

Book Review

A Guide to the SIAC Arbitration Rules **by Mark Mangan, Lucy Reed and John Choong¹**

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Singapore ranks as the number one international arbitration seat in Asia, and is among the five most popular international arbitration jurisdictions world-wide. In 2014, SIAC received 222 new cases with the total sum in dispute amounting to S\$5 billion. It has overseas liaison offices in India and South Korea. Singapore's *International Arbitration Act (IAA)*, like many international arbitration statutes in the Asia-Pacific region, is based on the UNCITRAL Model Law on International Commercial Arbitration (**Model Law**). Parties are attracted to Singapore as an arbitral seat for many reasons, including its convenient geographic location, the dedication of its parliament to update Singapore's arbitral law to keep up to date with international best practice, and the judiciary's unwavering pro-arbitration attitude. To add to its lustre as a dispute resolution hub, Singapore has recently established the Singapore International Commercial Court and the Singapore International Mediation Centre.

Singapore's leading arbitral institution, the Singapore International Arbitration Centre (**SIAC**), published its most recent Arbitration Rules in 2013 (**2013 SIAC Rules**). The purpose of this note is to review the commentary on those Rules, *A Guide to the SIAC Arbitration Rules (SIAC Arbitration Guide)*, authored by Mark Mangan, Lucy Reed and John Choong, and published by Oxford University Press. Individually and collectively, the authors have significant experience and expertise in international arbitration.

The SIAC Arbitration Guide is comprehensive; covering both the historical and current context of SIAC as an arbitral institution, its rules and related Singaporean law. The Foreword of this book was written by the Founder President of the recently established SIAC Court; internationally renowned Australian arbitrator, Dr Michael Pryles. Each chapter provides a step-by-step explanation of its particular subject, whilst seamlessly weaving in enlightening background information. The authors have achieved a refreshing balance with an air of effortless simplicity, considering the breadth of subject matter covered in the book.

Chapter 1 (entitled 'Arbitration in Singapore') demonstrates Singapore's competitive characteristics as an arbitral seat and SIAC's rise as a leading arbitral institution. The authors identify eight core components that contribute to Singapore's success, with supporting evidence.

Chapter 2 (entitled 'Legal Framework for Arbitration in Singapore') explores Singapore's IAA and its domestic Arbitration Act (**AA**), also touching briefly on the separate enactment of legislation giving effect to the ICSID Convention in 2012. Unlike Hong Kong, Singapore has separate legislation regulating domestic and international arbitration. Although the Acts are similar, the AA, as the authors explain, provides for a closer level of judicial supervision, including the ability to set aside awards for errors of law.

1 (Oxford University Press, 2014); 328pp, hardback/ebook; ISBN 978-0-19-965721-6.

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Chapter 3 (entitled ‘Introduction to SIAC Arbitration’) addresses the history of SIAC’s establishment and how its corporate and management structure has evolved. The authors explain the establishment of the SIAC Court of Arbitration (which resembles the ICC Court of Arbitration), whose role is to oversee the administration of SIAC and to determine matters of arbitration policy. The authors also discuss the relationship between domestic and international arbitration under SIAC, med-arb procedure, and provide a useful flowchart of the typical stages of a SIAC arbitration.

The authors observe (p. 17 [1.51]) that ‘the heart of the book is Chapters 4 to 14, which contain a rule-by-rule examination of the current SIAC Rules’.

Chapter 4 (entitled ‘SIAC Corporate Structure’) defines the roles of key players in SIAC arbitration; the Board of Directors, the SIAC Court, the SIAC Secretariat, the SIAC President, the SIAC Registrar and the SIAC CEO. As each role is defined, the powers and responsibilities of the respective roles are explained. Chapter 4 thus paints a picture of how SIAC operates in practice as an administering arbitral body.

Chapter 5 (entitled ‘Starting the Arbitration’) considers the scope and application of the 2013 SIAC Rules. The procedure for filing a Notice of Arbitration and Response to Notice of Arbitration is also laid out, step by step.

Chapter 6 (entitled ‘Expedited Proceedings’) acknowledges SIAC’s efforts in ensuring that arbitration is as expedient and cost-effective as possible. Rule 5 of the 2013 SIAC Rules outlines the criteria for eligibility for an arbitration to be conducted as an Expedited Proceeding. Application needs to be made before the constitution of the arbitral tribunal. If the proceeding is conducted under SIAC’s Expedited Proceeding rules, the award must be rendered within six months of the constitution of the arbitral tribunal.

Chapter 7 (entitled ‘Formation and Challenge of the Arbitral Tribunal’) describes how Rules 6 – 15 operate to constitute the tribunal and facilitate any challenges to the tribunal. The authors incorporate an analysis of the strengths, weaknesses and potential issues regarding the selection of a sole arbitrator, as opposed to a tribunal of three arbitrators, along with associated open questions unanswered by the 2013 SIAC Rules.

Chapter 8 (entitled ‘The Conduct of Proceedings’) considers the framework for the conduct of SIAC arbitrations, as covered by Rules 16 – 23. The 2013 SIAC Rules give the tribunal a significant degree of control, discretion and power to ensure that the objectives lying behind arbitration as a dispute resolution procedure are met. One example is found under Rule 16.4, which states that the tribunal may bifurcate proceedings (i.e. separate the proceeding into two or more phases dealing with separate issues) to ensure the arbitration is conducted expeditiously and economically. The tribunal also has express power to exclude cumulative or irrelevant testimony or other evidence, and to direct the parties to focus their presentation on issues which may assist in the disposal of all or part of the case.

Chapter 9 (entitled ‘Jurisdiction of the Tribunal’) addresses the jurisdictional determination procedure contained in Rule 25 of the 2013 SIAC Rules. The authors describe the general principles underpinning the resolution of jurisdictional issues, using a combination of English and Singaporean case law to illustrate the operation of these principles. Interestingly, unlike the Model Law, Singapore’s IAA and

AA allow a party to review a negative jurisdictional ruling by an arbitral tribunal. Brief reference is made to the controversial decision of the Singapore Court of Appeal in *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV and Ors* [2013] SGCA 57 (Singapore Court of Appeal) (**Astro v Lippo**) which is referred to as authority for the proposition that Singapore law imposes a high threshold for establishing waiver. In that case, the award debtor failed to review a positive preliminary jurisdictional ruling by an arbitral tribunal which allowed the joinder of non-parties to the arbitration agreement as co-claimants, yet was allowed to resist enforcement of the award in Singapore (where the arbitration was seated) on the basis that the arbitral tribunal lacked jurisdiction to entertain the claims advanced by the added parties. The award creditor was unsuccessful before the Court of Appeal in contending that the award debtor had waived its jurisdictional objection by not availing itself of the opportunity to review the preliminary ruling on jurisdiction pursuant to Article 16(3) of the Model Law.

Chapter 10 (entitled ‘The Powers of the Tribunal’) elaborates on the tribunal’s powers discussed in Chapter 8, exploring the additional powers conferred by Rule 24 of the 2013 SIAC Rules. The authors dissect the tools at the tribunal’s disposal regarding determination of the applicable law and capacity to act as *amiable compositeur* under Rule 27. *Astro v Lippo* is again discussed in the context of joinder. That case considered the 2007 edition of the SIAC Rules which (unlike the later 2010 and 2013 revisions of the SIAC Rules) did not expressly provide that the party proposed to be joined to the arbitration must be a party to the arbitration agreement.

Chapter 11 (entitled ‘Interim and Emergency Relief’) deals with the parties’ options regarding interim relief from a tribunal and an emergency arbitrator under Rule 26 of the 2013 SIAC Rules, as well as the option of obtaining interim relief from a court.

Chapter 12 (entitled ‘Awards’) sheds light on the capacity of different decisions to be classified as awards, as well as SIAC’s procedure for the scrutiny of awards, outlined in Rule 28 of the 2013 SIAC Rules. The IAA and the AA define an award as ‘a decision of the arbitral tribunal on the substance of the dispute’. The Singapore Court of Appeal has held that a ruling on jurisdiction alone cannot be considered an award as it is not a decision on the substance of the dispute (see *PT Asuransi Jasa Indonesia (Perseo) v Dexia Bank SA* [2007] 1 SLR(R) 597). The consequence is that a pure ruling on jurisdiction by an arbitrator (whether a positive or negative ruling) in an arbitration seated in Singapore (whether conducted under the SIAC Rules or any other rules) is not an arbitral award for the purposes of Singaporean law. This chapter also clarifies the process with respect to the correction and interpretation of awards under Rule 29.

Chapter 13 (entitled ‘Costs’) addresses Rules 30 – 33 of the 2013 SIAC Rules, providing a simple and practical overview of how SIAC treats costs, fees and expenses with respect to arbitration. Under the SIAC Rules, arbitrator fees are calculated on an *ad valorem* sliding scale basis, unless agreed otherwise. The authors include a wealth of useful comparisons between SIAC arbitrations costs (encompassing both SIAC administrative fees and arbitrator fees) and arbitration costs in arbitrations administered by other leading arbitral institutions.

Chapter 14 (entitled ‘Miscellaneous Provisions’) considers the remaining provisions of the 2013 SIAC Rules, specifically Rules 34 – 37. Matters such as exclusion of liability, confidentiality and SIAC administrative decisions are addressed. Additionally, the SIAC’s Code of Ethics and the SIAC Practice Notes are explained.

Chapter 15 (entitled ‘Ad Hoc Arbitration’) begins by addressing the various forms of ad hoc arbitration, noting its advantages and perceived risks. It is noteworthy that under the Singaporean arbitral system, domestic parties may opt out of the AA and opt into the IAA. Conversely, unlike the position now prevailing in Australia, parties may opt-out of the Model Law and select an alternative *lex arbitri*. The authors add an overview of the UNCITRAL Arbitration Rules and discuss SIAC’s Practice Note with respect to those rules.

The final Chapter, Chapter 16 (entitled ‘SIAC Domestic Arbitration’), gives a brief history of SIAC domestic arbitration and considers the summary award procedure applicable to SIAC domestic arbitrations. As is the case with all awards rendered under the SIAC Rules, summary awards are subject to scrutiny by SIAC.

The book includes a table of contents, table of cases, table of legislation, list of abbreviations, along with six appendices and an index. The appendices include the 2013 SIAC Rules, three SIAC Practice Notes, SIAC Code of Ethics for an Arbitrator (2009) and the Singapore *International Arbitration Act*. The headings and sub-headings employed by the authors transform the table of contents into an extremely useful reference point for both general and specific content covered in the book. The index is functional. The appendices are extremely useful, as they are frequently referred to throughout the book. It is unfortunate, however, that the AA was not included as an appendix, as it is referred to quite frequently.

Another noteworthy aspect of the SIAC Arbitration Guide is the useful comparisons made between SIAC and other leading arbitral bodies (especially the ICC). Any reader with a mind to assessing the utility of SIAC arbitration is aided by comparative contextualisation on a diverse array of arbitration issues.

Any minor complaints with respect to the reference material are negated by the interconnectedness of the information achieved in this book. Every chapter stands alone, yet the authors skilfully refer at every relevant stage in the text to other sections of the book, enhancing the understanding of the reader. I commend the authors on compiling this valuable resource. This text is a valuable contribution to the growing body of literature chronicling international arbitration law and practice in the Asia-Pacific region. The nature of arbitration in Singapore, and primarily SIAC arbitration, has never been detailed with such purpose and clarity. I have no hesitation in recommending this text.

One thing is certain – Singapore does not stand still. In the past few weeks, SIAC, under the new presidency of Gary Born, has announced the review of the 2013 edition of its Rules. SIAC plans to release a revised version of its Rules in mid-2016. It is expected that the revised Rules will concentrate on consolidation and joinder, emergency arbitrators, expedited procedures and investment arbitration. Notwithstanding the imminent review, this book will remain a valuable resource and will be indispensable to arbitrators and arbitration practitioners who, in the meantime, are conducting arbitrations either in Singapore or in accordance with the 2013 SIAC Rules (wherever the arbitration may be seated).