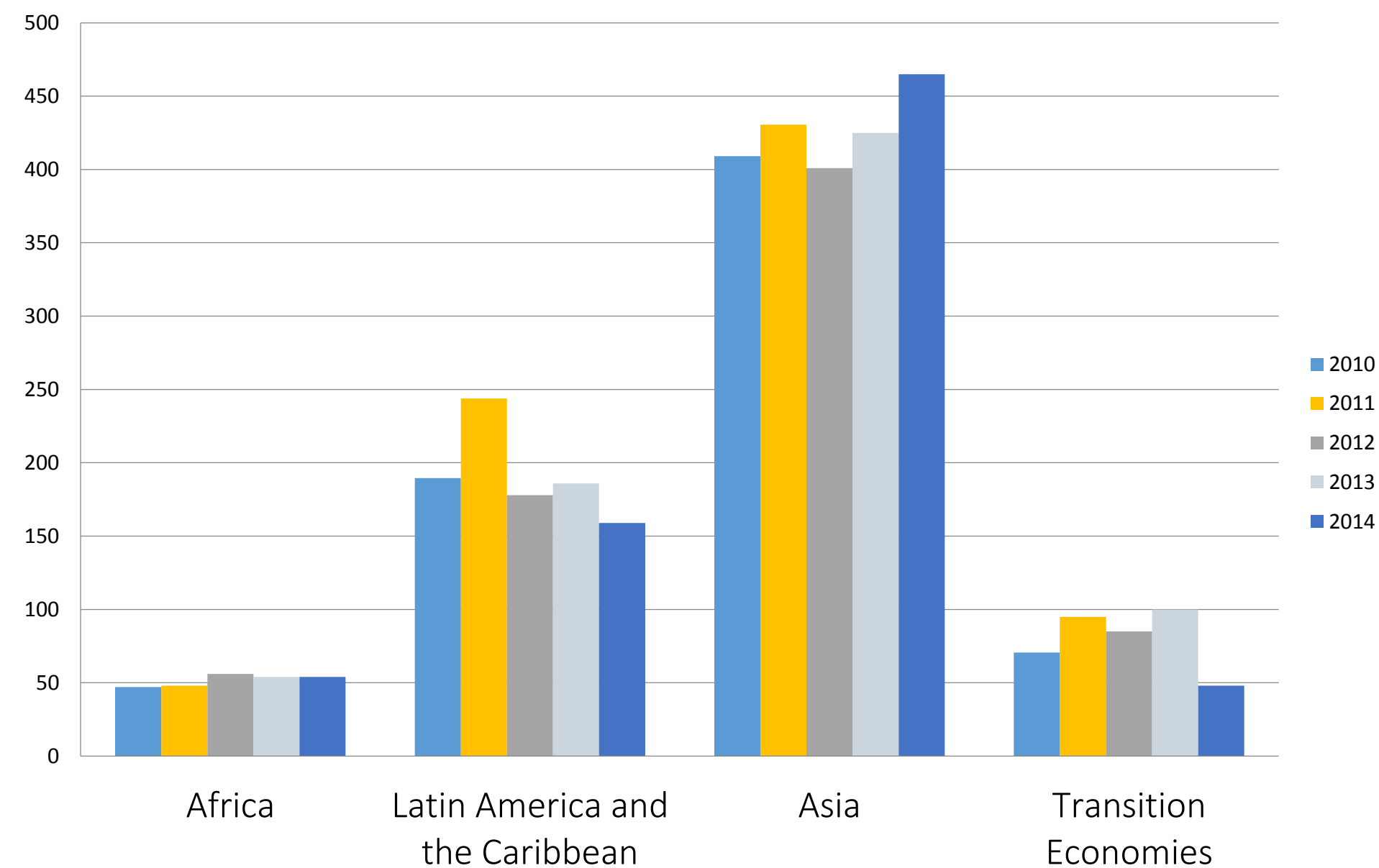
**SINGAPORE'S**  
**INTERNATIONAL**  
**ARBITRATION**  
**FRAMEWORK**



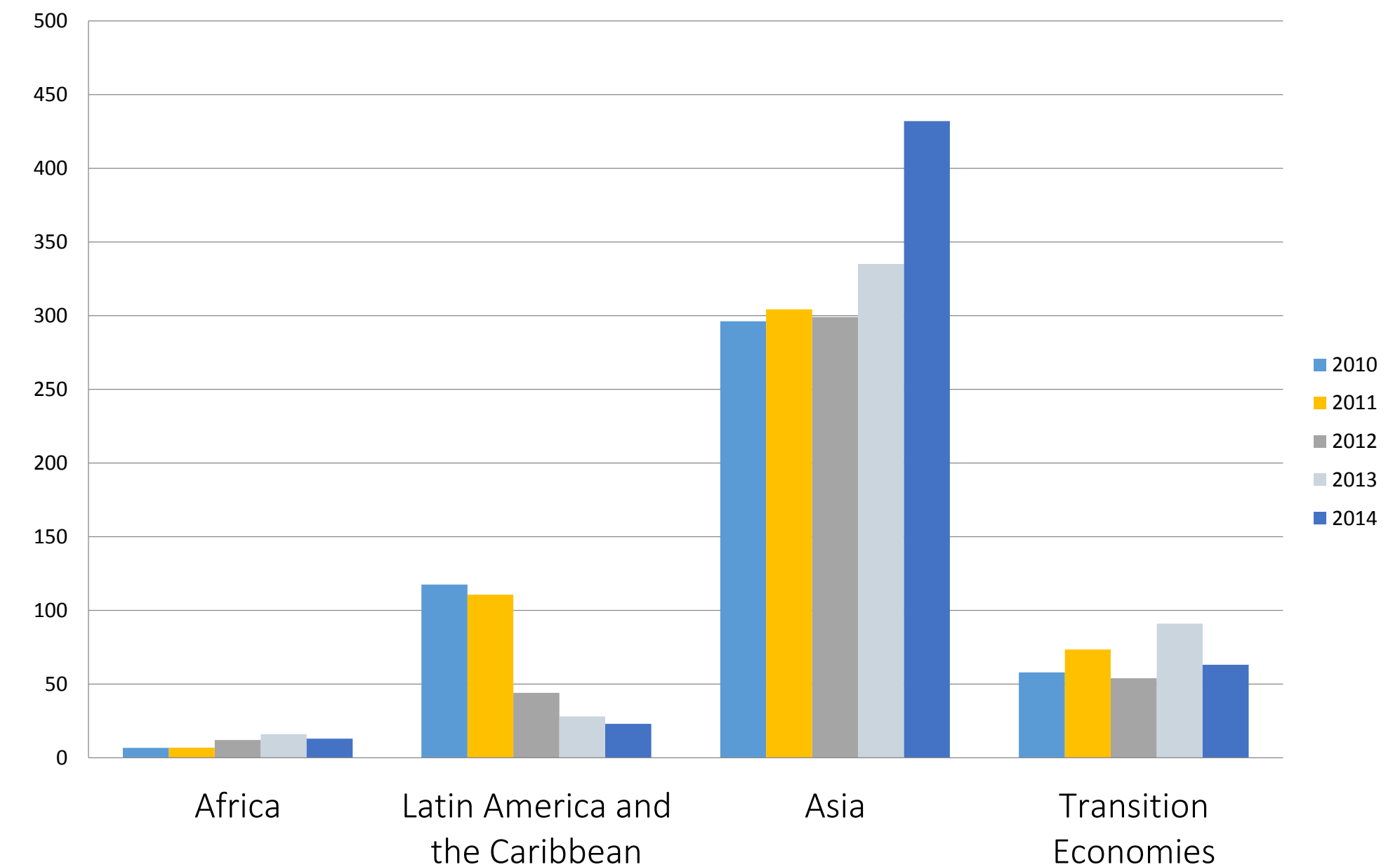
# ASIA'S POTENTIAL FOR INTERNATIONAL ARBITRATION

High trade flows in Asia lead to an increase in number and complexity of cross-border commercial disputes.

**FDI INFLOWS, BY REGION, 2010-2014  
(BILLIONS OF DOLLARS)**



**FDI OUTFLOWS, BY REGION, 2010-2014  
(BILLIONS OF DOLLARS)**



Source: 2015 UNCTAD World Investment Report

# SINGAPORE'S INTERNATIONAL ARBITRATION FRAMEWORK

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- 'The Hub of all trades' - excellent infrastructure and connectivity
- UNCITRAL Model Law adopted in International Arbitration Act
- Judiciary that provides maximum support and minimal intervention in arbitral proceedings
- Total freedom of choice of counsel and law firms
- Enforceability of Awards rendered in Singapore in over 150 countries under the New York Convention 1958
- World renowned facilities and services at Maxwell Chambers for arbitration hearings
- SIAC: developed institutional rules and experienced Court and Secretariat



# MAXWELL CHAMBERS

WORLD RENOWNED FACILITIES AND SERVICES AT MAXWELL CHAMBERS FOR ARBITRATION HEARINGS



MAXWELL CHAMBERS

# MAXWELL CHAMBERS

WORLD RENOWNED FACILITIES AND SERVICES AT MAXWELL CHAMBERS FOR ARBITRATION HEARINGS





# ARBITRATION UNDER THE SIAC

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- OVERVIEW OF SIAC
- ADMINISTRATION OF CASES UNDER THE SIAC RULES
- HOW WE CALCULATE COSTS
- INSTITUTIONAL MEASURES FOR CONTROLLING COSTS AND TIMELINES
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# OVERVIEW OF SIAC

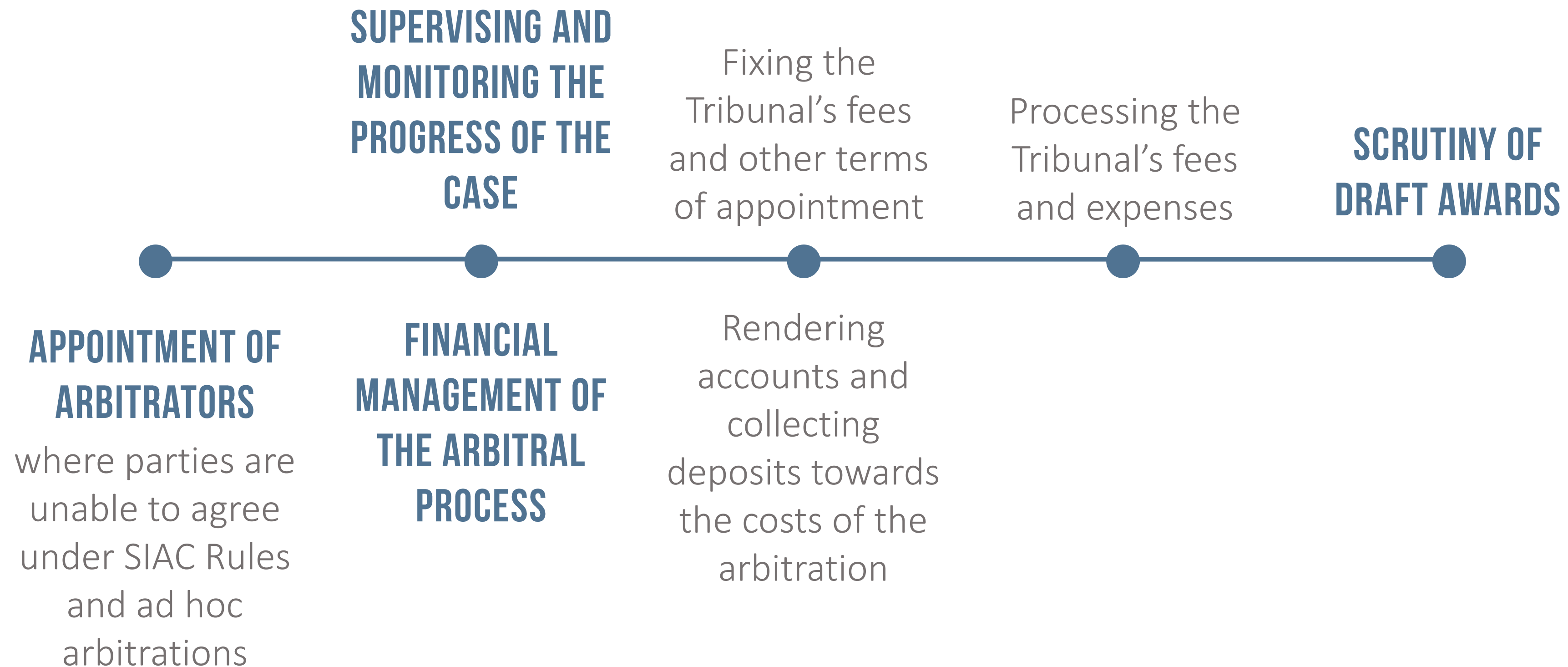
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- Commenced operations in July 1991
- Independent and not-for-profit
- 271 new cases filed in 2015 and an active caseload of about 600 cases
- Proven track record of enforcement:
  - SIAC Awards have been enforced, among others, in China, Hong Kong, India, Indonesia, Jordan, Thailand, Vietnam, Australia, UK and USA
- Rules ensure efficiency, cost effectiveness and flexibility
- Rules are easily acceptable to both Civil and Common Law practitioners/ arbitrators
- > 80% of SIAC's cases are international; 50% have no connection to Singapore

# PROFESSIONAL CASE MANAGEMENT

Team of international lawyers qualified in Canada, India, the Philippines, Singapore, England and USA

## FUNCTIONS INCLUDE ASSISTING IN:



# SUMMARY OF KEY CHANGES UNDER THE SIAC RULES 2016

## WITH EFFECT FROM 1 AUGUST 2016

	SIAC RULES 2013	SIAC RULES 2016
<b>MULTIPLE CONTRACTS AND CONSOLIDATION</b>	Only after the constitution of the Tribunal	Specific provisions on pre- and post-constitution consolidation (Rules 6 and 8)
<b>JOINER OF ADDITIONAL PARTIES</b>	Only after the constitution of the Tribunal (Rule 24(h))	Specific provisions on pre- and post-constitution joinder (Rule 7)
<b>EARLY DISMISSAL OF CLAIMS AND DEFENCES</b>	Rules are silent	Specific provisions on early dismissal of claims/defences manifestly without legal merit or manifestly outside the Tribunal's jurisdiction (Rule 29)
<b>DECISIONS ON ARBITRATOR CHALLENGES</b>	Rules are silent, but SIAC practice is to issue reasoned decisions (Rule 13)	SIAC Court of Arbitration will issue reasoned decisions on all challenges to arbitrators (Rule 16)

# SUMMARY OF KEY CHANGES UNDER THE SIAC RULES 2016

## WITH EFFECT FROM 1 AUGUST 2016

	SIAC RULES 2013	SIAC RULES 2016
<b>ENHANCING THE EMERGENCY ARBITRATION PROCEEDINGS</b>		
<b>TIMEFRAME FOR APPOINTMENT OF EA</b>	Within 1 business day (Rule 30, Schedule 1)	Within 1 day (Rule 30, Schedule 1)
<b>TIMEFRAME FOR THE ISSUANCE OF ORDER OR AWARD OF INTERIM RELIEF</b>	Rules are silent	Maximum of 14 days from appointment of EA (Rule 30, Schedule 1)
<b>FEES OF EA</b>	Capped at 20% of sole arbitrator's maximum fee but not less than SGD 20,000	Fixed at SGD 25,000 unless the Registrar determines otherwise

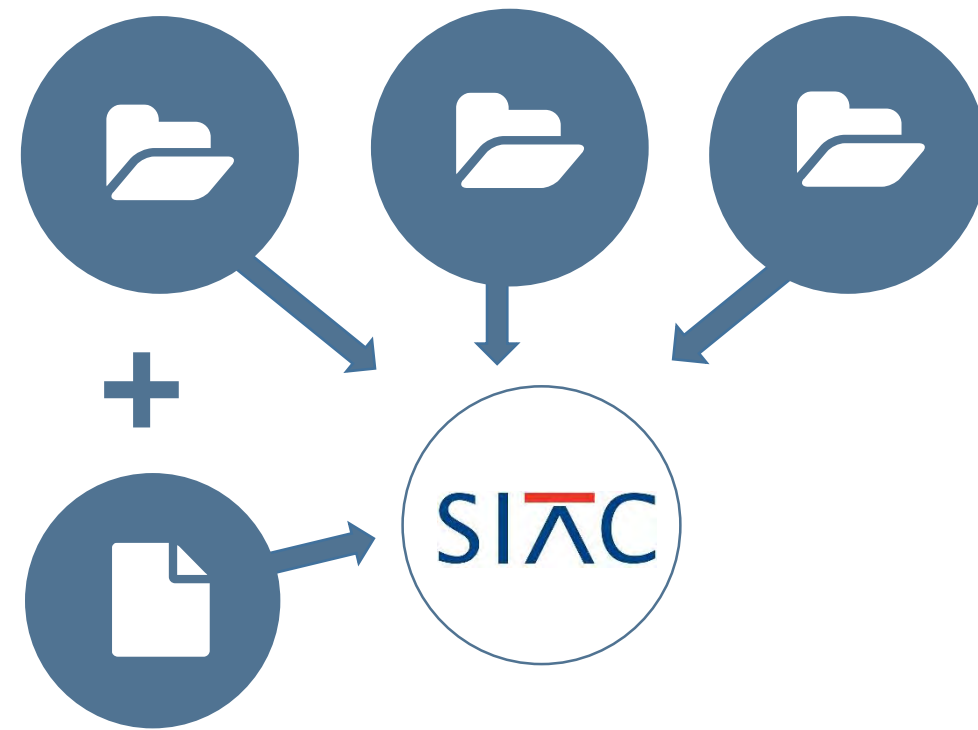
# SUMMARY OF KEY CHANGES UNDER THE SIAC RULES 2016

## WITH EFFECT FROM 1 AUGUST 2016

	SIAC RULES 2013	SIAC RULES 2016
<b>EXPANDING AND REFINING THE EXPEDITED PROCEDURE</b>		
<b>THRESHOLD FOR APPLICABILITY UNDER RULE 5.1(A)</b>	SGD 5,000,000	SGD 6,000,000
<b>CONDUCT OF PROCEEDINGS</b>	Tribunal shall hold hearing unless parties agree to hold documents-only proceedings	Tribunal may decide to hold documents-only proceedings
<b>EXPRESS AGREEMENT TO EP PROCEDURES</b>	Rules are silent	Rules provide that Parties expressly agree that the rules and procedures in Rule 5.2 shall apply in EP cases even where the arbitration agreement contains contrary terms
<b>POWER TO TAKE CASE OFF EP</b>	Rules are silent	Upon application by a party, Tribunal may order that proceedings shall no longer be conducted under EP

# OVERVIEW OF THE SIAC RULES 2016

## MULTIPLE CONTRACTS – RULE 6



### UNDER RULE 6.1 (A)

- Claimant may file multiple Notices of Arbitration, one for each arbitration agreement invoked, and concurrently submit an application for consolidation



### UNDER RULE 6.1 (B)

- Claimant may file a single Notice of Arbitration for all arbitration agreements invoked
- Claimant deemed to have commenced multiple arbitrations
- Notice of Arbitration deemed to be an application to consolidate

- Both options provide certainty on the date of commencement for multi-contract disputes

# OVERVIEW OF THE SIAC RULES 2016

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## CONSOLIDATION – RULE 8

- After arbitration proceedings have been commenced, any party may make an application for the consolidation of multiple arbitrations
- Such an application may be made to SIAC Court of Arbitration (before the Tribunal has been constituted) or to the Tribunal directly (after constitution of Tribunal)

## JOINDER – RULE 7

- Allows both parties and non-parties to be joined in pending arbitration proceedings under these Rules
- Such an application may be made to SIAC Court of Arbitration (before the Tribunal has been constituted) or to the Tribunal directly (after constitution of Tribunal)



# OVERVIEW OF THE SIAC RULES 2016

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## EARLY DISMISSAL OF CLAIMS AND DEFENCES - RULE 29

- SIAC's early dismissal procedure - the first of its kind amongst major institutional rules for commercial arbitration
- Party may apply to the Tribunal for early dismissal if claim/defence is:
  - manifestly without legal merit; or
  - manifestly outside the jurisdiction of the Tribunal
- Procedure has the potential to provide significant savings of time and costs
- As a safeguard against unmeritorious applications, Tribunal retains discretion to decide whether an application for early dismissal should be allowed to proceed

# OVERVIEW OF THE SIAC RULES 2016

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## REMEDY AGAINST A NON-PAYING PARTY - RULE 27

- Tribunal has the power to issue an order or award for the reimbursement of unpaid deposits towards the costs of the arbitration where a party to the arbitration has paid another party's share of the deposits

# HOW WE CALCULATE COSTS AT SIAC

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## *Ad valorem* Schedule of Fees

- With fee caps
- Promotes certainty and transparency
- Flexibility
  - Parties may elect for alternative methods of determining tribunal's fees e.g. hourly rates
- Deposits are calculated on estimated costs of arbitration
- Cost Determination Process – Objective Assessment of Arbitrator Fees
  - Relevant factors include time spent by Tribunal, complexity, hearings, questions of law and efficiency

# SCRUTINY OF DRAFT AWARDS BY REGISTRAR

## RULE 32.3, SIAC RULES 2016

- Before making any Award, the Tribunal shall submit such Award in draft form to the Registrar.
- Tribunal shall submit the draft Award to the Registrar not later than 45 days from the date of closing of the proceedings, unless the Registrar extends the period of time or unless otherwise agreed by the parties.
- The Registrar may suggest modifications as to the form of the Award and, without affecting the Tribunal's liberty to decide the dispute, draw the Tribunal's attention to points of substance.

## PARA. 31, SIAC PRACTICE NOTE FOR ADMINISTERED CASES (PN-01/14, 2 JAN 2014)

“The Registrar may, where appropriate, consult the Court [of Arbitration] before approving the draft award as to its form.”

SCRUTINY OF DRAFT AWARDS ENABLES **AVOIDANCE OF ERRORS** AND IMPROVEMENTS TO BE MADE TO **ENHANCE THE ENFORCEABILITY** OF AWARDS

# INSTITUTIONAL MEASURES FOR CONTROLLING COSTS AND TIMELINES

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## SPECIAL PROCEDURES



**EXPEDITED PROCEDURE**



**EMERGENCY ARBITRATOR**



**ARB-MED-ARB PROTOCOL**



# EXPEDITED PROCEDURE (EP)

## UNDER SIAC RULES 2016

### WHEN MAY A PARTY APPLY FOR EP

- When the sum in dispute does not exceed SGD 6,000,000; or
- When parties agree; or
- In cases of exceptional urgency

- Useful for lower-value, less complex disputes
- President of Court of Arbitration determines the application

### WHAT HAPPENS IF THE APPLICATION IS GRANTED

- Matter is referred to a sole arbitrator
- Award to be made within 6 months

**289**

Number of applications received as at 30 September 2016

**172**

Number of applications granted as at 30 September 2016



# EMERGENCY ARBITRATOR (EA)

## PROVISIONS FOR APPOINTMENT OF AN EMERGENCY ARBITRATOR UNDER THE SIAC RULES 2016, RULE 30 - PROCEDURE SET OUT IN SCHEDULE 1:

### APPLICATION IN WRITING TO THE REGISTRAR

1

- Concurrent with or following the filing of a Notice of Arbitration
- Prior to constitution of the Tribunal
- Accompanied by payment of administration fee and requisite deposits

2

- Appointment is made **within 1 day** of receipt by Registrar of application and payment of fee
  - Any challenge to appointment must be made **within 2 days** of communication by Registrar of EA appointment and circumstances disclosed

- **ACCEPTANCE OF EA APPLICATION BY PRESIDENT OF SIAC COURT OF ARBITRATION**
- **APPOINTMENT OF EMERGENCY ARBITRATOR**

## CONSIDERATION OF APPLICATION

3

- Schedule for consideration of application by Emergency Arbitrator is made **within 2 days** from appointment



## POWERS OF EMERGENCY ARBITRATOR

- Same powers as Tribunal
- Power to order any interim relief
- Interim order or award must be made **within 14 days** from appointment
- To give summary reasons in writing for the decision
  - No power to act after Tribunal is constituted
  - The order or award of an Emergency Arbitrator ceases to have effect if within 90 days a Tribunal is not constituted

SIAC was the first Asian arbitral institution to introduce EA provisions in July 2010





# EMERGENCY ARBITRATOR

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## EXAMPLES OF RELIEF SOUGHT

- To permit a company unimpeded access to inspect a property development where the respondent was effecting alterations to properties to remedy defects
- A Mareva injunction against a party from disposing shares and dissipating assets
- A freezing order against respondents from transferring assets and to disclose financial records and statements to an international financial institution
- Orders against a shipyard which had been contracted for steelworks and maintenance works, from interfering with the safe departure of a vessel



# EMERGENCY ARBITRATOR

## TIMING OF AWARDS AND ENFORCEABILITY

**2.5  
DAYS**

Average time between receipt of an application to the issuance of an interim order

**8.5  
DAYS**

Average time between the hearing on the request for an emergency measure and the issuance of an award

**1  
DAY**

Shortest time between the hearing on the request for an emergency measure and the issuance of an award

**High rate of voluntary compliance in practice**

Emergency Arbitrator orders and awards enforceable in Singapore-seated arbitrations and arbitrations seated outside Singapore under IAA

In majority of cases subsequently constituted Tribunals affirmed orders and awards issued by Emergency Arbitrator



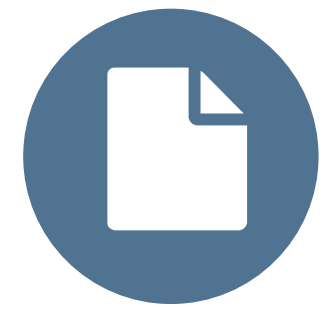
## EMERGENCY ARBITRATOR

### OUTCOMES OF APPLICATIONS FOR EMERGENCY RELIEF

GRANTED	22
GRANTED (BY CONSENT)	4
GRANTED (IN PART)	4
NO ORDERS MADE (APPLICATION WITHDRAWN)	6
REJECTED	14
PENDING	0
<b>TOTAL (AS AT 30 SEPTEMBER 2016)</b>	<b>51</b>

### SIAC EMERGENCY ARBITRATOR FEES

SIAC Administration Fee	<b>SGD 5,000</b> (+ GST if applicable)
Emergency Arbitrator's Fee	<b>SGD 25,000</b> (unless Registrar determines otherwise)
Deposits for EA's Fee and Expenses	<b>SGD 30,000</b> (unless Registrar determines otherwise)
Total Payable upon Filing	<b>SGD 30,000 + SGD 5,000</b> (+ GST if applicable)



## ARB-MED-ARB PROTOCOL

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- The SIAC-SIMC Arb-Med-Arb Service is a one-stop process where a dispute is first referred to arbitration before mediation is attempted.
- If mediation is successful, parties may request their mediated settlement be made a consent arbitral award with advantages of enforceability under the New York Convention.
- If mediation is unsuccessful, parties may proceed with arbitration.

# SIAC MODEL CLAUSE

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In drawing up international contracts, we recommend that parties include the following arbitration clause:

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (“SIAC”) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC Rules”) for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be [Singapore].\*

The Tribunal shall consist of \_\_\_\_\_\*\* arbitrator(s).

The language of the arbitration shall be \_\_\_\_\_.

*\* Parties should specify the seat of arbitration of their choice. If the parties wish to select an alternative seat to Singapore, please replace “[Singapore]” with the city and country of choice (e.g., “[City, Country]”).*

*\*\* State an odd number. Either state one, or state three.*



# SIAC'S PEOPLE

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**BOARD OF DIRECTORS  
COURT OF ARBITRATION  
SECRETARIAT  
PANEL OF ARBITRATORS**



# GOVERNANCE STRUCTURE AT SIAC

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## BOARD OF DIRECTORS

- Oversees corporate governance, business development and operations of SIAC

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## COURT OF ARBITRATION

- 18 eminent arbitration practitioners from around the world to supervise case administration
- President, SIAC Court of Arbitration to appoint arbitrators, determine Expedited Procedure and Emergency Arbitrator applications
- Court of Arbitration to decide challenges to arbitrators and jurisdictional objections
- Assisted by Registrar, Deputy Registrar and Secretariat

# BOARD OF DIRECTORS

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**LUCIEN WONG**  
CHAIRMAN



**CAVINDER BULL, SC**  
DEPUTY CHAIRMAN



**GAUTAM  
BANERJEE**



**NISHITH  
DESAI**



**DAVID  
LIU**



**RAJIV  
LUTHRA**



**MICHAEL  
MOSER**



**CHELVA  
RAJAH, SC**



**JOHN  
SAVAGE**



**GILES  
WHITE**



**JEANETTE  
WONG**



# COURT OF ARBITRATION



**GARY BORN**  
PRESIDENT



**CAVINDER BULL, SC**  
VICE-PRESIDENT



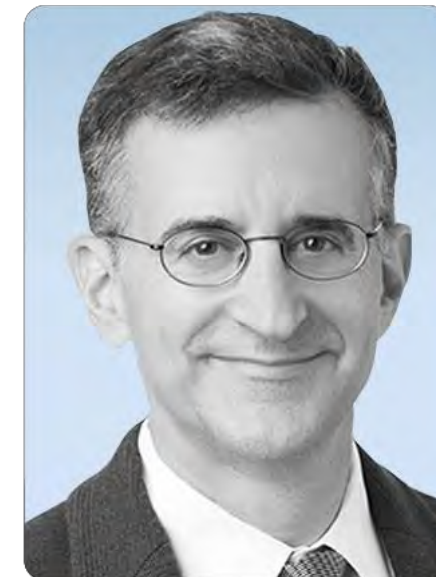
**JOHN SAVAGE**  
VICE-PRESIDENT



**CLAUDIA  
ANNACKER**



**CAO  
LIJUN**



**PAUL  
FRIEDLAND**



**EMMANUEL  
GAILLARD**



**BERNARD  
HANOTIAU**



**DARIUS  
KHAMBATA**



**TOBY  
LANDAU QC**



**DR EUN YOUNG  
PARK**



**JAN  
PAULSSON**



**DR MICHAEL  
PRYLES**



**LUCY  
REED**



**HARISH  
SALVE**



**HIROYUKI  
TEZUKA**



**ARIEL  
YE**



**ALVIN  
YEO, SC**

# SIAC PANEL OF ARBITRATORS

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- Experienced, international panel of legal and industry experts as arbitrators
- Over 400 expert arbitrators from 40 jurisdictions
- Experienced, international panel of legal and industry experts as arbitrators
- Parties may appoint arbitrators outside of SIAC Panel
- Established first specialist IP Panel in February 2014

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## RIGOROUS AND EFFICIENT APPOINTMENT PROCESS

- Arbitrators are selected by Executive Committee of SIAC Court composed of President and Vice-Presidents
- Nationality, expertise and seniority
- Strict standards of admission, e.g. 10 years PQE, fellowship accreditation, acted as arbitrator in at least 5 cases, written at least 2 Awards

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## SIAC CODE OF ETHICS

- Requires every arbitrator, before each appointment, to give a continuing written undertaking that:
  - he/she is able to discharge his/her duties as arbitrator without bias;
  - he/she will disclose all facts or circumstances that may give rise to justifiable doubts as to his/her impartiality or independence; and
  - he/she will devote sufficient time to the case throughout the process

# SIAC USERS COUNCIL

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- includes members from over 45 jurisdictions around the world, in Asia, North and South America, Europe, Africa and elsewhere
- composed of leading arbitration practitioners, in-house counsel, and arbitrators
- provides user feedback on SIAC Rules and SIAC's services, organises networking events
- Regional and National Committees oversee, coordinate and liaise with Users Council members within their jurisdictions
- Users Council Executive Committee chaired by SIAC Court President; members include SIAC CEO and Chairs of Regional and National Committees



# ASEAN PARTIES --- AT SIAC

# ASEAN PARTIES AT SIAC – 2013-2015

	2013			2014			2015		
	NUMBER OF PARTIES	TOTAL SUM IN DISPUTE (SGD)	AVERAGE SUM IN DISPUTE (SGD)	NUMBER OF PARTIES	TOTAL SUM IN DISPUTE (SGD)	AVERAGE SUM IN DISPUTE (SGD)	NUMBER OF PARTIES	TOTAL SUM IN DISPUTE (SGD)	AVERAGE SUM IN DISPUTE (SGD)
BRUNEI	-	-	-	1	0.98 M	0.98 M	-	-	-
CAMBODIA	-	-	-	2	10.16 M	5.08 M	7	20.01 M	5.00 M
INDONESIA	54	3.81 B	108.80 M	25	497.0 M	38.23 M	24	237.6 M	12.51 M
LAOS	-	-	-	2	0.43 M	0.22 M	7	282.18 M	141.09 M
MALAYSIA	22	188.35 M	9.42 M	24	417.27 M	19.87 M	15	73.91 M	5.28 M
MYANMAR	-	-	-	-	-	-	-	-	-
PHILIPPINES	4	6.00 M	1.50 M	9	341.06 M	85.27 M	3	40.09 M	13.36 M
SINGAPORE	186	1.01 B	7.47 M	197	1.09 B	7.40 M	239	1.63 B	10.01 M
THAILAND	16	415.07 M	27.67 M	11	162.26 M	16.22 M	12	250.49 M	22.77 M
VIETNAM	4	0.75 M	0.19 M	4	4.47 M	1.12 M	29	220.46 M	8.48 M

# ASEAN BASED ARBITRATORS

## ON SIAC PANEL

INDONESIA	MALAYSIA	MYANMAR	PHILIPPINES	THAILAND	VIETNAM
1. Dr Mohamed Idwan Ganie, SH	1. Tan Sri Cecil W. M. Abraham	1. Minn Naing Oo	1. Victor P. Lazatin	1. Christopher Redfearn	1. Dang Xuan Hop
2. Darell R. Johnson	2. Chang Wei Mun		2. Louie Ogsimer	2. Peter Shelford	2. Bill Magennis
3. Frederik B G Tumbuan	3. Lim Tuck Sun		3. Custodio O. Parlade	3. Victor James Smith	
4. Dr Frans H. Winarta	4. Nahendran Navaratnam		4. Patricia-Ann T. Prodigalidad	4. Surapol Srangsomwong	
	5. Rajendra Navaratnam				
	6. Vinayak P. Pradhan				
	7. Sundra Rajoo				
	8. Sitpah Selvaratnam				
	9. Dato' Seri Dr Visu Sinnadurai				
	10. Dato' K C Vohrah				

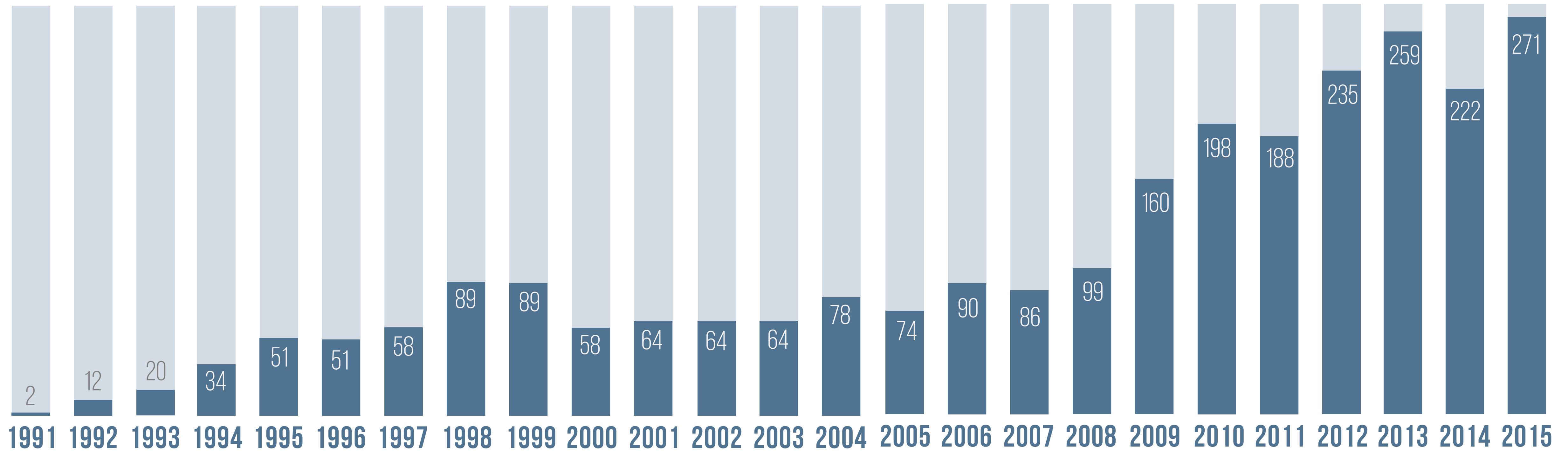
*\* Singapore-based Panel members are not listed as there are over 100 individuals.*



# RECENT TRENDS AT --- SIAC

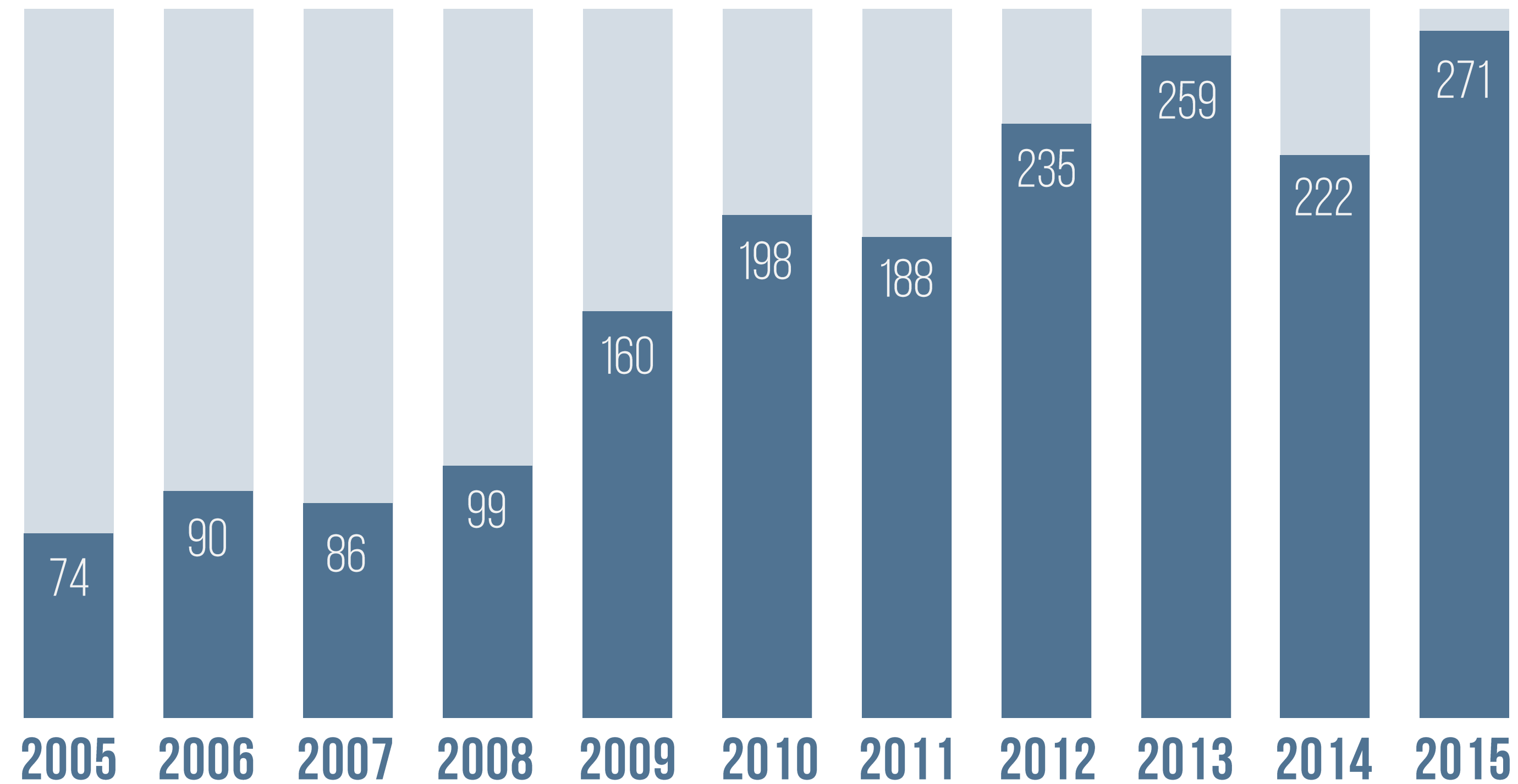
# NUMBER OF NEW CASES HANDLED BY SIAC IN THE LAST 25 YEARS

1991 – 2015



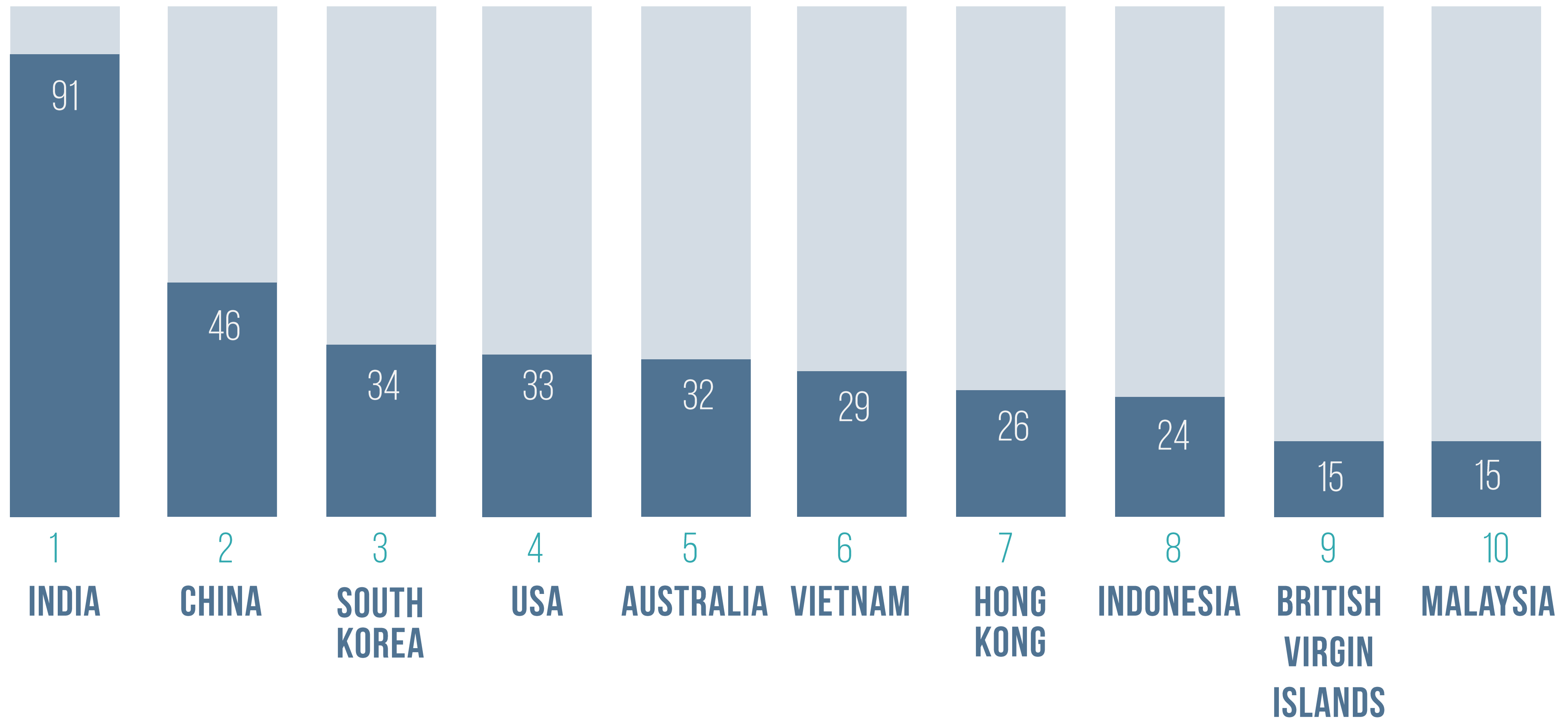


# NUMBER OF NEW CASES HANDLED BY SIAC – 2005-2015



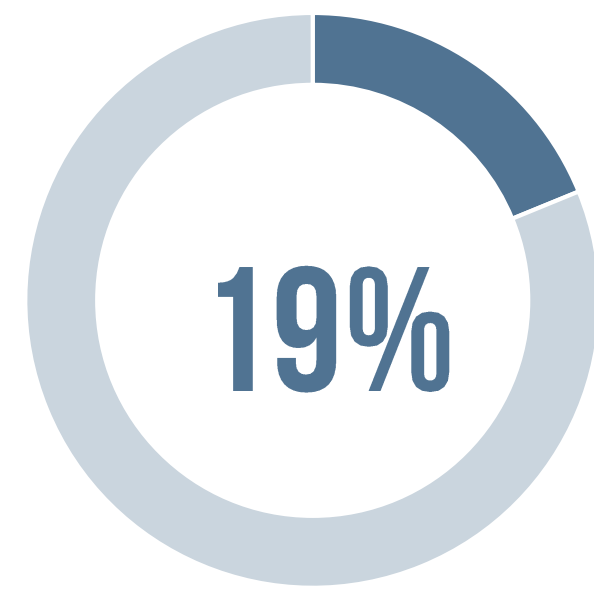
- Of 271 new cases, 244 were administered by SIAC.
- 84% international; about 50% have no connection with Singapore

# TOP TEN FOREIGN USERS IN 2015

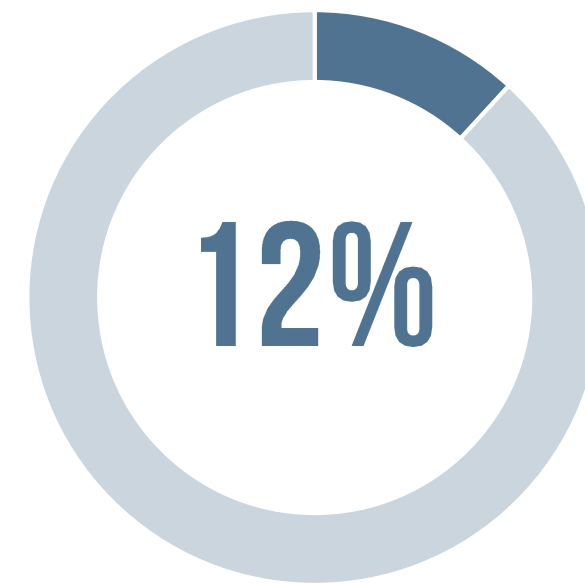


# CATEGORIES OF DISPUTES IN SIAC IN 2015

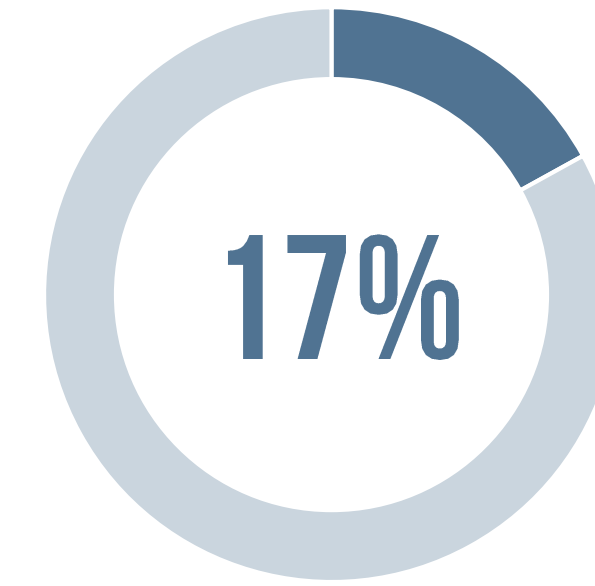
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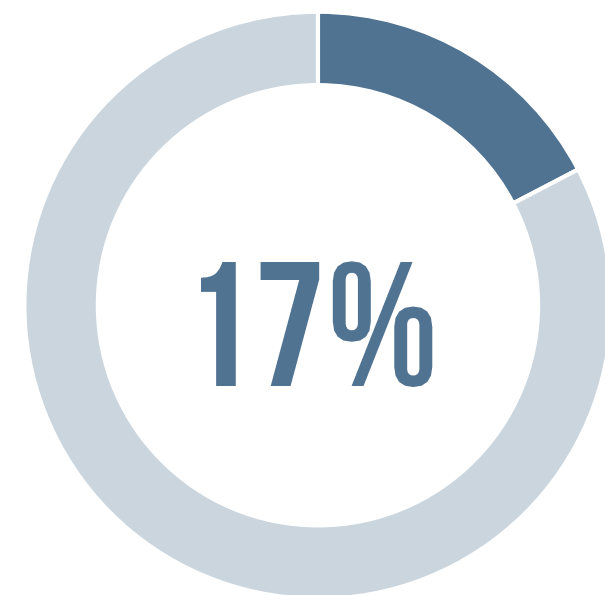
**COMMERCIAL**



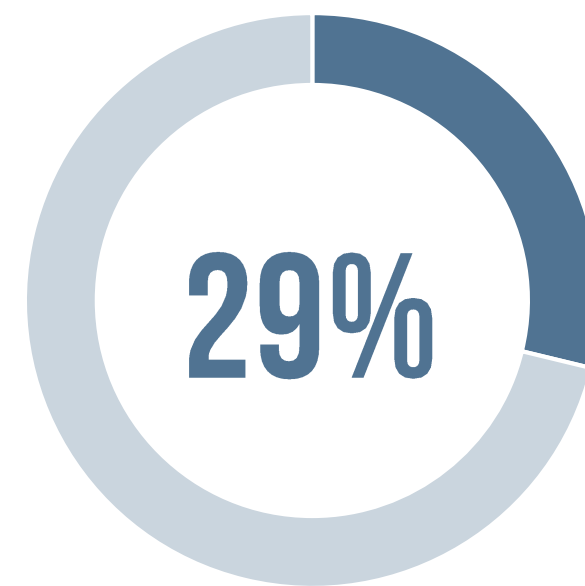
**CONSTRUCTION/ENGINEERING**



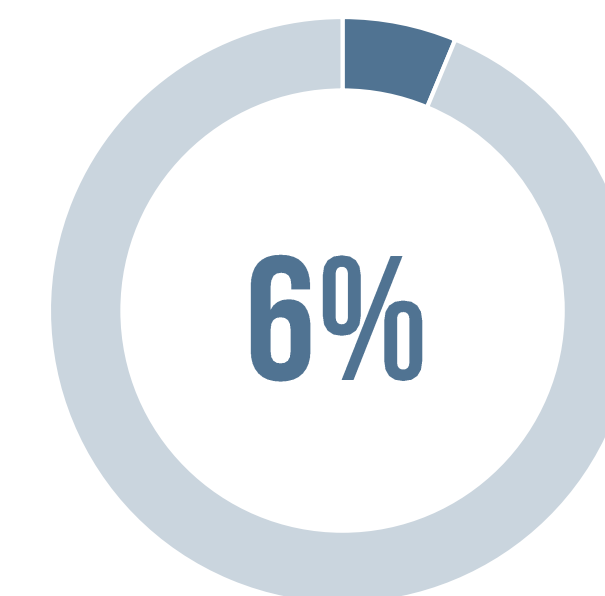
**CORPORATE**



**SHIPPING/ MARITIME**



**TRADE**



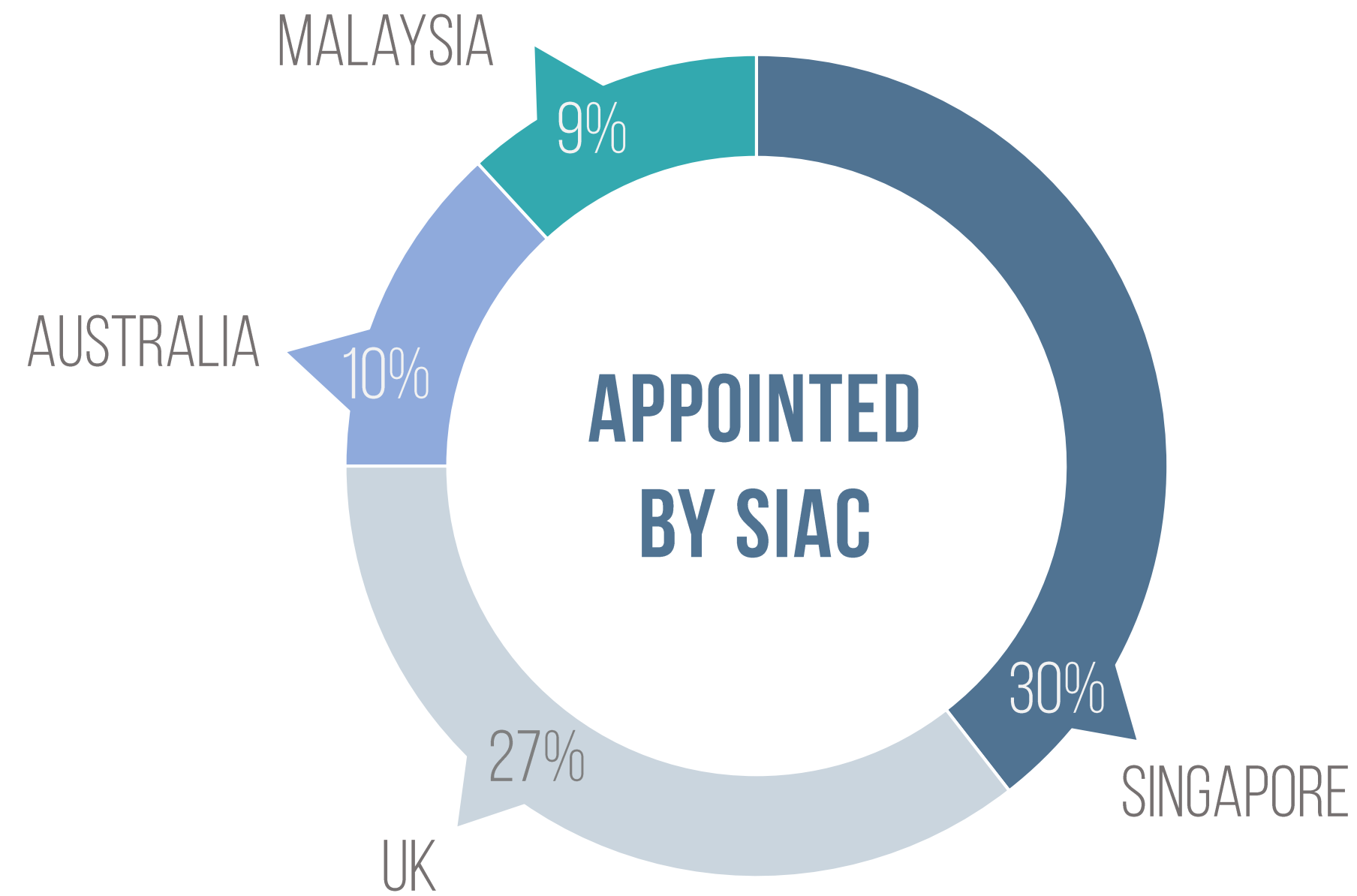
**OTHERS**

# SUMS IN DISPUTE – 2014-2015

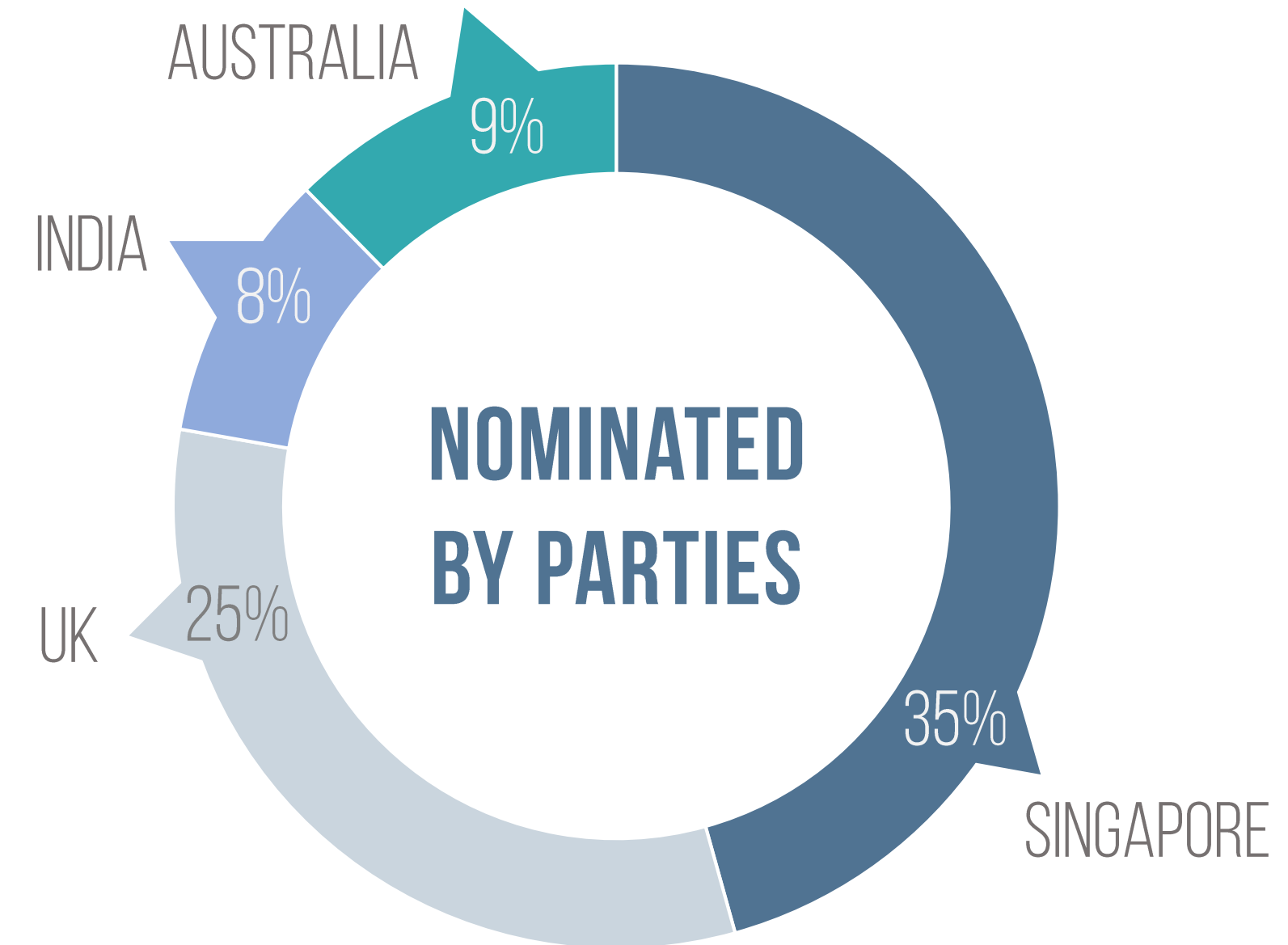
## CASES HANDLED BY SIAC

	2014	2015
TOTAL SUM IN DISPUTE (SGD)	5.04 BILLION	6.23 BILLION
AVERAGE SUM IN DISPUTE (SGD)	23.65 MILLION	23.00 MILLION
HIGHEST SUM IN DISPUTE (SGD)	2.40 BILLION	2.03 BILLION

# NATIONALITIES OF ARBITRATORS



1% - Canada, China, Hong Kong, Japan, Netherlands, Philippines, South Africa, South Korea, Sri Lanka, Switzerland, Taiwan, UAE  
 2% - Saudi Arabia, France, New Zealand  
 3% - India  
 5% - USA



1% - Austria, France, Germany, Lebanon, Netherlands, New Zealand, Pakistan, Sri Lanka  
 2% - China  
 4% - Ireland, USA  
 5% - Malaysia

- Female arbitrators appointed by SIAC in 2015 constituted nearly a quarter of all arbitrator appointments.

# WHERE WE ARE

## WORLDWIDE LOCATIONS



# WHERE WE ARE

## WORLDWIDE LOCATIONS



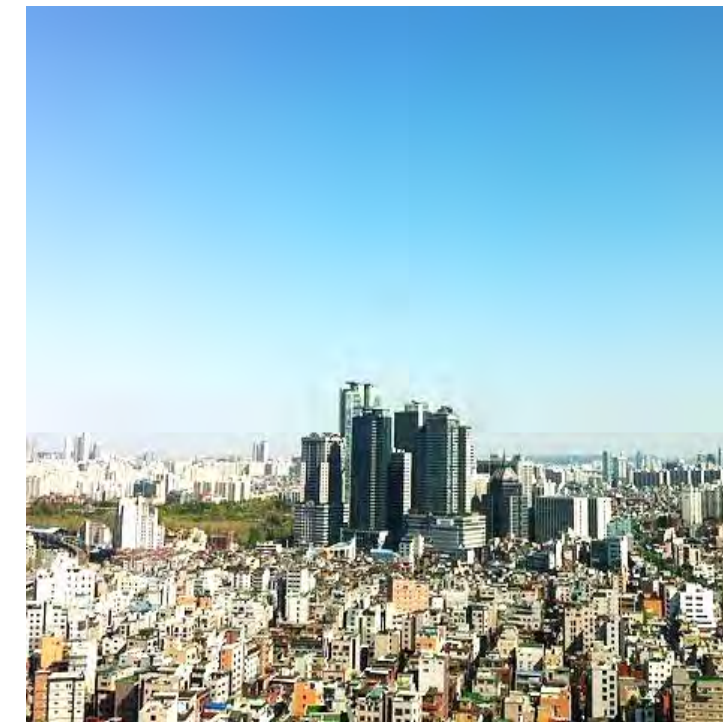
### SINGAPORE

32 Maxwell Road  
#02-01, Maxwell  
Chambers  
Singapore 069115



### MUMBAI

1729, The Hub, 17th  
Floor, One Indiabulls  
Centre, Tower 2B,  
Senapati Bapat Marg,  
Mumbai 400013, India



### SEOUL

11F, Seoul Global Center  
38 Jongno (Seorin-dong)  
Jongno-gu  
Seoul, Korea 03188



### SHANGHAI

22/F ONE Lujiazui,  
68 Yin Cheng Road (C),  
Pudong New Area,  
Shanghai,  
P.R.China, 200120



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**THANK YOU.  
ANY QUESTIONS?**



# CONTACT US

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