

Preliminary Note: The attached draft incorporates proposed amendments to the main body of the SIAC Arbitration Rules. Those provisions may be amended as further amendments to the main SIAC Arbitration Rules are made.

SIAC INVESTMENT ARBITRATION RULES

1. Scope of Application and Interpretation

1.1 These Rules shall apply if the parties have agreed that disputes between them shall be referred to arbitration in accordance with the SIAC Investment Arbitration Rules.

1.2 Any dispute with regard to the applicability of the SIAC Investment Arbitration Rules or the Arbitration Rules of the SIAC shall be decided by the Court. The decision of the Court on this issue shall be final.

1.3 An agreement to refer disputes in accordance with the SIAC Investment Arbitration Rules may be expressed through an offer by one party contained in a contract, treaty, or other instrument which is accepted by the other party, including by the commencement of arbitration.

1.4 Agreement by a party to arbitration under these Rules constitutes a waiver of any right of immunity from jurisdiction to which such party might otherwise be entitled. A waiver of immunity from jurisdiction is without prejudice to immunity with regard to execution.

1.5 These Rules shall come into force on 27 May 2016 and, unless the parties have agreed otherwise, shall apply to any arbitration which is commenced on or after that date.

1.6 In these Rules –

“Award” includes a partial or final award;

“Committee of the Court” means a committee consisting of not less than two members of the Court appointed by the President (which may include the President);

“Court” means the Court of Arbitration of SIAC and includes a Committee of the Court;

“President” means the President of the Court and includes a Vice President and the Registrar;

“Registrar” means the Registrar of the Court and includes any Deputy Registrar;

“SIAC” means the Singapore International Arbitration Centre; and

“Tribunal” includes a sole arbitrator or all the arbitrators where more than one is appointed.

Any pronoun shall be understood to be gender-neutral; and

Any singular noun shall be understood to refer to the plural in the appropriate circumstances.

2. Notice, Calculation of Periods of Time

- 2.1 For the purposes of these Rules, any notice, communication or proposal, shall be in writing. Any such written communication may be delivered or sent by registered postal or courier service or transmitted by any form of electronic communication (including electronic mail and facsimile) or delivered by any other means that provides a record of its delivery. It is deemed to have been received if it is delivered (i) to the addressee personally, (ii) to his habitual residence, place of business or designated address, (iii) to any address agreed by the parties, (iv) according to the practice of the parties in prior dealings, or (v) if none of these can be found, then at the addressee's last-known residence or place of business.
- 2.2 The notice, communication, or proposal is deemed to have been received on the day it is delivered.
- 2.3 For the purposes of calculating any period of time under these Rules, such period shall begin to run on the day following the day when a notice, communication or proposal is received. Any period of time under these Rules is to be calculated in accordance with Singapore Standard Time (GMT +8). If the last day of such period is not a business day at the place of receipt pursuant to Rule 2.1, the period is extended until the first business day which follows. Non-business days occurring during the running of the period of time are included in calculating the period. With respect to service of documents on SIAC, if service is made during non-business hours, such period shall begin to run on the next business day. SIAC's business hours are published on its website.
- 2.4 The parties shall file with the Registrar a copy of any notice, communication or proposal concerning the arbitral proceedings.
- 2.5 Except as provided in these Rules, the Registrar may at any time extend or shorten any time limits prescribed under these Rules.

3. Notice of Arbitration

- 3.1 A party wishing to commence an arbitration (the "Claimant") shall file with the Registrar a Notice of Arbitration which shall comprise:
- a. a demand that the dispute be referred to arbitration;

- b. the names, address(es), telephone number(s), facsimile number(s) and electronic mail address(es), if known, of the parties to the arbitration and their representatives, if any;
- c. a reference to the arbitration clause or the separate arbitration agreement that is invoked and a copy of it;
- d. a reference to the contract, treaty or other instrument out of or in relation to which the dispute arises and where possible, a copy of it;
- e. a brief statement describing the nature and circumstances of the dispute, specifying the relief claimed and, where possible, an initial quantification of the claim amount;
- f. a statement of any matters which the parties have previously agreed as to the conduct of the arbitration or with respect to which the Claimant wishes to make a proposal;
- g. a proposal for the number of arbitrator(s) if this is not specified in the arbitration agreement;
- h. unless the parties have agreed otherwise, the nomination of an arbitrator if the arbitration agreement provides for three arbitrators, or a proposal for a sole arbitrator if the arbitration agreement provides for a sole arbitrator;
- i. any comment as to the applicable rules of law;
- j. any comment as to the language of the arbitration; and
- k. payment of the requisite filing fee.

3.2 The date of receipt of the complete Notice of Arbitration by the Registrar shall be deemed the date of commencement of the arbitration. For the avoidance of doubt, the Notice of Arbitration is deemed to be complete when all the requirements of Rule 3.1 are fulfilled or if the Registrar determines that there has been substantial compliance with such requirements. SIAC shall notify the parties on the commencement of arbitration.

3.3 The Claimant shall at the same time send a copy of the Notice of Arbitration to the Respondent, and it shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service, and providing documentary evidence of such service.

4. Response to the Notice of Arbitration

- 4.1 The Respondent shall send to the Claimant a Response within 28 days of receipt by the Respondent of the Notice of Arbitration or any other period fixed by the Registrar. The Response shall contain:
- a. a confirmation or denial of all or part of the claims;
 - b. a brief statement describing the nature and circumstances of any counterclaim, specifying the relief claimed and, where possible, an initial quantification of the counterclaim amount;
 - c. any comment in response to any statements contained in the Notice of Arbitration under Rules 3.1(f), (g), (h), (i) and (j) or any comment with respect to the matters covered in such rules; and
 - d. unless the parties have agreed otherwise, the nomination of an arbitrator if the arbitration agreement provides for three arbitrators or, if the arbitration agreement provides for a sole arbitrator, agreement with Claimant's proposal for a sole arbitrator or a counter-proposal.
- 4.2 The Respondent shall at the same time send a copy of the Response to the Registrar, together with the payment of the requisite filing fee for any counterclaim, and shall notify the Registrar of the mode of service of the Response employed and the date of service, and providing documentary evidence of such service.

5. Number and Appointment of Arbitrators

- 5.1 The parties may agree that the arbitral tribunal shall be composed of one, three or any other odd number of arbitrators.
- 5.2 Where the parties have agreed that more than three arbitrators shall be appointed, the provisions of these Rules in relation to the appointment of three arbitrators, or in relation to the multi-party appointment of arbitrators as the case may be, shall apply *mutatis mutandis*.
- 5.3 The tribunal shall consist of three arbitrators, unless the parties have agreed otherwise or unless it appears to the Registrar, giving due regard to any proposals by the parties, the complexity, the quantum involved or other relevant circumstances of the dispute, that the dispute warrants the appointment of a sole arbitrator.
- 5.4 If the parties have agreed that any arbitrator is to be appointed by one or more of the parties, or by any third person including the arbitrators already appointed, that agreement shall be treated as an agreement to nominate an arbitrator under these Rules.

- 5.5 In all cases, the arbitrators nominated by the parties, or by any third person including the arbitrators already appointed, shall be subject to appointment by the Court in its discretion.
- 5.6 The Court shall appoint an arbitrator as soon as practicable. Any decision by the Court to appoint an arbitrator under these Rules shall be final and not subject to appeal.
- 5.7 The Court may appoint any nominee whose appointment has already been suggested or proposed by any party.
- 5.8 The terms of appointment of each arbitrator shall be fixed by the Registrar in accordance with these Rules and Practice Notes for the time being in force, or in accordance with the agreement of the parties.

6. Sole Arbitrator

- 6.1 If a sole arbitrator is to be appointed, either party may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator. Where the parties have reached an agreement on the nomination of a sole arbitrator, Rule 5.5 shall apply.
- 6.2 If within 28 days after receipt by the Registrar of the Notice of Arbitration or any other period fixed by the Registrar, or in the manner otherwise agreed by the parties, the parties have not reached an agreement on the nomination of a sole arbitrator, or if at any time either party so requests, the Court shall make the appointment as soon as practicable in accordance with Rule 8.

7. Three Arbitrators

- 7.1 If three arbitrators are to be appointed, each party shall nominate one arbitrator.
- 7.2 If a party fails to make a nomination within 28 days after receipt of a party's nomination of an arbitrator or any other period fixed by the Registrar, or in the manner otherwise agreed by the parties, the Court shall proceed to appoint the arbitrator on its behalf.
- 7.3 Unless the parties have agreed upon another procedure for appointing the third arbitrator, or if such agreed procedure does not result in a nomination within the time limit fixed by the parties or by the Registrar, the third arbitrator, who shall act as the presiding arbitrator, shall be appointed by the Court in accordance with Rule 8.

8. Appointment of the Sole Arbitrator or Presiding Arbitrator by the Court

- 8.1 In making the appointment of the sole arbitrator or the presiding arbitrator, the Court shall use the following list-procedure, unless the parties agree that the list procedure should not be used or unless the Court determines, in its discretion, that the use of the list-procedure is not appropriate for the case:

- a. The Court shall communicate to each of the parties an identical list containing at least three names;
- b. Within 15 days after the receipt of this list, or within the period agreed by the parties or set by the Registrar, each party may return the list directly to the Registrar, without need to copy in the other party, after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference. The parties may give reasons for any deletions;
- c. After the expiry of the above period of time, the Court shall appoint the sole arbitrator or the presiding arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
- d. If for any reason the appointment cannot be made according to this procedure, the Court may exercise its discretion in appointing the sole arbitrator or the presiding arbitrator, and in doing so, may appoint from among the names previously deleted by the parties.

8.2 Where the appointment of the sole arbitrator or the presiding arbitrator is made by the Court under Rule 6.2 or 7.3 respectively and the parties are of different nationalities, the Court shall appoint a sole arbitrator or a presiding arbitrator that does not have the same nationality as any of the parties.

9. Multi-party Appointment of Arbitrators

9.1 Where there are more than two parties in the arbitration, and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate one arbitrator and the Respondent(s) shall jointly nominate one arbitrator. The third arbitrator, who shall act as the presiding arbitrator, shall then be appointed in accordance with Rule 7.3. In the absence of both such joint nominations having been made within 28 days of receipt by the Registrar of the Notice of Arbitration or within the period agreed by the parties or set by the Registrar, the Court may appoint all three arbitrators and shall designate one of them to act as the presiding arbitrator.

9.2 Where there are more than two parties in the arbitration, and one arbitrator is to be appointed, all parties are to agree on an arbitrator. In the absence of such a joint nomination having been made within 28 days of receipt by the Registrar of the Notice of Arbitration or within the period agreed by the parties or set by the Registrar, the Court shall appoint the sole arbitrator in accordance with Rule 6.2.

9.3 Where the appointment of arbitrators is made by the Court under Rule 9.1 or 9.2 and the parties are of different nationalities, the Court shall appoint arbitrators that do not have the same nationality as any of the parties.

10. Qualifications of Arbitrators

- 10.1 Any arbitrator, whether or not nominated by the parties, conducting an arbitration under these Rules shall be and remain at all times independent and impartial, and shall not act as advocate for any party.
- 10.2 In making an appointment under these Rules, the Court shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.
- 10.3 The Court shall also consider whether the arbitrator has sufficient availability to determine the case in a prompt and efficient manner appropriate to the nature of the arbitration.
- 10.4 An arbitrator shall disclose to the parties and to the Registrar any circumstance that may give rise to justifiable doubts as to his impartiality or independence as soon as reasonably practicable and in any event before appointment by the Court.
- 10.5 An arbitrator shall immediately disclose to the parties, to the other arbitrators and to the Registrar any circumstance of a similar nature that may arise during the arbitration.
- 10.6 If the parties have agreed on any qualifications required of an arbitrator, the arbitrator shall be deemed to meet such qualifications unless a party states that the arbitrator is not so qualified within 14 days after receipt by that party of the notification of the nomination of the arbitrator. In the event of such a challenge, the procedure for challenge and replacement of an arbitrator in Rules 11 to 14 shall apply.
- 10.7 No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any arbitrator or with any candidate for appointment as party-nominated arbitrator, except to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability or independence in relation to the parties, or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any candidate for presiding arbitrator.

11. Challenge of Arbitrators

- 11.1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess any requisite qualification on which the parties have agreed.
- 11.2 A party may challenge the arbitrator nominated by him only for reasons of which he becomes aware after the appointment has been made.

12. Notice of Challenge

- 12.1 Subject to Rule 10.6, a party who intends to challenge an arbitrator shall file a notice of challenge in accordance with the requirements of Rule 12.2 within 14 days after the receipt of the notice of appointment of the arbitrator who is being challenged or within 14 days after the circumstances mentioned in Rule 11.1 or 11.2 became known to that party.
- 12.2 The notice of challenge shall be filed with the Registrar. The date of receipt by the Registrar of the notice of challenge shall be deemed the date the notice of challenge is filed. The filing party shall send the notice of challenge simultaneously to the other party, the arbitrator(s) who is being challenged and the other members of the Tribunal (or if the Tribunal has not yet been fully constituted, other appointed arbitrators), and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service. The notice of challenge shall be in writing and shall state the reasons for the challenge. The Registrar may order a suspension of the arbitration until the challenge is resolved.
- 12.3 When an arbitrator is challenged by one party, the other party may agree to the challenge. The challenged arbitrator may also withdraw voluntarily from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
- 12.4 In instances referred to in Rule 12.3, a substitute arbitrator shall be appointed in accordance with the procedure referred to in Rule 14, even if during the process of appointing the challenged arbitrator, a party had failed to exercise his right to nominate. The time-limits provided in those Rules shall commence from the date of receipt of the agreement of the other party to the challenge or the challenged arbitrator's withdrawal.

13. Decision on Challenge

- 13.1 If, within 14 days of receipt of the notice of challenge, the other party does not agree to the challenge and the arbitrator who is being challenged does not withdraw voluntarily from his office, the Court shall decide the challenge. The Registrar and/or the Court may request comments and/or submissions on the challenge to be made by the parties and the arbitrator(s) and set a schedule for such comments and/or submissions to be made. Apart from the comments and/or submissions on the challenge requested by the Registrar and/or the Court, no further comments and/or submissions on the challenge may be made.
- 13.2 If the Court sustains the challenge, a substitute arbitrator shall be appointed in accordance with the procedure referred to in Rule 14, even if during the process of appointing the challenged arbitrator, a party had failed to exercise his right to nominate. The time-limits provided in those Rules shall commence from the date of the Registrar's notification to the parties of the decision by the Court.

- 13.3 If the Court rejects the challenge, the arbitrator shall continue with the arbitration. Unless the Registrar ordered the suspension of the arbitration pursuant to Rule 12.2, pending the determination of the challenge by the Court, the challenged arbitrator shall be entitled to proceed in the arbitration.
- 13.4 The Court may fix the costs of the challenge (which forms part of SIAC's administrative fees and expenses under Rule 32.2(b) and may direct by whom and how such costs should be borne. The Registrar may call for deposits towards the costs of the challenge pursuant to Rule 31.4 and may set a time limit for the payment of such deposits upon the expiry of which the challenge shall be considered as withdrawn.
- 13.5 The Court's reasoned decision made under this Rule shall be issued to the parties, and shall be final and not subject to appeal.

14. Replacement of an Arbitrator

- 14.1 In the event of the death, resignation or removal of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced.
- 14.2 In the event that an arbitrator refuses or fails to act or in the event of a *de jure* or *de facto* impossibility of him performing his functions or that he is not fulfilling his functions in accordance with the Rules or within prescribed time limits, the procedure for challenge and replacement of an arbitrator provided in Rules 11 to 13 and 14.1 shall apply.
- 14.3 The President may, at his own initiative and in his discretion, remove an arbitrator who refuses or fails to act, or in the event of a *de jure* or *de facto* impossibility of him performing his functions, or if he is not fulfilling his functions in accordance with the Rules or within the prescribed time limits, or if he does not conduct or participate in the arbitration with due diligence and/or in a manner that ensures the fair, expeditious and economical determination of the dispute. The President may consult the parties and the arbitrator prior to the removal of an arbitrator under this Rule.

15. Repetition of Hearings in the Event of Replacement of an Arbitrator

If under Rules 12 to 14 the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated unless otherwise agreed by the parties. If any other arbitrator is replaced, any hearings held previously may be repeated at the discretion of the Tribunal after consulting with the parties. If the Tribunal has issued an interim or partial award, any hearings related solely to that award shall not be repeated, and the award shall remain in effect.

16. Conduct of the Proceedings

- 16.1 The Tribunal shall conduct the arbitration in such manner as it considers appropriate, after consulting with the parties, to ensure the fair, expeditious, economical and final determination of the dispute.
- 16.2 The Tribunal shall determine the relevance, materiality and admissibility of all evidence. Evidence need not be admissible in law.
- 16.3 As soon as practicable after the appointment of all arbitrators, the Tribunal shall conduct a preliminary meeting with the parties, in person or by any other means, to discuss the procedures that will be most appropriate and efficient for the case.
- 16.4 The Tribunal may in its discretion direct the order of proceedings, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.
- 16.5 A presiding arbitrator may make procedural rulings alone, subject to revision by the Tribunal.
- 16.6 All statements, documents or other information supplied to the Tribunal and the Registrar by one party shall simultaneously be communicated to the other party.
- 16.7 The President may, at any stage of the proceedings, request the parties and the Tribunal to participate in a case management conference which may be conducted through a meeting in person, by video conference or telephone.

17. Seat of Arbitration

- 17.1 The parties may agree on the seat of arbitration. Failing such an agreement, the seat of arbitration shall be Singapore, unless the Tribunal determines, having regard to all the circumstances of the case, that another seat is more appropriate.
- 17.2 The Tribunal may hold hearings and meetings by any means it considers expedient or appropriate and at any location it considers convenient or appropriate.

18. Language of Arbitration

- 18.1 Unless the parties have agreed otherwise, the Tribunal shall determine the language to be used in the proceedings.
- 18.2 If a document is written in a language other than the language(s) of the arbitration, the Tribunal, or if the Tribunal has not been established, the Registrar, may order that party to submit a translation in a form to be determined by the Tribunal or the Registrar.

19. Party Representatives

- 19.1 Any party may be represented by legal practitioners or any other authorised representatives. The Registrar and/or the Tribunal may require proof of the authority of any party representatives.
- 19.2 After the full constitution of the Tribunal, any change or addition by a party to its representatives shall be notified promptly in writing to all other parties, the Tribunal and the Registrar. The party seeking to change or add to its representatives after the full constitution of the Tribunal, shall not engage a representative that may impact the composition of the Tribunal, and/or the finality of any award that will be made by the Tribunal.

20. Hearings

- 20.1 Unless the parties have agreed on documents-only arbitration or as provided in these Rules, the Tribunal shall, if either party so requests or the Tribunal so decides, hold a hearing for the presentation of evidence and/or for oral submissions on the merits of the dispute, including without limitation any issue as to jurisdiction.
- 20.2 The Tribunal shall fix the date, time and place of any meeting or hearing and shall give the parties reasonable notice.
- 20.3 If any party to the arbitration fails to appear at a hearing without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration and may make the award based on the submissions and evidence before it.
- 20.4 Unless the parties agree otherwise, all meetings and hearings shall be in private, and any recordings, transcripts, or documents used shall remain confidential.

21. Witnesses

- 21.1 Before any hearing, the Tribunal may require all parties to give notice of the identity of witnesses, including expert witnesses, whom they intend to produce, the subject matter of their testimony and its relevance to the issues.
- 21.2 The Tribunal has discretion to allow, refuse or limit the appearance of witnesses to give oral evidence at any hearing.
- 21.3 Any witness who gives oral evidence may be questioned by each of the parties, their representatives and the Tribunal in such manner as the Tribunal shall determine.
- 21.4 The Tribunal may direct the testimony of witnesses to be presented in written form, either as signed statements or sworn affidavits or any other form of recording. Subject to Rule 21.2, any party may request that such a witness should attend for oral examination. If the witness fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, disregard it or exclude it altogether.

21.5 It shall be permissible for any party or its representatives to interview any witness or potential witness (that may be presented by that party) prior to his appearance to give oral evidence at any hearing.

22. Tribunal-Appointed Experts

22.1 Unless the parties have agreed otherwise, the Tribunal:

- a. may following consultation with the parties, appoint an expert to report on specific issues; and
- b. may require a party to give such expert any relevant information, or to produce or provide access to any relevant documents, goods or property for inspection.

22.2 Any expert so appointed shall submit a report in writing to the Tribunal. Upon receipt of such a written report, the Tribunal shall deliver a copy of the report to the parties and invite the parties to submit written comments on the report.

22.3 Unless the parties have agreed otherwise, if the Tribunal considers it necessary, any such expert shall, after delivery of his written report, participate in a hearing. At the hearing, the parties shall have the opportunity to question him.

23. Additional Powers of the Tribunal

In addition to the powers specified in these Rules and not in derogation of the mandatory rules of law applicable to the arbitration, the Tribunal shall have the power to:

- a. order the correction of any contract, but only to the extent required to rectify any mistake which it determines to have been made by all the parties to that contract. This is subject to the condition that the proper law of the contract allows rectification of such contract;
- b. except as provided in Rules 29.1, 29.2 and 30.5, extend or abbreviate any time limits provided by these Rules or by its directions;
- c. conduct such enquiries as may appear to the Tribunal to be necessary or expedient;
- d. order the parties to make any property or item available for inspection;
- e. order the preservation, storage, sale or disposal of any property or item which is or forms part of the subject-matter of the dispute;
- f. order any party to produce to the Tribunal and to the other parties for inspection, and to supply copies of, any document in their possession or control which the Tribunal considers relevant to the case and material to its outcome;

- g. issue an award for unpaid deposits towards the costs of the arbitration where a party to the arbitration has paid the non-paying party's share of the deposits on behalf of the non-paying party;
- h. direct any party to give evidence by affidavit or in any other form;
- i. direct any party to ensure that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party;
- j. order any party to provide security for legal or other costs in any manner the Tribunal thinks fit;
- k. order any party to provide security for all or part of any amount in dispute in the arbitration;
- l. order the disclosure of the existence and details of a party's third party funding arrangement, including details of the identity of the funder, the funder's interest in the outcome of the proceedings, and whether or not the funder has committed to undertake adverse costs liability;
- m. proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions or any partial award or to attend any meeting or hearing, and to impose such sanctions as the Tribunal deems appropriate;
- n. decide, where appropriate, any issue not expressly or impliedly raised in the submissions of the parties provided such issue has been clearly brought to the notice of the other party and that other party has been given adequate opportunity to respond;
- o. determine the law applicable to the arbitral proceedings; and
- p. determine any claim of legal or other privilege.

24. Jurisdiction of the Tribunal

- 24.1 If a party objects to the existence or validity of the arbitration agreement or to the competence of SIAC to administer an arbitration before the Tribunal is appointed, the Registrar shall determine if reference of such an objection is to be made to the Court. If the Registrar so determines, the Court shall decide if it is *prima facie* satisfied that the arbitration can proceed. The arbitration shall be terminated if the Court is not so satisfied. Any decision by the Registrar or the Court is without prejudice to the power of the Tribunal to rule on its own jurisdiction.

- 24.2 The Tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, termination or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration agreement.
- 24.3 Unless otherwise directed by the Tribunal, a plea by a party responding to a claim or counterclaim that the Tribunal does not have jurisdiction shall be raised no later than in the first pleading directed by the Tribunal to be filed by the responding party after the exchange of the Notice of Arbitration and Response to the Notice of Arbitration. A plea that the Tribunal is exceeding the scope of its authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged to be beyond the scope of its authority. The Tribunal may nevertheless admit a late plea under this Rule if it considers the delay justified. A party is not precluded from raising such a plea by the fact that he has nominated, or participated in the nomination of, an arbitrator.
- 24.4 The Tribunal may rule on a plea referred to in Rule 24.3 either as a preliminary question or in an award on the merits.
- 24.5 A party may rely on a claim or defence for the purpose of a set-off to the extent permitted by the applicable law.

25 Early Dismissal of Claims

- 25.1 After the Tribunal is constituted, a party may, no later than 30 days after the constitution of the Tribunal, and in any event before the first session of the Tribunal, file an early objection to dismiss a claim or claims, on the basis that:
- a. the claim is manifestly without legal merit;
 - b. the claim is manifestly outside the jurisdiction of the Tribunal; or
 - c. the claim is manifestly inadmissible.
- 25.2 The party shall specify as precisely as possible the basis for the objection.
- 25.3 The Tribunal, after giving the parties an opportunity to present their observations shall, at its first session or promptly thereafter, notify the parties of its decision on the early objection. The Tribunal may, but need not, hold an oral hearing to determine the party's early objection.
- 25.4 The decision of the Tribunal on the party's early objection shall be without prejudice to the right of a party to make any further objections on different grounds under these Rules, whether on jurisdictional, admissibility or merits grounds.

25.5 If the Tribunal decides that the claim is manifestly without legal merit, outside the jurisdiction of the Tribunal or inadmissible, it shall render an award to that effect.

26. Interim Relief

26.1 The Tribunal may, at the request of a party, issue an order or an award granting an injunction or any other interim relief it deems appropriate. The Tribunal may order the party requesting interim relief to provide appropriate security in connection with the relief sought.

26.2 A request for interim relief made by a party to a judicial authority prior to the constitution of the Tribunal, or in exceptional circumstances thereafter, is not incompatible with these Rules.

26.3 If a party makes a request for interim relief prior to the constitution of the Tribunal, the Registrar may, on the application of either party, fix time limits for the parties to file submissions on the request. The request for interim relief and any submissions shall be forwarded to the Tribunal upon its constitution.

26.4 If the parties expressly agree on the application of the emergency arbitrator provisions set forth in Schedule 1, a party in need of emergency interim relief prior to the constitution of the Tribunal may apply for such relief pursuant to the procedures set forth in Schedule 1.

27. Applicable law and/or Rules of Law, *Amiable Compositeur*

27.1 The Tribunal shall apply the law and/or rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Tribunal shall apply the law and/or rules of law which it determines to be appropriate.

27.2 The Tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorised the Tribunal to do so.

27.3 In all cases, the Tribunal shall decide in accordance with the terms of the contract or other instrument, if any, and shall take into account any applicable usage of trade.

28 Submissions of Non-disputing Party

28.1 Upon written notice to the disputing parties, a party to the contract, treaty or other instrument that is not a party to the dispute (“non-disputing contracting party”) may make written submissions to the Tribunal, but only on a question of treaty or contractual interpretation that is directly relevant to the dispute. The Tribunal may also invite or accept oral submissions from a non-disputing contracting party on a question of treaty or contractual interpretation that is directly relevant to the dispute.

- 28.2 The Tribunal may, after consulting with all the parties and taking into consideration the confidentiality of proceedings as provided for in Rule 36, allow a person or entity that is not a party to the dispute (the “non-disputing party”) to file a written submission with the Tribunal regarding a matter within the scope of the dispute.
- 28.3 In determining whether to allow such a filing under Rule 28.2, the Tribunal shall consider, among other things, the extent to which:
- a. the non-disputing party’s submission would assist the Tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;
 - b. the non-disputing party’s submission would address a matter within the scope of the dispute; and
 - c. the non-disputing party has a sufficient interest in the proceedings and/or any other related proceedings.

Should the Tribunal allow the filing of the non-disputing party’s submission, the Tribunal shall take appropriate measures to safeguard the confidentiality of information related to the proceedings.

- 28.4 The Tribunal shall ensure, with respect to all submissions under this Rule, that the submission does not disrupt the proceeding or unduly burden or unfairly prejudice either party, and that both parties are given an opportunity to submit their response to the submission.

29. The Award

- 29.1 The Tribunal shall, after consulting with the parties and in any event no later than 30 days after the last hearing concerning matters to be decided in the award or the filing of the last submissions directed by the Tribunal concerning such matters, declare the proceedings closed if it is satisfied that the parties have no further relevant and material evidence to produce or submission to make with respect to the matters to be decided in the award. The Tribunal’s declaration that the proceedings are closed shall be copied to the parties and the Registrar. The Tribunal may, on its own motion or upon application of a party but before any award is made, reopen the proceedings. In such an event, the Tribunal shall seek an extension of the 30-day timeline to close the proceedings, if necessary.
- 29.2 Before making any award, the Tribunal shall submit it in draft form to the Registrar. Unless the Registrar extends time or the parties agree otherwise, the Tribunal shall submit the draft award to the Registrar within 45 days from the date on which the Tribunal declares the proceedings closed. The Registrar may, as soon as practicable, suggest modifications as to the form of the award and, without affecting the Tribunal’s

liberty of decision, may also draw its attention to points of substance. No award shall be made by the Tribunal until it has been approved by the Registrar as to its form.

- 29.3 The Tribunal may make separate awards on different issues at different times.
- 29.4 If any arbitrator fails to cooperate in the making of the award, having been given a reasonable opportunity to do so, the remaining arbitrators shall proceed in his absence.
- 29.5 Where there is more than one arbitrator, the Tribunal shall decide by a majority. Failing a majority decision, the presiding arbitrator alone shall make the award for the Tribunal.
- 29.6 The award shall be delivered to the Registrar, who shall transmit certified copies to the parties upon the full settlement of the costs of arbitration.
- 29.7 The Tribunal may award simple or compound interest on any sum which is the subject of the arbitration at such rates as the parties may have agreed or, in the absence of such agreement, as the Tribunal determines to be appropriate, in respect of any period which the Tribunal determines to be appropriate.
- 29.8 In the event of a settlement, if the parties so request, the Tribunal may render a consent award recording the settlement. If the parties do not require a consent award, the parties shall confirm to the Registrar that a settlement has been reached. The Tribunal shall be discharged and the arbitration concluded upon payment of any outstanding costs of the arbitration.
- 29.9 Subject to Rule 30 and Schedule 1, if applicable, by agreeing to arbitration under these Rules, the parties undertake to carry out the award immediately and without delay, and they also irrevocably waive their rights to any form of appeal, review or recourse to any state court or other judicial authority insofar as such waiver may be validly made and the parties further agree that an award shall be final and binding on the parties from the date it is made.

30. Correction of Awards and Additional Awards

- 30.1 Within 30 days of receipt of an award, a party may, by written notice to the Registrar and to any other party, request the Tribunal to correct in the award any error in computation, any clerical or typographical error or any error of a similar nature. Any other party may comment on such request within 15 days of its receipt. If the Tribunal considers the request to be justified, it shall make the correction within 30 days of receipt of the request. Any correction, made in the original award or in a separate memorandum, shall constitute part of the award.
- 30.2 The Tribunal may correct any error of the type referred to in Rule 30.1 on its own initiative within 30 days of the date of the award.

- 30.3 Within 30 days of receipt of an award, a party may, by written notice to the Registrar and to any other party, request the Tribunal to make an additional award as to claims presented in the arbitration but not dealt with in the award. Any other party may comment on such request within 15 days of its receipt. If the Tribunal considers the request to be justified, it shall make the additional award within 45 days of receipt of the request.
- 30.4 Within 30 days of the receipt of the award, a party may, by written notice to the Registrar and to any other party, request that the Tribunal give an interpretation of the award. Any other party may comment on such request within 15 days of its receipt. If the Tribunal considers the request to be justified, it shall give the interpretation in writing within 45 days after the receipt of the request. The interpretation shall form part of the award.
- 30.5 The Registrar may, if necessary, extend the period of time within which the Tribunal shall make a correction, interpretation or an additional award under this Rule.
- 30.6 The provisions of Rule 29 shall apply in the same manner with the necessary or appropriate changes in relation to a correction of an award, interpretation of an award and to any additional award made.

31. Fees and Deposits

- 31.1 The Tribunal's fees and SIAC's fees shall be ascertained in accordance with the Schedule of Fees in force at the time of commencement of the arbitration. Alternative methods of determining the Tribunal's fees may be agreed by the parties prior to the constitution of the Tribunal.
- 31.2 The Registrar shall fix the amount of deposits payable towards the costs of the arbitration. Unless the Registrar directs otherwise, 50% of such deposits shall be payable by the Claimant and the remaining 50% of such deposits shall be payable by the Respondent. The Registrar may fix separate deposits on costs for claims and counterclaims, respectively.
- 31.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, a provisional estimate of the costs of the arbitration shall be made by the Registrar. Such estimate may be based on the nature of the controversy and the circumstances of the case. This may be adjusted in light of such information as may subsequently become available.
- 31.4 The Registrar may from time to time direct parties to make further deposits towards costs of the arbitration.
- 31.5 Parties are jointly and severally liable for the deposits towards the costs of the arbitration and for the costs of the arbitration. Any party is free to pay the whole of the deposits towards the costs of the arbitration in respect of the claim or the counterclaim should the other party fail to pay its share. If a party fails to pay the deposits directed

either wholly or in part, the Tribunal may suspend its work and/or the Registrar may suspend SIAC's administration of the arbitration, in whole or in part. The Registrar may also, after consultation with the Tribunal (where the Tribunal is constituted) and after informing the parties, set a time limit on the expiry of which the relevant claims or counterclaims shall be considered as withdrawn without prejudice to the party reintroducing the same claims or counterclaims in another proceeding. In cases where the Tribunal has not been constituted, the Registrar may, after informing the parties, set a time limit on the expiry of which the relevant claims or counterclaims shall be considered as withdrawn without prejudice to the party reintroducing the same claims or counterclaims in another proceeding. On the application of a party, the Tribunal may issue an award for unpaid deposits towards the costs of the arbitration pursuant to Rule 23 (g).

- 31.6 If the arbitration is settled or disposed of without a hearing, the costs of the arbitration shall be finally determined by the Registrar. If the claim and/or counterclaim is not quantified, the Registrar shall determine the costs of the arbitration, as set out in Rule 32, in his discretion. The Registrar shall have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or disposed of. In the event that the costs of the arbitration determined are less than the deposits made, there shall be a refund in such proportions as the parties may agree, or failing an agreement, in the same proportions as the deposits were made.
- 31.7 All advances shall be made to and held by SIAC. Any interest which may accrue on such deposits shall be retained by SIAC.
- 31.8 In exceptional circumstances, the Registrar may direct an additional fee for SIAC's administrative fees to be paid over that prescribed in the Schedule of Fees.

32 Costs of the Arbitration

- 32.1 Unless the parties have agreed otherwise, the Tribunal shall specify in the award the total amount of the costs of the arbitration. Unless the parties have agreed otherwise, the Tribunal shall determine in the award the apportionment of the costs of the arbitration among the parties. The Tribunal may take into account any third party funding arrangements in apportioning the costs of the arbitration.
- 32.2 The term "costs of the arbitration" includes:
- a. the Tribunal's fees and expenses and the Emergency Arbitrator's fees and expenses where applicable;
 - b. SIAC's administrative fees and expenses; and
 - c. the costs of expert advice and of other assistance required by the Tribunal.

33. Tribunal's Fees and Expenses

- 33.1 The fees of the Tribunal shall be fixed by the Registrar in accordance with the applicable Schedule of Fees and the stage of the proceedings at which the arbitration ended. In exceptional circumstances, the Registrar may allow an additional fee over that prescribed in the applicable Schedule of Fees to be paid.
- 33.2 The Tribunal's reasonable out-of-pocket expenses necessarily incurred and other allowances shall be reimbursed in accordance with the applicable Practice Note.

34. Party's Legal and Other Costs

The Tribunal shall have the authority to order in its award that all or a part of the legal or other costs of a party be paid by another party or, where appropriate, any third party funder.

35. Exclusion of Liability

- 35.1 SIAC, including the President, members of its Court, directors, officers, employees or any arbitrator, shall not be liable to any person for any negligence, act or omission in connection with any arbitration governed by these Rules.
- 35.2 SIAC, including the President, members of its Court, directors, officers, employees or any arbitrator, shall not be under any obligation to make any statement in connection with any arbitration governed by these Rules. No party shall seek to make the President, any member of the Court, director, officer, employee or arbitrator act as a witness in any legal proceedings in connection with any arbitration governed by these Rules.

36. Confidentiality

- 36.1 Unless otherwise agreed by the parties, the parties and the Tribunal shall at all times treat all matters relating to the proceedings and the award as confidential. The deliberations of the Tribunal shall be confidential.
- 36.2 A party or any arbitrator shall not, without the prior written consent of all the parties, disclose to a third party any such matter except:
- a. for the purpose of making an application to any competent court of any State to enforce or challenge the award;
 - b. pursuant to the order of or a subpoena issued by a court of competent jurisdiction;
 - c. for the purpose of pursuing or enforcing a legal right or claim;

- d. in compliance with the provisions of the laws of any State which are binding on the party making the disclosure;
- e. in compliance with the request or requirement of any regulatory body or other authority; or
- f. pursuant to an order by the Tribunal on application by a party with proper notice to the other parties.

36.3 In this Rule, “matters relating to the proceedings” means the existence of the proceedings, and the pleadings, evidence and other materials in the arbitration proceedings and all other documents produced by another party in the proceedings or the award arising from the proceedings, but excludes any matter that is otherwise in the public domain.

36.4 The Tribunal has the power to take appropriate measures, including issuing an order or award for sanctions or costs, if a party breaches the provisions of this Rule.

37. Publication

37.1 Unless otherwise agreed by the parties, SIAC may publish information on proceedings conducted under these Rules.

37.2 Information that may be published shall be limited to the identity of the parties, the identity of the parties’ counsel, the Tribunal, the date of commencement of the arbitration and whether the proceedings are ongoing or have been terminated.

37.3 SIAC may publish any orders, directions and/or awards under these Rules with the express consent of all parties.

38. Decisions of the President, the Court and the Registrar

38.1 Subject to Rule 24.1, the decisions of the President, the Court and the Registrar with respect to all matters relating to an arbitration shall be conclusive and binding upon the parties and the Tribunal. The President, the Court and the Registrar shall not be required to provide reasons for such decisions, unless the Court determines otherwise or as may be provided in these Rules. The parties agree that the discussions and deliberations of the Court are confidential.

38.2 Subject to Rule 24.1, the parties shall be taken to have waived any right of appeal or review in respect of any decisions of the President, the Court and the Registrar to any state court or other judicial authority.

39. General Provisions

- 39.1 Any party who proceeds with the arbitration without raising any objection to a failure to comply with any provision of these Rules, or of any other rules applicable to the proceedings, any direction given by the Tribunal, or any requirement under the arbitration agreement relating to the constitution of the Tribunal or the conduct of the proceedings, shall be deemed to have waived its right to object.
- 39.2 In all matters not expressly provided for in these Rules, the President, the Court, the Registrar and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the fair, expeditious and economical conclusion of the arbitration and the enforceability of any award.
- 39.3 The Registrar may from time to time issue Practice Notes to supplement, regulate and implement these Rules for the purpose of facilitating the administration of arbitrations governed by these Rules.

SCHEDULE 1
Emergency Arbitrator

1. A party in need of emergency relief may, concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the Tribunal, make an application for emergency interim relief. The party shall notify the Registrar and all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party is entitled to such relief. Such notice must include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties. The application shall also be accompanied by payment of the non-refundable administration fee and the Emergency Arbitrator's fees and expenses set by the Registrar for proceedings pursuant to this Schedule 1. In appropriate cases, the Registrar may increase the amount of the Emergency Arbitrator's fees and expenses requested from the party making the application. If the additional fees and expenses are not paid within the time limit fixed by the Registrar, the application shall be considered as withdrawn.
2. The President shall, if he determines that SIAC should accept the application, seek to appoint an Emergency Arbitrator within one business day of receipt by the Registrar of such application and payment of any required fee.
3. If the parties have agreed on the seat of arbitration, that seat shall be the seat of the proceedings for emergency interim relief. Failing such an agreement, the seat of the proceedings for emergency interim relief shall be Singapore, without prejudice to the Tribunal's determination of the seat of arbitration under Rule 17.1.
4. Prior to accepting appointment, a prospective Emergency Arbitrator shall disclose to the Registrar any circumstance that may give rise to justifiable doubts as to his impartiality or independence. Any challenge to the appointment of the Emergency Arbitrator must be made within one business day of the communication by the Registrar to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.
5. An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless agreed by the parties.
6. The Emergency Arbitrator shall, as soon as possible but in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceedings by telephone conference or on written submissions as alternatives to a formal hearing. The Emergency Arbitrator shall have the powers vested in the Tribunal pursuant to these Rules, including the authority to rule on his own jurisdiction, and shall resolve any disputes over the application of this Schedule 1.

7. The Emergency Arbitrator shall have the power to order or award any interim relief that he deems necessary, including preliminary orders that may be made pending any hearing, telephone conference or written submissions by the parties (as applicable and whether or not the parties choose to participate). The Emergency Arbitrator shall give reasons for his decision in writing. The Emergency Arbitrator may modify or vacate the preliminary order, the interim award or order for good cause shown.
8. The Emergency Arbitrator's order or award shall be made within fourteen business days from the date of the Emergency Arbitrator's appointment unless, in exceptional circumstances, the Registrar extends the time. No Emergency Arbitrator's order or award shall be made by the Emergency Arbitrator until it has been approved by the Registrar as to its form.
9. The Emergency Arbitrator shall have no further power to act after the Tribunal is constituted. The Tribunal may reconsider, modify or vacate the interim award or order of emergency relief issued by the Emergency Arbitrator. The Tribunal is not bound by the reasons given by the Emergency Arbitrator. Any order or award issued by the Emergency Arbitrator shall, in any event, cease to be binding if the Tribunal is not constituted within 90 days of such order or award or when the Tribunal makes a final award or if the claim is withdrawn.
10. Any interim award or order of emergency relief may be conditioned on provision by the party seeking such relief of appropriate security.
11. An order or award pursuant to this Schedule 1 shall be binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to comply with such an order or award without delay.
12. The costs associated with any application pursuant to this Schedule 1 may initially be apportioned by the Emergency Arbitrator, subject to the power of the Tribunal to determine finally the apportionment of such costs.
13. These Rules shall apply as appropriate to any proceeding pursuant to this Schedule 1, taking into account the inherent urgency of such a proceeding. The Emergency Arbitrator may decide in what manner these Rules shall apply as appropriate, and his decision as to such matters is final and not subject to appeal. The Registrar may shorten any time limits under these Rules in applications made pursuant to proceedings commenced under Rule 26 and Schedule 1.