

Arbitration in Singapore

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Key Words : Arbitration Act (AA), International Arbitration Act (IAA),
Singapore International Arbitration Centre (SIAC)

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I . Introduction

This paper limits its discussion on an overview of the legal framework of arbitration in Singapore and the administration of arbitration proceedings at the Singapore International Arbitration Centre (SIAC).

II . Legal framework of arbitration in Singapore:An Overview

a. Dual arbitration regime

Singapore provides a dual-track arbitration regime. Where the arbitration is domestic in nature and the agreed seat of arbitration is Singapore the Arbitration Act (Cap 10) ("AA") will apply.¹⁾ Where the arbitration is international in nature with the seat of arbitration in Singapore, the International Arbitration Act (Cap 143A) ("IAA") will apply.²⁾ IAA incorporates the UNCITRAL Model Law on International Commercial Arbitration ("Model Law") as its First Schedule. Section 3 of IAA gives Model Law the force of law in Singapore.³⁾ The second schedule to the IAA is Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention").

1) See Section 3, AA.

2) See Section 5, IAA.

3) Section 3 of the IAA.

b. Scope of application of IAA and AA

Section 5 of the IAA provides the scope of its application. It provides that IAA shall not apply to an arbitration which is not an international arbitration, unless the parties agree in writing that IAA shall apply to that arbitration. Section 5(2) of IAA further defines an international arbitration an arbitration whereby:

- (a) at least one of the parties to an arbitration agreement, at the time of the conclusion of the agreement, has its place of business in any State other than Singapore; or
- (b) one of the following places is situated outside the State in which the parties have their place of business:
 - (i) the place of arbitration
 - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
- (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

Accordingly, where any of the above categories are satisfied by an arbitration having its seat in Singapore, the arbitration is considered an international arbitration governed by the IAA.

Section 3 of the AA for domestic arbitration proceedings provides that AA shall apply to arbitrations having its seat in Singapore and if part II of the IAA does not apply to that arbitration.⁴⁾

4) This includes Section 5 of the IAA discussed above.

Therefore for arbitration in Singapore, unless the parties agree otherwise,⁵⁾ domestic arbitration is governed by AA and international arbitration is governed by IAA.

c. Opting-in and opting-out of IAA and AA

While the law provides a default statutory regime for domestic (AA) or international (IAA) arbitrations having its seat in Singapore, parties are allowed by law to expressly contract out of these default regimes. Accordingly, notwithstanding that an arbitration may be domestic in nature which satisfies Section 3 of the AA, parties may provide that the IAA will apply to the arbitration. Conversely, while the arbitration may be considered ‘international’ under the provisions of Section 5 of the IAA, parties opt-out of IAA and agree that the AA will apply.⁶⁾

d. IAA vs AA

The key differences between the operation of IAA and AA in an arbitration proceeding are the extent of judicial intervention, respect for party autonomy and primacy on the finality of the arbitral award.

Under the IAA regime, the level of judicial intervention is minimal and there is greater respect for party autonomy. Under IAA, court intervention is limited only to instances expressly provided in the IAA.⁷⁾ Further, the court is mandated to stay court proceedings in favour of arbitration where a valid and binding arbitration agreement exists between the parties.⁸⁾ With

5) See discussion under 1(c) below - opting-in and opting-out of IAA and AA

6) Section 15 IAA

7) Article 5, Model Law.

respect to the finality of the arbitral award, there is no recourse against arbitral award made under the IAA except to set aside the award under the exclusive grounds provided by law. In addition to the grounds set under Article 34(2) of Model Law, award made under IAA may only be set aside by the court if it is satisfied that the making of the award was induced or affected by fraud or corruption or if a breach of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced.⁹⁾

Under the AA regime, the law allows the court greater supervision of arbitration proceedings than that found under the IAA. Under the AA, stay of court proceedings in favour of arbitration is discretionary and not mandatory.¹⁰⁾ Thus, despite the existence of a valid and binding arbitration agreement between the parties, Singapore court has the discretion to decide whether to stay the court proceedings and refer the matter to arbitration or to continue with the proceedings before the court for the resolution of the dispute. The court retains discretion to continue the court proceedings should it feel that the matter is best to be decided by court. Moreover, in the course of arbitral proceedings, a party may apply before the court for a determination of a question of law which arises in the arbitration.¹¹⁾ Under AA regime, in addition to setting aside an arbitral award under the grounds stated in the law, a party aggrieved by an arbitral award may ‘appeal’ the award before the court on a question of law.¹²⁾

8) Section 6, IAA.

9) Section 24, IAA.

10) Section 6 AA

11) Section 45 AA.

12) Section 49 AA

e. Number of Arbitrators under IAA and AA

IAA and AA have a similar approach on the number of arbitrators to be appointed in the absence of agreement between the parties. Under the law, the parties may agree on any number of arbitrator(s). In the absence of such agreement, there shall be a sole arbitrator.¹³⁾ This modifies the position under Model Law which provides for a default number of three arbitrators.¹⁴⁾

f. Power and immunity of arbitral tribunal

The IAA and the AA enumerate the specific powers that the arbitral tribunal may exercise in the course of the arbitration proceeding. The power granted to the arbitral tribunal under the IAA is wider than the powers granted under the AA. Section 12 of the IAA gives arbitral tribunal the power to grant:

- i) security for costs;
- ii) the preservation, interim custody or sale of any property which is or forms part of the subject-matter of the dispute;
- iii) samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject-matter of the dispute;
- iv) the preservation and any interim custody of any evidence for the purposes of the proceedings;
- v) securing the amount in dispute;

13) Section 9 IAA and Section 12 AA

14) Article 10 UNCITRAL Model Law

- vi) ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and
- vii) an interim injunction or any other interim measure.

Section 28 of the AA empowers arbitral tribunal same power as set above, save for those set out in (v) to (vii).

With respect to the immunity of arbitrators, both the IAA and the AA stipulate express provisions on immunity to arbitrators. Under the IAA and AA, arbitrators are not liable for negligence in respect of anything done or omitted to be done in the capacity of arbitrator nor for any mistake in law, fact or procedure made in the course of arbitral proceedings or in the making of an arbitral award.¹⁵⁾

III. Overview of SIAC and its services

Singapore International Arbitration Centre (SIAC) was established in July 1991 as anon-profit organization. It currently runs under the umbrella body of Singapore Business Federation.

The core business of the SIAC is to administer arbitration proceedings. In addition to the administration of arbitration proceedings, the SIAC also offers services such as: renting hearing rooms, arranging transcription and translation service, secretarial support during arbitration hearings, etc. While these additional services complement and facilitate the administration of the arbitration cases by the SIAC, these additional services may also be

¹⁵⁾ Section 20 AA and Section 25 IAA

availed of by ad hoc users.

Since its establishment, the SIAC has administered over 900 cases involving parties from all over the world. In the last 6 years, there has been an average of 67 new cases docketed each year.¹⁶⁾ About 70% of these cases are international in nature. The average time of completion of an arbitral proceeding, from the Notice of Arbitration is filed until the award is rendered, is 18 months.

In administering cases, SIAC undertakes the following -

- Assist parties to appoint the arbitrators where they are unable to agree
- Manage the financial accounts of each case, according to published transparent guidelines
- Supervise and monitor the progress of the case
- Arrange all logistics for arbitration hearing
- Scrutiny of arbitral awards to ensure that each award complies with procedural form

SIAC administers arbitration proceedings under its own rules of arbitration and where parties so agree and request, cases governed by the UNCITRAL Arbitration Rules. At present, the SIAC may administer an arbitration under any of the following rules of arbitration agreed upon by the parties:

- (1) SIAC Rules¹⁷⁾ - primarily for international arbitration. A general flow chart of arbitration proceedings under SIACrules is attached in the annexure

16) Statistics from 2000-2005, details can be viewed from www.siac.org.sg under the heading "Facts and Figures".

17) SIAC Rules (2nd Edition, 22 October 1997) and SIAC Domestic Arbitration Rules (2nd Edition, 1 September 2002) are currently under review.

- (2) SIAC Domestic Arbitration Rules - primarily for domestic arbitration;
- (3) Singapore Bunker Claims Procedure - for disputes relating to the supply of bunkers;
- (4) SIAC SGX-DC Arbitration Rules - for disputes arising from derivative clearing; and
- (5) SIAC SGX-DT Arbitration Rules - for disputes arising from derivative trading.

For the services in administering an arbitration case, SIAC charges a fee depending on the amount of claim in dispute. For international arbitration cases, the fee scale ranges from S\$2,750 to S\$25,000.¹⁸⁾

In addition, for ad-hoc arbitration proceedings with seat the seat of arbitration in Singapore, SIAC assists the parties in the appointment of the arbitral tribunal where they are unable to agree. The Deputy Chairman of the SIAC is the designated appointing authority under both the IAA and the AA. The fee for appointing one arbitrator for an international arbitration case is S\$1,250.

SIAC also provides a Registry and an authentication service for arbitral awards, made under SIAC Rules and/or for ad hoc arbitral awards made in Singapore. All users of Singapore arbitration can now lodge their awards with the SIAC and apply to the Registrar to have the said authenticated or certified to assist the enforcement of the award in a foreign jurisdiction.

18) For more information on SIAC's fees, please see www.siac.org.sg under the heading "Fees".

b. SIAC's appointing process

Where the SIAC is required to appoint an arbitrator or an arbitral tribunal, SIAC adopts a three-step approach.

The first step is the nomination of the arbitrators by a Nomination Committee, comprising at least 2 legal officers of the SIAC. The Nomination Committee will produce a list of 3-4 candidates for a sole arbitrator and 7-8 candidates for a 3-member tribunal, which are indicated by order of preference.

The Nomination Committee proposes the list of candidates after a consideration of, among others: qualifications called by arbitration agreement or indicated by the parties; the expertise/experience of the arbitrator; the nature of dispute; time availability of candidate; number of arbitration appointments made in the last 2 years (to ensure fair distribution of cases); historical performance of cases handled; knowledge of language; and knowledge of the governing law of the arbitration. Arbitrators who are members of the SIAC Panel of Arbitrators¹⁹⁾ are initially considered by the SIAC for appointment. However, the SIAC may also appoint an arbitrator outside of the SIAC Panel of Arbitrators.

The second step in the SIAC appointment process is the approval of the candidates by the Confirmation Council. The Nomination Committee will submit the list of candidates for appointment to the Confirmation Council composed of 4 members of which at least 2 members are from the SIAC

19) There are two panels of arbitrators: International Panel and Regional Panel. The difference is only geographical division. Regional Panel are arbitrators who reside within ASEAN region. Those who live outside, are categorised as International Panel. In addition, SIAC also maintains a Reserve list for those who have the expertise to conduct arbitration proceedings but not necessary fulfill the minimum arbitration experience required to be admitted to the main panel.

Board of Directors. The Confirmation Council may then: (i) confirm; (ii) re-rank; or (iii) reject the list.

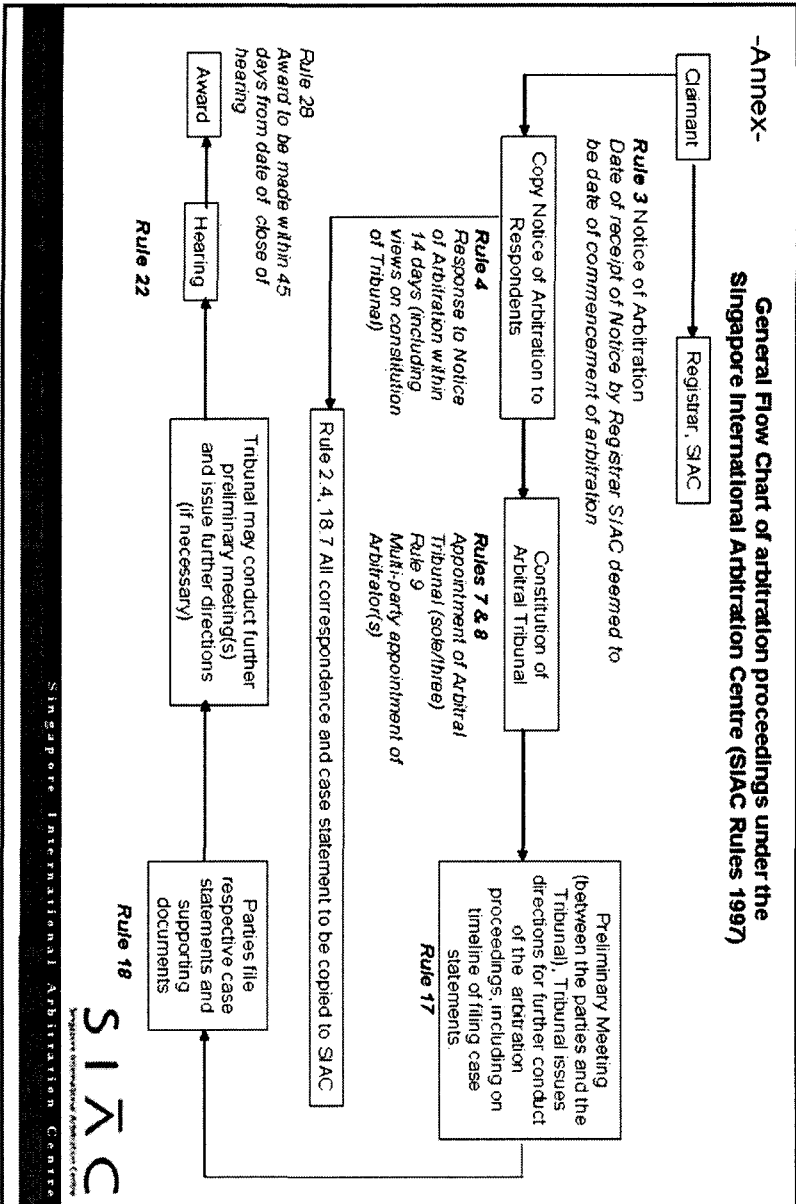
The final step in the appointing process is the appointment by the Deputy Chairman of SIAC. The Deputy Chairman will appoint the arbitrator from the list approved or re-ranked by the Confirmation Council. The Deputy Chairman will usually make the appointment of the candidate who ranks first on the list as approved by the Confirmation Council unless there are circumstances within his knowledge to warrant a departure.

c. SCMA and ICDR-Singapore

In 2004, SIAC has set up a specialist maritime arbitration centre called the Singapore Chamber of Maritime Arbitration (SCMA) to administer disputes that are of a maritime nature. SCMA administers arbitrations under its own set of rules of arbitration known as the SCMA Rules.²⁰⁾

In February 2006, the International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association (AAA), and SIAC announced a joint venture to establish a dispute resolution center to be situated in Singapore. This new facility will be called the International Centre for Dispute Resolution-Singapore and will provide its own rules for the conduct of arbitration and mediation, training and appointment of arbitrators to its panel and case administration services.

²⁰⁾ For more information on SCMA, please see www.scma.org.sg



References

The Statutes of the Republic of Singapore:

- Arbitration Act (Cap 10)
- International Arbitration Act (Cap 143A)

SIAC website: www.siac.org.sg

SCMA website: www.scma.org.sg

ABSTRACT

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Singapore is a dual-track arbitration regime. Where seat of arbitration is Singapore, the governing procedural law for domestic arbitration is AA and for international arbitration is IAA. The parties may by agreement opt-out of and opt-into a specific regime.

SIAC is a leading arbitral institution in Singapore. It offers wide range of services: administer arbitration proceedings, arrangement of logistics for arbitration hearing, appointment of arbitral tribunal for ad hoc arbitration in Singapore as well as registry and authentication of arbitral awards.

Key Words : Arbitration Act (AA), International Arbitration Act (IAA), Singapore International Arbitration Centre (SIAC)