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AMIDST 24/7 MEDIA CLIMATE, SIAC PROVIDES FOR SPEEDY PROCESS AND
EMERGENCY RELIEF

By
Nathan Volpi*

I. A CAUSE FOR REVISION

In the summer of 2010, the Singapore International Arbitration Centre (“SIAC”) announced the enactment of a new edition of its arbitration rules.¹ The 2010 SIAC Rules effect a small but important change to the rules enacted in 2007.² Specifically, the 2010 SAIC Rules provide for the use of expedited arbitration procedures in special circumstances, and grant the parties the power to appoint an emergency arbitrator and seek interim relief.³ As explained by the SIAC, the 2010 SAIC Rules “were drafted after a review of the practical experience of the application of the 2007 SIAC Rules” and “reflect the best practices in international arbitration . . .”⁴ The New Rules were drafted by SIAC’s Rules Committee, chaired by Mr. David Rivkin, in consultation with members of SIAC’s Board of Directors and became effective on July 1, 2010.⁵

II. EXPEDITED DECISIONS FOR PARTIES ON THE GO

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¹ Press Release, Singapore International Arbitration Centre (July 1, 2010), http://www.siac.org.sg/cms/images/stories/documents/news/2010/News_Release_-_SIAC_Rules_2010.pdf [hereinafter Press Release].

² Singapore International Arbitration Centre, SIAC Rules 2007 (July 1, 2007), *available at* http://www.siac.org.sg/cms/index.php?option=com_content&view=article&id=127&Itemid=82 [hereinafter SIAC 2007].

³ *See* Press Release, *supra* note 1; *see also* Singapore International Arbitration Centre, SIAC Rules 2010 (July 1, 2010), *available at* http://www.siac.org.sg/cms/index.php?option=com_content&view=article&id=210&Itemid=130 [hereinafter SIAC 2010].

⁴ Press Release, *supra* note 1.

⁵ *Id.*

Rule 5 of the 2010 SIAC Rules allows any party to an arbitration to apply for expedited procedures in special circumstances.⁶ The previous version of Rule 5, which provided for the “Number, Appointment and Confirmation of Arbitrators,” has become Rule 6 of the New Rules.⁷ New Rule 5 is divided into two parts: 5.1 and 5.2.⁸ Section 5.1 contains the criteria for invoking the provisions of the Rule.⁹ Section 5.2 details the new powers granted to the Registrar of SIAC, the Chairman of SIAC’s Board of Directors (“Chairman”), and the parties themselves in order to facilitate the expedited process.¹⁰

A. Rule 5.1

Expedited procedures are available to any party, acting unilaterally, and may be invoked if certain requirements are met. Expedited procedures may be requested if the arbitral tribunal has not yet been fully constituted and the amount in controversy is less than five million Singapore Dollars, or “in cases of exceptional urgency.”¹¹ Rule 5 can also be invoked through party agreement, so long as the full tribunal remains unformed.¹² Invocation of the Rule is not an automatic process, however, and the party or parties requesting expedited procedures must file a written application with the SIAC.¹³ Once the application has been received by the SIAC, the Chairman must determine whether to grant the request for use of the expedited procedure.¹⁴ In making this determination, the

⁶ See SIAC 2010.

⁷ Compare SIAC 2007, Rule 5 with SIAC 2010, Rule 6.

⁸ SIAC 2010, Rule 5.

⁹ *Id.* at Rule 5.1.

¹⁰ *Id.* at Rule 5.2.

¹¹ *Id.* at Rules 5.1(a) & (c).

¹² *Id.* at Rule 5.1(b).

¹³ SIAC 2010, Rule 5.1.

¹⁴ *Id.* at Rule 5.2.

Chairman has to consider the views of all of the parties involved, but is subject to no set of formal guidelines.¹⁵

B. Rule 5.2

If the Chairman permits the applying party to utilize expedited procedures the Chairman must then determine the number of arbitrators that will hear the dispute.¹⁶ The default rule is one arbitrator, but it is within the discretion of the Chairman to appoint multiple arbitrators.¹⁷ The 2010 SAIC Rules refer to the arbitrator or the arbitrators as the Tribunal, notwithstanding the number of individuals appointed. Once established, the Tribunal will hear the case in accordance with three special rules.¹⁸

The first rule provides, regardless of any need for haste, that the Tribunal must hold a hearing “for the examination of all witnesses . . . as well as for any argument . . .”¹⁹ This provision can be waived by the consent of both parties in situations where a full hearing is not desirable.²⁰ Provided that at least one party wishes to argue the issues, however, the Tribunal must balance the hearing requirement with the requirement that the award “shall be made within six months from the date when the Tribunal is constituted . . .”²¹ This requirement can only be lengthened by the Registrar of SIAC, and then only when there are “exceptional circumstances.”²² What those circumstances may be is left undefined.

¹⁵ *Id.*

¹⁶ *Id.* at Rule 5.2(b).

¹⁷ *Id.*

¹⁸ SIAC 2010, at Rules 5.2(c), (d) & (e).

¹⁹ *Id.* at Rule 5.2(c).

²⁰ *Id.*

²¹ *Id.* at Rule 5.2(d).

²² *Id.*

The Registrar also possesses the power to “shorten any time limits under these Rules” entirely at his or her own discretion.²³ The Registrar and the Chairman are thus left with a substantial amount of control over the length of expedited proceedings. This is in contrast to a more “traditional” form of arbitration, which permits the parties to be the masters of their own destiny. The parties do retain some control over the form of the award, as Rule 5 requires the Tribunal to state “the reasons upon which the award is based in summary form” *unless* the parties decide they mutually do not want any reasons to be given.²⁴

III. EMERGENCY RELIEF FOR BELEAGUERED PARTIES

With the addition of Rule 26, the 2010 SAIC Rules now contain provisions for parties requiring emergency or interim relief. Rule 26 empowers the Tribunal to issue awards, injunctions and “any other relief it deems appropriate” for the petitioning party.²⁵ Rule 26 also provides that requests made to the judiciary “prior to the constitution of the Tribunal or in exceptional circumstances” are acceptable.²⁶ The Tribunal may require a party seeking emergency or interim relief to provide “appropriate security in connection with the relief sought.”²⁷

Should a party require emergency relief before the Tribunal is established, then an emergency arbitrator may be appointed pursuant to Schedule 1.²⁸ To comply with Schedule 1, the party must file an application for relief with all other parties and with the Registrar and explain why emergency relief is required.²⁹ The Chairman of SIAC’s Board of Directors will then decide whether to grant the application and, if so, will then appoint an arbitrator “within one business day of

²³ SIAC 2010, Rule 5.2(a).

²⁴ *Id.* at Rule 5.2(e) (emphasis added).

²⁵ SIAC 2010, Rule 26.1.

²⁶ *Id.* at Rule 26.3.

²⁷ *Id.* at Rule 26.1.

²⁸ *Id.* at Rule 26.2.

²⁹ SIAC 2010, Schedule 1, § 1.

receipt of such application and payment of any required fee.”³⁰ The emergency arbitrator will then provide each party with the opportunity to be heard before rendering “any interim relief that he deems necessary.”³¹ The emergency arbitrator is required to provide the reasoning for his or her decision in writing in order for it to be enforced.³²

IV. CONCLUSION

The Singapore International Arbitration Centre believes the addition of Rules 5 and 26 to its already popular arbitration rules will “facilitate even more efficient and effective arbitrations at SIAC.”³³ The organization also believes that the “best practices in international arbitration” are reflected in the new rules.³⁴ The new rules do provide a strong alternative to the slower paced arbitration regime previously established by SIAC. Specifically, Rules 5 and 26 now govern situations where haste is a requirement. Rule 5 creates the new model for expedited procedures and Rule 26 establishes grounds for interim and emergency relief, thus rendering the 2010 SIAC Rules more flexible than the 2007 SIAC Rules.³⁵

³⁰ *Id.* at Schedule 1, § 2.

³¹ *Id.* at Schedule 1, §§ 5 & 6.

³² *Id.* at Schedule 1 § 6.

³³ Press Release, *supra* note 1.

³⁴ *Id.*

³⁵ *See* SIAC 2010, Rules 5 & 26.