

Singapore International Arbitration Centre Launches Investment Arbitration Rules

January 30, 2017

The Investment Arbitration Rules of the Singapore International Arbitration Centre (“**SIAC Investment Rules**”) entered into force on January 1, 2017.¹

This is the first time a private arbitral institution has developed a set of rules tailored expressly for investment arbitration. While modeled on the standard Arbitration Rules of the Singapore International Arbitration Centre as amended on August 1, 2016 (“**2016 SIAC Rules**”), the SIAC Investment Rules were thus drafted with a view to the special issues arising in arbitral proceedings involving States, State-controlled entities and intergovernmental organizations. This memorandum sets forth the main features of the new rules.

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The SIAC Investment Arbitration Rules are available on the website of the Singapore International Arbitration Centre here:

<http://www.siac.org.sg/images/stories/articles/rules/IA/SIAC%20Investment%20Arbitration%20Rules%20-%20Final.pdf>.



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I. Scope Of Application

The SIAC Investment Rules apply by agreement of the parties to a dispute, in proceedings involving a State, State-controlled entity or intergovernmental organization, regardless of whether the dispute arises out of a contract, treaty, statute or other instrument, and irrespective of objective criteria, such as the existence of a qualifying “investor” or “investment.”²

In agreeing to arbitrate under the SIAC Investment Rules, the parties waive any right of immunity from jurisdiction in respect of proceedings relating to the arbitration, but not immunity from execution.³

II. Main Features

A. Constitution Of The Tribunal And Arbitrator Challenges

In the absence of an agreement of the parties to the dispute, a tribunal constituted under the SIAC Investment Rules will consist of three arbitrators.⁴ In the event that a party fails to nominate its arbitrator within 35 days after receipt of the other party’s nomination of its arbitrator, or, in the event of a sole arbitrator, if the parties fail to agree on the nomination of the arbitrator within 42 days after the commencement of the arbitration, the SIAC Court will appoint the arbitrator.⁵ These intervals are significantly shorter than that provided for under Rule 4(1) of the Arbitration Rules of the International Centre for Settlement of Investment Disputes (“**ICSID Arbitration Rules**”). Likewise, if the parties’ agreed procedure does not result in a nomination within the period agreed by the parties or set by the

Registrar, the SIAC Court will appoint the presiding arbitrator.⁶

The SIAC Investment Rules also set forth a strict deadline for challenges to arbitrators: a party must raise its challenge within 28 days after receipt of the notice of appointment or of becoming aware of the circumstances giving rise to the challenge.⁷ This interval is considerably longer than that provided for under the 2016 SIAC Rules. By contrast, ICSID Arbitration Rule 9(1) simply provides that any challenge must be raised “*promptly*.” Moreover, unlike ICSID Arbitration Rule 9(6), which states that an arbitrator challenge automatically suspends ongoing proceedings, under the SIAC Investment Rules, such a challenge will not suspend the proceedings unless the Registrar so orders.⁸

B. Early Dismissal Of Claims And Defenses

The SIAC Investment Rules permit a party, at any point of the proceedings, to apply for early dismissal of a claim or defense on the basis that the claim or defense is manifestly without legal merit, manifestly outside the jurisdiction of the tribunal or manifest inadmissible.⁹ This provision draws on, but is broader than, ICSID Arbitration Rule 41(5), which allows a party to file an objection that a claim is manifestly without legal merit within 30 days of the constitution of the tribunal, and in any event before the first session of the tribunal. Under the SIAC Investment Rules, any order or award on a party’s application for early dismissal is to be made within 90 days of the date of filing of the application.¹⁰

² Introduction (ii).

³ Rule 1.3.

⁴ Rule 5.2.

⁵ Rules 6.2, 7.2 and 9.1.

⁶ Rules 7.3 and 9.2.

⁷ Rule 12.1.

⁸ Rule 12.4.

⁹ Rule 26.1.

¹⁰ Rule 26.4.

C. Interim And Emergency Relief

The SIAC Investment Rules permit a party to apply for interim relief and, in the event of an express agreement to the application of the emergency arbitrator provisions of the Rules, for emergency relief prior to the constitution of the tribunal.¹¹

D. Confidentiality And Publication Of Information Concerning The Proceedings

The SIAC Investment Rules contain strict provisions on confidentiality.¹² However, they permit SIAC to publish limited information regarding the existence of an investment dispute, including the nationality of the parties, the identity and nationality of the members of the tribunal, the treaty, statute or other instrument under which the arbitration was commenced and the status of the proceedings, as well as redacted excerpts of the reasoning of the tribunal and the decisions of the SIAC Court on challenges to arbitrators.¹³ Further information may be published with the express consent of the parties to the dispute.¹⁴

E. Award

In agreeing to arbitrate under the SIAC Investment Rules, the parties agree that any award rendered is final and binding on the parties, undertake to carry out the award immediately, and waive their right to any form of appeal, review or recourse to a State court or other judicial authority with respect to that award (insofar as a waiver may be validly made).¹⁵

¹¹ Rules 27.1 and 27.4; Schedule 1.

¹² Rule 37.

¹³ Rules 38.1 and 38.2.

¹⁴ Rule 38.3.

¹⁵ Rule 30.11.

F. Third-Party Submissions

In recognition of the fact that investment arbitration may implicate matters of public interest and concern, investment treaty tribunals increasingly allow a greater degree of public participation in the form of submissions from non-parties to the arbitration.

Under the SIAC Investment Rules, a tribunal may allow – and even invite – submissions from a non-party without the consent of the parties to the dispute.¹⁶ A party to the treaty pursuant to which the dispute was referred to arbitration may make a submission to the tribunal on a question of treaty interpretation that is directly relevant to the dispute, while any third party may apply to the tribunal to make a written submission regarding a matter within the scope of the dispute.¹⁷ In exercising its discretion to permit such a submission, the tribunal will consider, among other factors, whether the third party has “*a sufficient interest*” in the proceedings.¹⁸ By contrast, the ICSID Arbitration Rules¹⁹ and the UNCITRAL Transparency Rules²⁰ both require a “*significant*” interest to grant a request for submissions by a non-party.

G. Disclosure Of Third-Party Funding

The role of third-party funding arrangements has been at issue in several recent investment disputes.²¹

¹⁶ Rules 29.1 and 29.2.

¹⁷ *Ibid.*

¹⁸ Rule 29.3(c).

¹⁹ See 2006 ICSID Arbitration Rules, Rule 37(2)(c).

²⁰ See 2014 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, Art. 4(3)(a).

²¹ See *e.g.* *South American Silver v. Bolivia* (PCA Case No. 2013-15), Procedural Order No. 10 (January 11, 2016); *EuroGas Inc. v. Slovak Republic* (ICSID Case No. ARB/14/14), Procedural

The SIAC Investment Rules empower a tribunal to order disclosure of the existence of any third-party funding arrangement and the identity of the third-party funder, and where appropriate, information concerning the third-party funder's interest in the outcome of the proceedings, as well as whether the funder has committed to undertake liability to reimburse costs.²² The tribunal may take such disclosure into account when proportioning the costs of the arbitration and the parties' legal or other costs.²³

Claudia Annacker chaired the SIAC Committee on Investment Arbitration responsible for drafting the SIAC Investment Rules.

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Order No. 3 Decision on the Parties' Requests for Provisional Measures (June 23, 2015); *Muhammet Çap & Sehil İnşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan* (ICSID Case No. ARB/12/6), Procedural Order No. 3 (June 12, 2015).

²² Rule 24.1.

²³ Rules 33.1 and 35.