

International Arbitration

# 2010 SIAC Arbitration Rules Come Into Effect From 1 July 2010

## Introduction

The Singapore International Arbitration Centre (“SIAC”) recently released the latest edition of the SIAC Arbitration Rules (“2010 SIAC Rules”). This is the fourth edition of the SIAC Rules, which have come into operation on 1 July 2010.

The 2010 SIAC Rules were drafted by the Rules Committee of the SIAC Board of Directors in consultation with Chairman Prof Michael Pryles, other Board members and the SIAC Secretariat, following extensive consultation with practitioners, arbitrators and other stakeholders. The Committee also took into account the practical experience of the application of the 2010 SIAC Rules’ predecessor, the 2007 SIAC Rules. The 2010 SIAC Rules retain their foundation in the 2007 SIAC Rules, which have been clarified and updated in keeping with the changing times. There are also some new provisions that were introduced to facilitate even more efficient and effective arbitration at the SIAC.

The Rules Committee is chaired by Mr David Rivkin. Rajah & Tann LLP’s Mr Sundaresh Menon SC is its Deputy Chairman.

## Key Features Of The 2010 SIAC Rules

We set out below the key features of the 2010 SIAC Rules.

### **Jurisdiction Of The Tribunal**

The 2007 SIAC Rules provided that a party may raise the plea that the Tribunal does not have jurisdiction not later than in the Statement of Defence. This has been amended in the 2010 SIAC Rules to confirm that the plea can also be raised not later than in a Statement of Defence to a Counterclaim.

In instances where a party objects to the existence, validity or scope of the arbitration agreement or to the jurisdiction of the SIAC over a claim before the Tribunal is appointed, a Committee of Board shall decide if it is *prima facie* satisfied that an arbitration agreement under the Rules may exist.

## Qualifications Of Arbitrators

In addition to the provision contained in the 2007 SIAC Rules that the qualifications required of the arbitrator by the arbitration agreement must be taken into consideration when appointing an arbitrator, the 2010 SIAC Rules expressly mandate the Chairman to also “consider whether the arbitrator has sufficient availability to determine the case in a prompt and efficient manner appropriate to the nature of the arbitration”. The purpose of this is to not unduly delay the resolution of a case on account of the arbitrator’s other commitments.

## Independence And Impartiality Of Arbitrators

The 2010 SIAC Rules reiterate the need to have independent and impartial arbitrators in arbitration proceedings. While the 2007 SIAC Rules mandated the prospective arbitrators to disclose “to those who approach [them]” any circumstance likely to give rise to justifiable doubts as to their impartiality or independence, rule 10.4 of the 2010 SIAC Rules specifically requires such disclosure to be made to the parties and to the Registrar. It is also expressly stated in rule 10.4 that the disclosure should be made “as soon as reasonably practicable and in any event before appointment by the Chairman”. During the arbitration, the arbitrator must also disclose any circumstance of a similar nature to the parties, the other arbitrators and the Registrar.

To preserve the independence and impartiality of arbitrators, *ex parte* communication of one party with any arbitrator or any candidate for appointment as party-nominated arbitrator is prohibited (except in specific circumstances set out therein).

## Multi-party Appointment Of Arbitrator(s)

The 2010 SIAC Rules provide for a clearer method of nominating arbitrators where there are more than two parties in the arbitration. The 2010 SIAC Rules state that where there are more than two parties in the arbitration, and three arbitrators are to be appointed, the Claimants shall jointly nominate one arbitrator and the Respondents shall do the same. If no such joint nominations are made within 28 days of the filing of the Notice of Arbitration or within the period agreed by the parties, the Chairman shall appoint all three arbitrators. He shall also designate one of them to act as the presiding arbitrator.

Where one arbitrator is to be appointed, all parties are to agree on an arbitrator. If no joint nomination is made within 28 days of the filing of the Notice of Arbitration or within the period agreed by the parties, the Chairman shall appoint the arbitrator.

The procedure for joint nominations by the Claimants and the Respondents was not present in the 2007 SIAC Rules, and the period within which appointment of arbitrators may be made was previously limited to 21 days from receipt of the Notice of Arbitration.

## Confidentiality Of Arbitration Proceedings And Award

Under the 2010 SIAC Rules, the Tribunal is given more teeth to enforce the confidentiality provisions of the 2007 SIAC Rules. While the 2007 SIAC Rules directed the parties to keep the

arbitration proceedings and the award confidential, they did not provide for sanctions or consequences when one party breaches the confidentiality rule. The 2010 SIAC Rules now authorise the Tribunal to take appropriate measures, including issuing an order or award for sanctions or costs, if a party contravenes the confidentiality rule.

## Conduct Of Proceedings

The provisions governing the conduct of proceedings within the 2007 SIAC Rules have been revised. One useful feature that has been introduced is the power of the Tribunal “[to] in its discretion direct the order of proceedings, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and direct the parties to focus their presentation on issues the decision of which could dispose of all or part of the case”.

This express power on the part of the Tribunal to control how parties structure, present or even argue their cases will be welcomed as very often, valuable arbitration time and resources are wasted on issues which may turn out to be ancillary at best.

## Expedited Procedure

Prior to the full constitution of the Tribunal, a party may apply to the SIAC in writing for the arbitration proceedings to be conducted in accordance with the Expedited Procedure.

### *Availability Of The Expedited Procedure*

The Expedited Procedure is available where any of the following criteria is satisfied:

- (i) the amount does not exceed S\$5 million, representing the aggregate of the claim, counterclaim, and any setoff defence;
- (ii) the parties so agree; or
- (iii) in cases of exceptional urgency.

### *Abbreviated Manner Of Conducting Arbitration*

The following provisions apply to those arbitral proceedings that qualify for Expedited Procedure:

- (i) The Registrar may shorten any time limits prescribed under the 2010 SIAC Rules.
- (ii) The case shall be referred to a sole arbitrator, unless the Chairman determines otherwise.
- (iii) Unless the parties agree that the dispute shall be decided on the basis of documentary evidence only, the Tribunal shall hold a hearing for the examination of all witnesses, including expert witnesses, as well as for any argument.
- (iv) As a general rule, the award must be made within six months from the date when the Tribunal is constituted. However, this may be extended by the Registrar in exceptional circumstances.

- (v) The award must state the reason upon which it is based in summary form, unless the parties agree that no reasons are to be given.

### **Interim Relief And Emergency Arbitrator**

A party may request for, and the Tribunal may grant, an interim relief when the circumstances warrant. In this regard, the Tribunal may order the party requesting interim relief to provide appropriate security in connection with the relief sought.

If an emergency interim relief is needed prior to the constitution of the Tribunal, a party may apply for an Emergency Arbitrator pursuant to the procedure set out in Schedule 1 to the 2010 SIAC Rules.

### **Correction Of Awards And Additional Awards**

Under the 2007 SIAC Rules, a party may request for the correction of an award (ie error in computation, clerical or typographical error) within 30 days of receipt of the award. The Tribunal may then make the corrections within 30 days from receipt of the request.

The 2010 SIAC Rules now allow any other party in the arbitration proceedings to comment on the request 15 days from receipt thereof, before the Tribunal makes the necessary correction.

The same feature is introduced when one requests for an additional award. Fifteen days from receipt of the written notice of the request to make an additional award, any other party may comment on such request. The Tribunal shall make an additional award within 45 days of receipt of the request if it considers the request to be justified.

The "Correction of Awards and Additional Awards" portion of the 2010 SIAC Rules has been amended to include a provision on the request for an interpretation of an award. It has the same timelines as that prescribed for the request of additional award.

## **Concluding Words**

The coming into operation of the 2010 SIAC Rules is a welcome development as Singapore positions itself as a regional hub for international arbitration. The SIAC deserves praise for its insightfulness in introducing new changes, some of which are unique in that they are not found in most international arbitration rules. The SIAC has once again shown by these amendments that it is progressive in its thinking and not afraid to introduce practical and innovative ideas which will enable parties to better utilise arbitration proceedings to resolve international disputes.

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