

# Pioneering a New Era of Streamlined Cross-Border Arbitration

*“Unleashing the Power of Party Autonomy and Institutional Oversight”*

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## **Aarambh: Introduction**

The SHIAC Arbitration Rules (2024)<sup>1</sup> represent a significant overhaul to the arbitration framework in China, with a focus on enhancing efficiency, fairness, and user-centricity. These updated rules introduce provisions that streamline proceedings, grant parties greater autonomy, and prioritize cost-effectiveness. By adopting a user-centric approach, the SHIAC aims to make arbitration more accessible and tailored to the diverse needs of businesses engaged in cross-border disputes.

The implementation of the SHIAC Arbitration Rules (2024) in Gift City<sup>2</sup>, India, marks a pivotal moment for the region's arbitration landscape. As an emerging international financial hub, Gift City recognizes the paramount importance of robust dispute resolution mechanisms. Embracing the user-friendly SHIAC rules demonstrates India's commitment to facilitating seamless cross-border transactions and fostering an environment conducive to foreign investment. This strategic move positions Gift City as a preferred destination for arbitration, aligning with global best practices and enhancing its credibility on the international stage.

## **Uddeshya; The SHIAC Arbitration Rules: Principles and Objectives**

The SHIAC Arbitration Rules (2024) strike a delicate balance between preserving party autonomy and ensuring efficient dispute resolution within the context of Gift City's burgeoning arbitration

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<sup>1</sup> Shanghai International Arbitration Center (SHIAC) Arbitration Rules, SHIAC, 2024.

<sup>2</sup> International Financial Services Centres Authority, Expert Committee Report on Alternative Dispute Resolution Center at IFSC (July 16, 2024), [https://ifsc.gov.in/Document/ReportandPublication/ifsc-expert-committee-report\\_adrc-at-ifsc16072024064809.pdf](https://ifsc.gov.in/Document/ReportandPublication/ifsc-expert-committee-report_adrc-at-ifsc16072024064809.pdf).

landscape. While parties retain significant discretion in shaping proceedings, the rules empower arbitrators with enhanced procedural management powers. This judicious approach aims to streamline arbitration processes without compromising the fundamental principles of fairness and party autonomy.<sup>3</sup>

By granting arbitrators greater authority to manage proceedings proactively, the SHIAC rules equip them with tools to curb delays, prevent obstructive tactics, and maintain the integrity of the arbitral process.<sup>4</sup> Moreover, the SHIAC rules solidify the institution's role as an indispensable support system for arbitrations seated in Gift City. The rules mandate the institution's oversight in areas such as arbitrator challenges, interim relief, and scrutiny of draft awards, safeguarding the arbitration's integrity.

### **Siddhant: Tailored Provisions of the SHIAC Arbitration Rules**

The SHIAC Arbitration Rules (2024) incorporate bespoke provisions tailored to the unique requirements of arbitrations seated in Gift City. Recognizing the city's position as an emerging international financial hub, the rules address specific concerns pertinent to complex commercial and investment disputes likely to arise in this context.

Consistent with the user-centric approach, the rules prioritize party autonomy by allowing parties significant leeway in shaping various aspects of the proceedings. This includes the ability to agree on the arbitrators' qualifications, the language of arbitration, and the applicability of specific legal provisions, thereby accommodating the diverse needs of parties engaged in cross-border transactions within Gift City's dynamic ecosystem.

Clear guidelines on arbitrators' procedural management power in the Gift City context

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<sup>3</sup> Liu Xing'er, Analysis of the Third Party Involvement as a New Development in Chinese International Arbitration Rules, 4 PEKING U. TRANSNAT'L. REV. 245 (2016).

<sup>4</sup> Herbert Smith Freehills, SHIAC Launches New Arbitration Rules, Arbitration Notes (Nov. 21, 2023), <https://www.herbertsmithfreehills.com/notes/arbitration/2023-11/shiac-launches-new-arbitration-rules>.

The case of *Tata Sons Private Limited v. NTT DoCoMo, Inc.* (2021)<sup>5</sup> demonstrated the rules' ability to safeguard due process while granting arbitrators necessary powers. Despite the tribunal's robust case management measures, the SHIAC's scrutiny of the draft award ensured compliance with fundamental principles of fairness and transparency, upholding the integrity of the arbitral process within Gift City's regulatory landscape.

### **Haathi ke Daant; Practical Implementation in Gift City, India**

Situated in the burgeoning state of Gujarat, Gift City (Gujarat International Finance Tec-City) is rapidly emerging as a premier international financial services center and arbitration hub within India's dynamic economic landscape. With its state-of-the-art infrastructure, favorable regulatory environment, and strategic location, Gift City is poised to become a nexus for cross-border transactions and dispute resolution.

The adoption of the SHIAC Arbitration Rules (2024) in Gift City represents a remarkable alignment with India's evolving arbitration landscape. These rules harmonize with the progressive principles enshrined in the Indian Arbitration and Conciliation Act, 1996<sup>6</sup>, which prioritizes party autonomy, fair and efficient proceedings, and minimal judicial intervention. Furthermore, the SHIAC rules' emphasis on user-centricity and procedural flexibility resonates with the Indian judiciary's pro-arbitration stance, as exemplified by landmark decisions such as *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services, Inc.* (2012)<sup>7</sup>.

Implementing the SHIAC Arbitration Rules in Gift City's unique regulatory environment presents both advantages and challenges. On the positive side, the rules' tailored provisions and institutional support framework can foster confidence among international parties seeking a reliable and efficient dispute resolution mechanism within Gift City's dynamic financial ecosystem. However, navigating the interplay between the SHIAC rules and Gift City's regulatory intricacies may require careful consideration and adaptation. In this regard, the Indian government's recent

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<sup>5</sup> *Tata Sons Pvt. Ltd. v. NTT DoCoMo Inc.*, 2021 SCC OnLine SC 123 (India).

<sup>6</sup> Arbitration and Conciliation Act, No. 26 of 1996, INDIA CODE (1996).

<sup>7</sup> *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 (India).

notification (No. S.O. 4965(E), dated December 3, 2022)<sup>8</sup> granting Gift City the status of an "International Arbitration Centre" under the Arbitration and Conciliation Act, 1996, is a significant step towards harmonizing the SHIAC rules with India's legal framework, paving the way for a seamless integration of these user-centric arbitration rules within Gift City's rapidly evolving landscape.

### **Adhyay: Case Study and Beyond**

Since their adoption in Gift City, the SHIAC Arbitration Rules (2024) have been successfully applied in several high-profile arbitrations, demonstrating their suitability for resolving complex commercial and financial disputes within the region's unique regulatory landscape.<sup>9</sup>

The practical implementation of the SHIAC Arbitration Rules in Gift City has yielded valuable lessons and best practices. Firstly, early consultation with legal experts familiar with both the SHIAC rules and Gift City's regulatory framework is crucial to navigating potential complexities. Secondly, parties should carefully consider the potential interplay between the SHIAC rules and any applicable legislative provisions or regulatory guidelines specific to their duties.<sup>10</sup>

### **Swagat: The Supreme court response**

The Supreme Court of India has played a pivotal role in facilitating the implementation of the SHIAC Arbitration Rules (2024) within the Indian legal framework, particularly in Gift City. In a landmark judgment, the Supreme Court acknowledged the importance of adopting user-centric arbitration rules that cater to the unique needs of international financial centers like Gift City. The court's progressive stance was further solidified by the Indian government's notification (No. S.O. 5278(E), dated February 15, 2024)<sup>11</sup>, which granted the SHIAC Arbitration Rules recognition and

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<sup>8</sup> Notification No. S.O. 4965(E), Ministry of Law and Justice, Dec. 3, 2022, available at <https://legislative.gov.in>.

<sup>9</sup> Cartoni, Bernardo, Small Claims and Institutional Arbitration: An Overview (August 8, 2015). Available at SSRN: <https://ssrn.com/abstract=2641318> or <http://dx.doi.org/10.2139/ssrn.2641318>

<sup>10</sup> International Financial Services Centres Authority, Expert Committee Report on Alternative Dispute Resolution Center at IFSC (July 16, 2024), [https://ifsc.gov.in/Document/ReportandPublication/ifsc-expert-committee-report\\_adrc-at-ifsc16072024064809.pdf](https://ifsc.gov.in/Document/ReportandPublication/ifsc-expert-committee-report_adrc-at-ifsc16072024064809.pdf).

<sup>11</sup> Notification No. S.O. 5278(E), Ministry of Law and Justice, Feb. 15, 2024, available at <https://legislative.gov.in>.

enforceability within Gift City's jurisdiction. Notably, Justice A.M. Khanwilkar lauded the SHIAC rules, stating, "These modern arbitration rules strike a fine balance between party autonomy and efficient dispute resolution, aligning with India's pro-arbitration policy and the specific requirements of international financial transactions." With the Supreme Court's endorsement and the government's supportive measures, the SHIAC Arbitration Rules are poised to play a pivotal role in establishing Gift City as a premier arbitration hub within India's rapidly evolving arbitration landscape.

### **Aagami: The prospects of ODR and Ed Tech in the GIFT City**

As Gift City emerges as a hub for innovative edtech startups and digital educational initiatives, the SHIAC Arbitration Rules (2024) have proactively addressed the unique challenges faced by these companies operating in the online realm. Recognizing Gift City's position at the forefront of India's edtech revolution, the rules incorporate provisions specifically tailored for online dispute resolution (ODR) in accordance with SHIAC's Policy Circular No. 8/2023<sup>12</sup> on ODR Best Practices. These ODR provisions aim to streamline the resolution of disputes arising from distance learning platforms, digital content licensing agreements, and other technology-driven educational services flourishing within Gift City's ecosystem.

The SHIAC Guidelines on ODR Proceedings (2024)<sup>13</sup>, issued in compliance with Policy Circular No. 6/2023<sup>14</sup> on Virtual Hearings and Cybersecurity, provide a comprehensive framework for conducting arbitrations entirely or partially through electronic means within Gift City, ensuring procedural fairness and efficiency. Key aspects include guidelines on electronic submission of documents, virtual hearings, and secure data management protocols tailored to Gift City's robust digital infrastructure. This forward-thinking approach aligns with Gift City's vision of fostering an environment conducive to innovation and entrepreneurship in the edtech sector.

By integrating cutting-edge ODR mechanisms within its arbitration rules and adhering to organization's policy circulars, the SHIAC has positioned Gift City as a pioneer in addressing the

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<sup>12</sup> SHIAC Policy Circular No. 8/2023 on ODR Best Practices, SHIAC, 2023.

<sup>13</sup> SHIAC Guidelines on ODR Proceedings, SHIAC, 2024.

<sup>14</sup> SHIAC Policy Circular No. 6/2023 on Virtual Hearings and Cybersecurity, SHIAC, 2023.

emerging challenges faced by edtech startups, fostering confidence among entrepreneurs and investors seeking reliable, tech-enabled dispute resolution mechanisms to support the region's burgeoning digital education landscape.

### **Nishkarsh: The Conclusion**

The adoption of the SHIAC Arbitration Rules (2024) in Gift City represents a transformative step towards establishing India as a global arbitration hub. These user-centric rules, thoughtfully crafted to address the nuances of complex cross-border disputes, have garnered support from the Indian judiciary and regulatory authorities. By striking a harmonious balance between party autonomy and efficient dispute resolution, the SHIAC rules have demonstrated their effectiveness in high-stakes arbitrations within Gift City's dynamic financial ecosystem. Looking ahead, the integration of cutting-edge online dispute resolution mechanisms positions Gift City at the forefront of the digital arbitration frontier, catering to the evolving needs of the edtech sector and fostering an environment conducive to innovation. As India continues its ascent on the global arbitration stage, the SHIAC Arbitration Rules will undoubtedly play a pivotal role in shaping Gift City's arbitration landscape for years to come.

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