THE SIAC ARBITRATION RULES 2010 – SOME SALIENT FEATURES

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The SIAC Arbitration Rules 2010 ('2010 SIAC Rules') came into operation on 1st July 2010. This is the 4th edition of the SIAC Rules. Unless parties have agreed otherwise, the 2010 SIAC Rules apply to all arbitration which commenced on or after 1st July 2010.

The 2010 SIAC Rules retain most of the features of the 2007 SIAC Rules. However, several important changes and improvements to the 2007 SIAC Rules have been introduced. These changes and improvements are aimed at achieving (1) greater efficiency in the conduct of the arbitral process; (2) greater effectiveness of the arbitral process; (3) clarification of certain provisions; and, (4) flexibility of the arbitral process.

(1) GREATER EFFICIENCY IN THE CONDUCT OF THE ARBITRAL PROCESS

Rule 5 – Expedited Procedure

The new Rule 5 provides for a party to file a written application with the SIAC for the arbitral proceedings to be conducted under an Expedited Procedure. Such an application may be filed in cases where the aggregate of the amount in dispute does not exceed S$5 million, or if parties so agree, or in cases of exceptional urgency. The application may be made prior to the full constitution of the Tribunal.

Once the written application is approved, the Registrar of the SIAC may shorten the time limits in the arbitral process and, unless the Chairman determines otherwise, the case will be referred to a sole arbitrator. The parties may also agree that the dispute shall be decided on the basis of documentary evidence only and unless the Registrar extends the time limit for making the award, the Tribunal has six (6) months from the time of its constitution to render the award. Further, the parties may agree that the Tribunal need not state the reasons for its award.

The Old Rule 17 is Removed – Memorandum of Issues

Under the old 2007 SIAC Rules, the parties were required to agree on a 'Memorandum of Issues'. This is no longer required under the 2010 SIAC Rules.

(2) GREATER EFFECTIVENESS OF THE ARBITRAL PROCESS

Rule 16.3 and 16.4 – Conduct of Proceedings

Upon its constitution, the Tribunal shall conduct a preliminary meeting with the parties to discuss and provide directions for the arbitral procedures in a manner that will be most appropriate and efficient for

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the proper administration of the case. The Tribunal has the discretion to direct the order of proceedings, bifurcate the proceedings, exclude cumulative or irrelevant testimony or other evidence and direct parties to focus their presentations on issues which would effectively dispose of all or part of the case. This power allows the Tribunal to make the most effective use of its time.

Rule 24(b)– Additional Powers of the Tribunal

Upon the application of a party to the arbitration, the Tribunal may allow the inclusion of one or more third parties in the arbitration provided that such a person is a party to the arbitration agreement. The inclusion of the third party is to be done with the written consent of such third party. Once the third party has been included as a party to the arbitration, the Tribunal has the power to make a single final award or separate awards in respect of all the parties. This particular provision addresses the increasing trend of multi-party arbitration.

Rule 24(h) – Additional Powers of the Tribunal

Under the new Rule 24(h), the Tribunal has the power to issue an award for unpaid costs. The award may be in the nature of an interim award.

Rule 25.1 and 25. 3 – Jurisdiction of Tribunal

This Rule now provides that the Committee of the SIAC Board shall decide on jurisdiction issues prior to the constitution of the Tribunal. Provided the Committee is prima facie satisfied that an arbitration agreement exists, the arbitral proceedings shall be terminated. Rule 25.3 clarifies that a plea that a tribunal does not have jurisdiction shall be raised not later than in the Statement of Defence or in the Statement of Defence to a Counterclaim.

Rule 26 and Schedule 1 – Interim Relief and Emergency Arbitrator

Prior to the constitution of the Tribunal, a party may also apply for an Emergency Arbitrator to seek emergency relief under the procedures set out in Schedule 1 of the SIAC Rules. After the constitution of the Tribunal, at the request of a party, the Tribunal may grant an injunction or other interim relief as it deems appropriate. The party seeking relief may be required to provide security in connection with the relief sought.

(3) CLARIFICATION OF CERTAIN PROVISIONS

Rule 9 – Multiparty appointment of Arbitrators

The 2010 SIAC Rules clarify the procedure for the nomination of arbitrators where there are more than two (2) parties in the arbitration. Rule 9 provides that where there are more than two (2) parties in the

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arbitration, and three (3) arbitrators are to be appointed, the Claimants shall jointly nominate one (1) arbitrator and the Respondents will also do the same. Where there is only one arbitrator to be appointed, all parties are to agree on the arbitrator. In both instances, if no nominations are made within 28 days from the filing the Notice of Arbitration or within such period as agreed upon by the parties, the Chairman shall appoint the arbitrator/s.

Rule 23 – Tribunal Appointed Experts

A new rule 23.2 has been added to clarify that expert(s) appointed by the Tribunal must submit a report in writing and upon such receipt, the Tribunal will deliver a copy of the report to both parties and invite comments.

Rule 27 – Applicable Law

Under the new Rule 27, the Tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. The phrase 'rules of law' include set of rules or laws other than laws of any particular state. If the parties fail to designate the rules of law to be made applicable, the Tribunal shall apply the law which it determines to be appropriate.The parties may also authorize the Tribunal to decide as amiable compositeur or ex aequo et bono.

(4) FLEXIBILITY OF THE ARBITRAL PROCESS

Rule 17 – Submissions by Parties

Time limits for submission of written statements are not specified under Rule 17. The Statement of Claim, Statement of Defence and Counterclaim (if any) and Statement of Defence to Counterclaim shall be filed within the period of time to be determined by the Tribunal.

In addition, the new Rule 17.5 allows a party to amend its claim, counterclaim or other submissions at any time unless the Tribunal considers it inappropriate to allow such amendment due to the delay or prejudice it may cause or that the amendments fall outside the scope of the arbitration agreement.

Rule 30.1 – Fees and Deposits (alternative fee arrangement)

The new Rule 30.1 allows the parties to adopt alternative methods of determining arbitrator's fees prior to the constitution of the Tribunal.
The enhanced 2010 SIAC Rules are indeed a welcome change to the existing Rules that have governed SIAC arbitrations for the last three years. The new features such as the expedited arbitration procedure and the Tribunal's extended powers in granting interim relief to parties in arbitration are indeed constructive steps forward in improving and enhancing the arbitral process in Singapore..

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