



JONES DAY COMMENTARY

SIAC AMENDS ITS STRUCTURE AND RULES

The Singapore International Arbitration Centre (“SIAC”) has released the fifth edition of its Rules of Arbitration (“SIAC Rules”), which give effect to a new governance structure as well as introduce new rules for the conduct of arbitration. The new SIAC Rules came into force on April 1, 2013.

COURT OF ARBITRATION

Key among the changes to SIAC’s governance structure is the establishment of a SIAC Court of Arbitration (“SIAC Court”) that will oversee case administration and the appointment of arbitrators. This change separates the arbitration functions carried out by the SIAC Court from the corporate, business development, and compliance functions that will continue to be overseen by the Board of Directors.

Pursuant to the changes to the SIAC Rules, the determination of applications for the expedited procedure (Rule 5), the appointment of arbitrators (Rule 6), and the appointment of Emergency Arbitrators (Schedule 1) will now be performed by the President of the SIAC Court. The SIAC Court will

also determine jurisdictional challenges and challenges to arbitrators (Rule 13).

CHANGES TO THE ARBITRAL PROCESS

In addition to the establishment of the SIAC Court, the new Rules also include a number of changes that directly affect the process of an arbitration, including:

- Clarification of the rules on the extension of time limits (Rule 2.5), the commencement of arbitration (Rule 3.3), and challenges to arbitrators (Rule 12);
- Consideration of issues not specifically raised in the pleadings (Rule 24(n));
- Challenges to the jurisdiction of the tribunal prior to its constitution (Rules 12 and 13);
- The ability of a tribunal to award post-award interest in line with the latest legal developments in Singapore¹ (Rule 28.7); and
- Publication of redacted awards (Rule 28.10).

TIME LIMITS AND THE ROLE OF THE REGISTRAR

The changes to Rules 2.5 and 3.3 regarding the ability to extend time limits indicate an increase in the powers and discretion of the Registrar of the SIAC Court. Under Rule 2.5, the Registrar has the discretion to grant extensions or shorten any time limits prescribed in the SIAC Rules without deference to the arbitral tribunal, and even before the tribunal is constituted.

Pursuant to Rule 3.3, the Registrar can deem a Notice of Arbitration complete and therefore that the arbitration has commenced if satisfied that there has been “substantial compliance” with the requirements of a Notice of Arbitration under Rule 3.1.

The Registrar also has powers pursuant to Rule 25.1 to determine whether a party’s objection to the existence or validity of an arbitration agreement, or to the competence of SIAC to administer an arbitration, should be referred to the SIAC Court.

CHALLENGING JURISDICTION

The intention of the changes to the rules concerning challenges to the jurisdiction of the arbitral tribunal and the competence of SIAC to administer an arbitration is to streamline the process in order that such challenges are dealt with swiftly and efficiently. As described above, SIAC Rule 25.1 provides the Registrar with the more substantive role of vetting the challenges to jurisdiction; this constitutes the first phase of the new two-phase process. The intention is that unfounded or unwarranted challenges can be disposed of swiftly while genuine objections can move quickly to the second phase of the process—namely, consideration of the challenge by the SIAC Court.

CONSIDERATION OF ISSUES NOT IN PLEADINGS

Rule 24(n) is a new rule that allows an arbitral tribunal to decide, where appropriate, any issue not expressly or impliedly raised in the parties’ submissions, provided the

issue has been clearly brought to the notice of the other party and there has been adequate opportunity to respond. This development can be traced to the decision of the Singapore Court of Appeal in *PT Prime International Development v Kempinski Hotels SA* [2012] 4 SLR 98, where the court held that when making an award, an arbitrator can, and in some cases must, have regard to issues that may not have been pleaded. The example from this case is that of public policy—the court stated, “public policy is a question of law which an arbitrator must take cognisance of if he becomes aware of it in the course of hearing the evidence presented during arbitral proceedings.”² However, the court alluded to other circumstances when an arbitrator may consider issues beyond those specifically pleaded when relying on Gary B Born’s *International Commercial Arbitration*, which states:

Where the parties’ contract raises issues of illegality, violations of public policy or mandatory law, or performance of administrative functions, then the tribunal’s mandate must necessarily include consideration of those issues insofar as they would affect its decision or the enforceability of its award....

TRANSPARENCY OF AWARDS

Following the example of the London Court of International Arbitration (“LCIA”) Rules and the Swiss Chambers’ Arbitration Institution (“SCAI”) Rules, Rule 28.10 expressly allows SIAC to publish awards with the names of the parties and “other identifying information” redacted. However, SIAC Rule 28.10 differs from the LCIA and SCAI rules as it does not expressly require the consent of the parties prior to publication of the award. To date, there has been no indication of what form the publication of awards will take and what SIAC considers to be “other identifying information.” It is possible that in some industries and with respect to some disputes, the redaction of “identifying information” to make the award truly anonymous would leave very little of the award available for publication. It remains to be seen whether SIAC will consult parties prior to publication of the award and whether parties to SIAC arbitrations will seek further clarification on

how the redaction will ensure the confidentiality of the proceedings. However, in circumstances where SIAC's case load continues its rapid expansion (up 25 percent in 2012), the prospect of a developing body of arbitral decisions and increasing institutional transparency are welcome developments.

CONCLUSION

The changes to SIAC's governance structure are intended to reflect its expanding case load and to further strengthen SIAC as an international arbitration institution by allowing a dedicated team of arbitration professionals to constitute the SIAC Court and focus on the legal and practical requirements of arbitration.

The amendments to the rules are designed to keep SIAC at the forefront of international arbitration developments by quickly implementing changes designed to clarify and simplify procedural aspects of the SIAC Rules. The changes to the SIAC Rules also demonstrate the synergistic relationship between arbitration in Singapore and the Singapore courts by responding to developments in Singapore law and the interpretation that the courts provide on the UNCITRAL Model Law on International Commercial Arbitration and its relationship with the Singapore International Arbitration Act.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

Matthew J. Skinner

Singapore
+65.6233.5502
mkskinner@jonesday.com

Martin S. King

Singapore
+65.6538.3939
mking@jonesday.com

ENDNOTES

- 1 For further background, refer to *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125.
- 2 *PT Prime International Development v Kempinski Hotels SA* [2012] 4 SLR 98 [72].