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## Singapore International Arbitration Centre (SIAC) Issues New Arbitration Rules And Fee Arrangements

The SIAC has this week published a new set of Arbitration Rules (“New Rules”) which come into effect on 1 July 2007, replacing the current 2<sup>nd</sup> edition of the SIAC Rules issued ten years ago.<sup>1</sup> The New Rules introduce significant changes to the SIAC’s arbitration procedures, its role in administering arbitrations, as well as its fee structures. While some of these changes appear inspired by the popular ICC arbitration rules, the New Rules also incorporate certain innovative features. Major changes implemented by the New Rules include the following:

### Appointment and Number of Arbitrators

The SIAC clarifies its role as an appointing authority in the New Rules. In future arbitrations subject to the New Rules, even if the arbitration agreement provides that one arbitrator is to be “appointed” by each of the parties (or any third persons such as co-arbitrators), that agreement shall only be treated as an agreement for each party to “nominate” an arbitrator (New Rule 5.2). A nominated arbitrator will only be deemed “appointed” when confirmed by the SIAC Chairman (New Rule 5.5). This New Rule usefully clarifies and formalises in the rules what is in fact the SIAC’s current practice of confirming parties’ selections of their respective arbitrators after agreement of the arbitrators’ terms of appointment (SIAC Practice Note 01/07, para. 12).

Importantly, if the parties have not agreed on the number of arbitrators, the Registrar will have the power to decide that a dispute warrants the appointment of three arbitrators, taking into account the dispute’s complexity, sums involved or other relevant circumstances (New Rule 5.1). This contrasts with the current rules where, failing agreement of the parties, a sole arbitrator will be appointed (Current Rule 6). This

change brings the New Rules in line on this point with the ICC Rules.

### No Automatic Suspension Upon Challenge of Arbitrators

Under the current SIAC Rules, when a party’s challenge of an arbitrator is notified to the SIAC Registrar, the arbitration is automatically suspended until the challenge is resolved or decided upon (Current Rule 13.2). Under the New Rules, there is no longer any automatic suspension of proceedings. Instead, the SIAC Registrar now has discretion whether to order suspension of the arbitration until the challenge is resolved (New Rule 11.2). This is a welcome change as the automatic suspension encouraged dilatory parties to challenge arbitrators at critical stages of the arbitration, notably on the eve of or during hearings.

### Memorandum of Issues

A significant amendment in the New Rules is the introduction of a requirement that the tribunal and the parties prepare a Memorandum of Issues within 45 days following completion of the parties’ submission of written statements (New Rule 17). Written statements

<sup>1</sup> The New Rules and Schedule of Fees are available on the SIAC website at [www.siac.org.sg](http://www.siac.org.sg).

here refer to Statements of Case, Defence, Counterclaims and further written statements including witness statements (New Rule 16). The Memorandum of Issues will define the matters that the tribunal is to decide in its award. It must be signed by the parties and the tribunal. If a party refuses to participate in this process, the tribunal may submit its Memorandum of Issues to the SIAC Registrar for approval. At first sight, the SIAC's Memorandum of Issues appears similar to the drawing up of Terms of Reference in ICC arbitration. In practice, however, it is likely to be of greater importance in the dispute because it is to be drawn up only after the parties have fully argued their respective cases in writing. This innovation by the SIAC requires the parties and the tribunal to focus and agree on the dispositive issues in the dispute shortly before the hearings, which should help streamline the latter part of the arbitration.

### Scrutiny of Draft Awards by SIAC

Another new requirement is for a tribunal to submit its draft award first to the SIAC Registrar for scrutiny and approval on matters of form, before the award may be issued (New Rule 27.1). The Registrar may suggest modifications as to form and may also draw the tribunal's attention to points of substance. With this new feature, SIAC now exercises control over the quality of the award without affecting the arbitrators' liberty of decision.

### New *Ad Valorem* Fee Structure

The New Rules are accompanied by a new Schedule of Fees used to determine both arbitrators' remuneration and the SIAC's administrative fees. In the same way as the ICC's fee system, the SIAC's Schedule of Fees uses a sliding scale, with fees charged in proportion to the sums in dispute. However, the SIAC's administrative fees are significantly lower than the fees charged by the ICC for a dispute of equivalent size. And while, unlike the ICC, the SIAC does not offer a minimum-maximum range of arbitrators' fees, the SIAC's new fees for arbitrators are comparable to the median rates fixed by the ICC for similarly sized disputes. Parties are likely to welcome the SIAC's introduction of a more objective and transparent system for determining arbitrators' fees, while keeping the SIAC's administrative fees highly competitive. Also, the level of the SIAC's arbitrators' fees should now allow parties choosing SIAC arbitration to select without difficulty the world's leading – and most expensive – arbitrators.

### Conclusion

With its New Rules, which are the fruit of broad consultation within the international arbitration community, the SIAC has enhanced the certainty and transparency of its procedures. Its new fee arrangements are, in our view, a distinct improvement. These developments reflect the SIAC's rising stature as a leading global arbitral institution, which is particularly suited for the expeditious resolution of cross-border disputes relating to Asia.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. For more information on the topics covered in this issue, please contact:

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