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facilitate the choice
of foreign seats of
arbitration

Singapore News

SIAC launches a new Model Clause to facilitate the choice of foreign seats of arbitration

The number of cases handled by the Singapore International Arbitration Centre (“SIAC”), one of the leading international arbitral institutions worldwide, has increased tremendously over the last years. According to SIAC the active case load as of 1st October 2015 is of 600 cases.

Last month, SIAC launched its new Model Clause and Expedited Procedure Model Clause. The previous Model Clause and the SIAC Model Clause for Contracts with PRC [People’s Republic of China] Parties are now combined to provide a single Model Clause to parties wishing to refer their disputes to SIAC.

The new Model Clause expressly allows parties to choose a seat of arbitration outside of Singapore. Similarly, the Expedited Procedure Model Clause has been revised to include this possibility. The new clauses reflect the growing number of arbitrations under the auspices of SIAC seated outside of the city-State. Their revision provides for more certainty and flexibility to the parties that will have the clear option to choose any seat satisfying their needs while preserving the benefits from SIAC and the SIAC Rules, even if they do not necessarily have a link with Singapore.

New Model Clauses

The new Model Clause provides as follows:

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (“SIAC”) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC Rules”) for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be [Singapore]¹.

The Tribunal shall consist of _____² arbitrator(s).

The language of the arbitration shall be _____.”

The new Expedited Procedure Model Clause reads as follows:

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (“SIAC”) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC Rules”) for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The parties agree that any arbitration commenced pursuant to this clause shall be conducted in accordance with the Expedited Procedure set out in Rule 5.2 of the SIAC Rules.

The seat of the arbitration shall be [Singapore]³.

The Tribunal shall consist of one arbitrator.

The language of the arbitration shall be _____.”

Importance of a cautious drafting of arbitration agreements

It is very common for parties to a contract to confound the seat of the arbitration with its venue. While the venue is only the place where the arbitration will physically take place, the seat determines among others which national courts will have jurisdiction to oversee the arbitration. For example, German, French or Belgian national courts will have jurisdiction to grant

1 Parties should specify the seat of arbitration of their choice. If the parties wish to select an alternative seat to Singapore, please replace “[Singapore]” with the city and country of choice (e.g., “[City, Country]”).

2 State an odd number. Either state one, or state three.

3 Parties should specify the seat of arbitration of their choice. If the parties wish to select an alternative seat to Singapore, please replace “[Singapore]” with the city and country of choice (e.g., “[City, Country]”).

interim reliefs in relation to an arbitration where Frankfurt, Paris or Brussels is designated as the seat of such arbitration.

It is therefore essential for parties to carefully choose the seat of their arbitration when drafting an agreement. In particular, parties must consider whether the seat is an arbitration friendly jurisdiction. A seat will be arbitration friendly when it is easy to enforce an arbitral award, when the seat of arbitration is in a country that is a party to the New York Convention and when relief from national courts is available.

Conclusion

The clarity provided by the new Model Clauses will further attract international cases to SIAC.

These amendments are in line with SIAC's willingness to offer a state of the art arbitration administration reflecting the recent developments in both the practice and the procedure of international arbitration. Less than two weeks before the launch of the new SIAC Model Clause, the Singaporean arbitration institution announced that committees were being put in place to revise the SIAC Rules. The new rules are intended to be released in the middle of next year and will replace the current Rules whose last version was adopted in 2013.

As stated by Gary Born, President of the Court of Arbitration of SIAC, these efforts aim at *"ensuring that SIAC stays at the cutting edge of international arbitration practice around the world."*

For more information, please contact:



Dr Claus Trenner, LL.M. (NUS Singapore)

Partner
Luther LLP
Singapore
Phone +65-6408-8009
claus.trenner@luther-lawfirm.com



Els Van Poucke, LL.M.

Attorney-at-Law Brussels Bar (Belgium)
Registered Foreign Lawyer (Singapore)
Luther LLP
Singapore
Phone +65 6408 8018
els.vanpoucke@luther-lawfirm.com



Thomas Lieby, LL.M.

Attorney-at-Law (New York State Bar)
Luther LLP
Singapore
Phone + 65 6408 8020
thomas.lieby@luther-lawfirm.com

Imprint

Luther Rechtsanwalts-gesellschaft mbH, Anna-Schneider-Steig 22,
50678 Cologne, Phone +49 221 9937 0, Fax +49 221 9937 110,
contact@luther-lawfirm.com

Editor: Birgitta von Dresky, Lawyer, Partner, Luther LLP, 4 Battery Road,
Bank of China Building, #25-01, 049908 Singapore, Phone +65 6408 8008,
Fax +65 6408 8001, Birgitta.von.Dresky@luther-lawfirm.com

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