Herbert Smith

Recent Developments at the Singapore International Arbitration Centre (SIAC)

British Institute of International Comparative Law

Nicholas Peacock, Partner, Herbert Smith LLP
19 June 2012

Contents

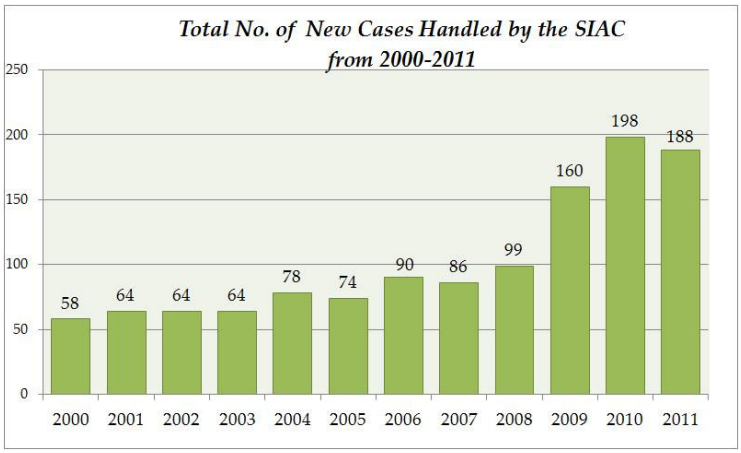
SIAC – statistics and trends

SIAC 2010 Rules – review and key features

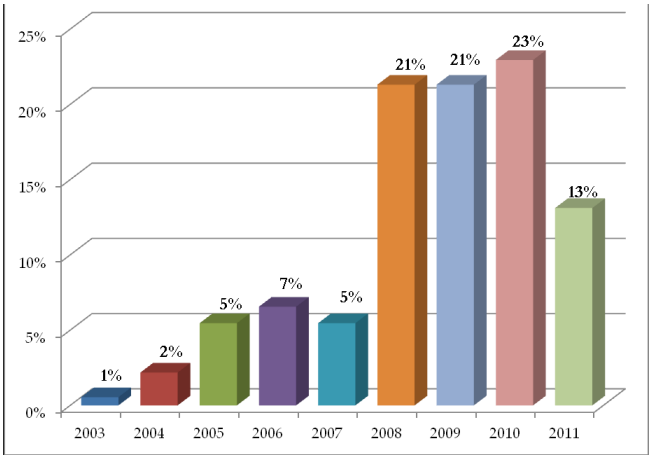
- Expedited Procedure
- Emergency Arbitrators
- Multiple Parties, Contracts and Consolidation
- Other Features of Interest

Recent changes to Singapore International Arbitration regime

Growth of SIAC caseload



Contract dates: 2011 SIAC arbitrations



SIAC Statistics (2011)

- 405 active cases (as of 31 December 2011). 188 new cases
- Average claim value 2011: SGD7.03m (c USD5.48m). Highest SGD304m (USD237m)
- Nationality of parties (no. of filings):-
  - Singapore (37% subsidiaries of international companies)
  - India
  - Hong Kong
  - China = Indonesia
  - UK
- Tribunal appointments:
  - 86.3% sole arbitrator
  - 13.7% three member tribunals
- Arbitrator nationalities (top 4):-
  - Singaporean
  - British
  - Indian
  - Malaysian

SIAC 2010 Rules Expedited Procedure

Introduced in 2010 edition of SIAC Rules

Reflects growing trend towards expedited procedures among global arbitration institutions

•Expedited Procedure: 8% of SIAC administered cases filed in 2011

•Any party may apply to SIAC for expedited procedure if:
- amount in dispute is SGD5m or less (most typical);
- parties agree to use procedure; or
- exceptional urgency

- SIAC Chairman makes determination and if considered appropriate:
- case will be referred to sole arbitrator;
- parties can agree to documents-only arbitration;
- award made within 6 months from constitution of Tribunal; and
- reasons of Tribunal will be in summary unless parties have agreed no reasons will be given

SIAC
Singapore International Arbitration Centre

Emergency Arbitrators

A tool for emerging jurisdictions?

•Emergency Arbitrator – 2 cases in 2011. E.g.:-

- Cargo of coal sitting in Chinese port few days before Chinese New Year
- Applicant contacted SIAC in morning indicating intention to file application (given pending holiday period)
- Filed papers at 2pm. Arbitrator appointed at 5pm
- Preliminary directions same evening
- Hearing scheduled for next day and order made

SIAC
Singapore International Arbitration Centre

Emergency Arbitrators

•Award must be written (giving reasons) and is binding pending decision by Tribunal
- unless claim is withdrawn or
- Tribunal not constituted within 90 days

•Applicant required to pay initial fee/deposit

•Costs determined and allocated in EA's award
- Cap fixed at 20% of sole arbitrator's max. fees

•Applications for EA made <u>after</u> Notice of Arbitration

•EA appointed within one business day of receipt of application

•Challenges to appointment made within one business day

•No fixed period for EA's award

SIAC
Singapore International Arbitration Centre

Multiple Parties, Contracts and Consolidation

•Appointment in multi-party situations (Rule 9)

•No provisions for:-
- Multi-contract
- Consolidation of claims

•Joinder of third parties (Rule 24(b))

SIAC
Singapore International Arbitration Centre

Other Features of Interest

- Confidentiality:-
  - Tribunal and parties treat matters relating to proceedings and award as confidential at all times (Rule 35)
  - "*Matters relating to the proceedings*" given a wide definition
- Default seat:-
  - Singapore
  - Nb/ model form clause
- Domestic arbitrations:-
  - Separate statutory regime
  - Some additional provisions in Rules

International Arbitration (Amendment) Act 2012

Four areas of reform to current IAA:

- Relaxation of requirement that arbitration agreement be in writing
- Court review of negative jurisdictional rulings
- Clarification of tribunal's power to award interest
- Recognition of emergency arbitrator orders

Herbert Smith

Abu Dhabi
Herbert Smith LLP
Suite 302, 3rd Floor
Al Bateen Towers C2 Building
Al Bateen
PO Box 106178
Abu Dhabi UAE
T: +971 2 412 1700
F: +971 2 412 1701

Bangkok
Herbert Smith (Thailand) Ltd
1403 Abdulrahim Place
990 Rama IV Road
Bangkok 10500
T: +66 2657 3888
F: +66 2636 0657

Beijing
Herbert Smith LLP
28th Floor Office Tower
Beijing Yintai Centre
2 Jianguomenwai Avenue
Chaoyang District
Beijing PRC 100022
T: +86 10 6535 5000
F: +86 10 6535 5055

Belfast
Herbert Smith LLP
3 Cromac Quay
Ormeau Gasworks
Belfast BT7 2JD
T: +44 28 9025 8200
F: +44 28 9025 8201

Brussels
Herbert Smith LLP
Central Plaza
Rue de Loxum 25
1000 Brussels
T: +32 2 511 7450
F: +32 2 511 7772

Doha
Herbert Smith Middle East LLP
Level 14 Commercial Bank Plaza
West Bay
PO Box 27111
Doha Qatar
T: +974 4452 8955
F: +974 4452 8960

Dubai
Herbert Smith LLP
Dubai International Financial Centre
Gate Village 7, Level 4
PO Box 506631
Dubai UAE
T: +971 4 428 6300
F: +971 4 365 3171

Hong Kong
Herbert Smith
23rd Floor, Gloucester Tower
15 Queen's Road Central
Hong Kong
T: +852 2845 6639
F: +852 2845 9099

Jakarta
Hiswara Bunjamin and Tandjung
Herbert Smith LLP
associated firm
23rd Floor, Gedung BRI II
Jl. Jend. Sudirman Kav. 44-46
Jakarta, 10210
T: +62 21 574 4010
F: +62 21 574 4670

London
Herbert Smith LLP
Exchange House
Primrose Street
London EC2A 2HS
T: +44 20 7374 8000
F: +44 20 7374 0888

Madrid
Herbert Smith Spain LLP
Paseo de la Castellana 66
28046 Madrid
T: +34 91 423 4000
F: +34 91 423 4001

Moscow
Herbert Smith CIS LLP
10 Ulitsa Nikolskaya
Moscow 109012
T: +7 495 363 6500
F: +7 495 363 6501

Paris
Herbert Smith Paris LLP
66, Avenue Marceau
75008 Paris
T: +33 1 53 57 70 70
F: +33 1 53 57 70 80

Saudi Arabia
Al-Ghazzawi Professional Association
Herbert Smith LLP
associated firm
Jeddah Commercial Centre, 3rd Floor, Al Maady Street
Corniche Al Hamra
P.O. Box 7346, Jeddah 21462
T: +966 2 6531576
F: +966 2 6532612

Al-Ghazzawi Professional Association
Herbert Smith LLP
associated firm
Arabian Business Center
Prince Muhammad Street
PO Box 381, Dammam 31411
T: +966 3 8331611
F: +966 3 8331981

Al-Ghazzawi Professional Association
Herbert Smith LLP
associated firm
King Faisal Foundation
North Tower, 4th Floor
K. Fahd Road
PO Box 9029, Riyadh 11413
T: +966 1 4632374
F: +966 1 4627566

Shanghai
Herbert Smith LLP
38th Floor, Bund Center
222 Yan An Road East
Shanghai 200002
T: +86 21 2322 2000
F: +86 21 2322 2322

Singapore
Herbert Smith LLP
50 Raffles Place
#24-01 Singapore Land Tower
Singapore 048623
T: +65 6868 8000
F: +65 6868 8001

Tokyo
Herbert Smith
41st Floor, Midtown Tower
9-7-1 Akasaka, Minato-ku
Tokyo 107-6241
T: +81 3 5412 5412
F: +81 3 5412 5413

www.herbertsmith.com