

Kluwer Arbitration Blog

SIAC Arbitration: Some Strong 2010 Numbers and an App...

John Savage (King & Spalding) · Thursday, February 24th, 2011

The SIAC dispenses hospitality to the legal profession in Singapore on a regular basis, as part of its “outreach” efforts to what I suppose we can describe as its local client base. The latest of these events took place at the end of January at the Helipad — a dimly lit bar with, disappointingly, no aircraft in sight. Turnout was strong, surely for reasons unconnected with the availability of free alcohol and food, and we heard the Chairman talk us through the institution’s performance in 2010.

The two main highlights for the SIAC in 2010 were strong case numbers for the year, and the application of the SIAC’s new rules beginning in July 2010. Looking at the caseload first, the number of new cases administered by the SIAC in 2010 was 166, rising from 132 in 2009, and 85 in 2008. This represents a 100% increase over the last two years. Again, these are cases administered by the SIAC, and don’t include ad hoc cases in which the SIAC acted only as appointing authority or otherwise played an incidental role. The increase in cases compared to 2009 suggests that the growing caseload is not something ephemeral connected to the global financial crisis in late 2008 and early 2009. Most of Asia’s economies rebounded strongly in 2010, which one might expect to cool the ardour of parties considering arbitration. That said, improvements in the economic environment may take more time to have an impact on case numbers.

The total amount in dispute for the new cases filed with the SIAC in 2010 was slightly lower than in 2009: SGD 1.35 billion — or a little over USD 1 billion — in 2010 against SGD 1.54 billion in 2009. This is a low number, when one considers the multi-billion dollar claims in perhaps dozens of individual investment and commercial arbitrations around the world — i.e. where the amount at stake in one case is a multiple of the total amount in dispute across the SIAC’s entire 2010 caseload. This is certainly consistent with my experience that there are and have historically been fewer large arbitrations in Asia than there are in Europe and the Americas, and that the big Asia-related cases are, for the time being, not typically referred to SIAC arbitration or to arbitration at other institutions in the region.

My guess is that the SIAC caseload, and the amounts at stake, will continue to rise as SIAC clauses make their way into more contracts. The pace of growth of the number of cases will slow as recent growth rates are unlikely to be sustainable. Why do I say

this? My experience, from my own client work and from speaking to other users of arbitration, is that parties based or operating in the region who would previously have insisted on more established and more “international” forms of arbitration (especially ICC and UNCITRAL) are now comfortable with SIAC arbitration. They will propose SIAC arbitration to their counter-parties, or will at least agree to SIAC arbitration when it is offered to them, even in their largest contracts. I’m not talking here about companies from Singapore, most of whom have been open to SIAC arbitration for a while, but about significant investors in the region (such as the oil majors), and companies (including state-owned entities) from around the region. Many of these companies, even two or three years ago, would have resisted SIAC arbitration in their large contracts, and non-Singaporean SOEs would have been particularly hesitant. And it is these recent contracts which generate the bulk of the caseload: 85% of the SIAC’s cases filed in 2010 involve disputes arising from contracts entered into between 2007 and 2010.

Turning to the nationalities of the disputing parties, the trend seems to be one of increasing diversity, although with an unsurprising Asian emphasis. New SIAC cases filed in 2010 involved parties of 45 different nationalities. Singaporean parties were predominant, with 107 Singaporean parties out of a total of 370. The nuance here is that 42 of these were Singaporean subsidiaries of international companies. Next in line was India, with 36 parties, and Hong Kong with 26, suggesting that the SIAC’s hinterland is increasingly Asia as a whole, and not simply South-East Asia. The growing popularity of SIAC arbitration with Indian parties is, in my view, the most important trend for the future. There are huge and growing trade and investment flows into and out of India, Indian parties are rarely afraid to litigate, yet arbitration in India itself is not something that well-advised non-Indian parties (or Indian parties, for that matter) will readily agree to. SIAC arbitration in Singapore provides a decent, nearby alternative. The SIAC is in fact planning to open an office in India in the coming months, although I understand the goal will be to promote SIAC arbitration generally, rather than to function as an arbitral institution based in India handling arbitration seated in India. A new source of cases is Vietnam, which was the fastest growing source of parties to SIAC arbitrations in 2010. I expect this trend to continue, as my take is that Vietnamese parties and their lawyers are more comfortable with arbitration in Singapore than in Hong Kong, and as arbitration in Vietnam is not currently something that foreign parties will accept in a hurry.

All of these statistics and more are set out in the SIAC’s Annual Report for 2010, which has just been released and is available on the SIAC website at <http://www.siac.org.sg>.

At the SIAC’s drinks the Chairman also provided an update on the application of the institution’s new arbitration rules, which came into force on July 1, 2010. Alongside incremental improvements to the previous rules, the new 4th Edition introduced two more substantial changes: provision for an Expedited Procedure (Article 5.1), and for the appointment of an Emergency Arbitrator (Article 26 and Schedule 1). Both have already been put to use.

A party can apply for the Expedited Procedure where the amount in dispute is no more than SGD 5 million (about USD 4 million), or where the parties so agree, or in cases of

exceptional urgency. If the SIAC accepts the application, the case will in principle be heard by a sole arbitrator, the award will be made within six months of constitution of the tribunal, and the award need only give summary reasons. As of late January, the SIAC had received 20 Expedited Procedure applications. Of these, it had accepted 12 under Rule 5(1)(a) (amount in dispute below SGD 5 million), one under Rule 5(1)(b) (agreement of the parties) and its decisions on three requests were pending. So recourse to the Expedited Procedure has been largely driven by the amount in dispute, rather than the parties' agreement or urgency. We can probably expect increasing awareness of the Expedited Procedure to generate more applications based on the agreement of the parties. What will be most interesting is to see how often and in which situations the SIAC allows an Expedited Procedure on grounds of urgency. There have been no such cases to date.

The Emergency Arbitrator procedure allows a party to apply for emergency relief concurrent with or following a notice of arbitration, but prior to the constitution of the tribunal. If the SIAC's Chairman accepts the application, he will seek to appoint an Emergency Arbitrator within one business day. The SIAC has received three applications for the appointment of an Emergency Arbitrator to date. In all three cases, the Chairman accepted the application, appointed an Emergency Arbitrator within a day, and the Emergency Arbitrator rendered his decision on the interim relief sought within a week of his appointment. Interestingly, two of the cases were effectively between Indian parties, while the third involved an Indonesian party and a Chinese party.

Last but not least, for those of us who want to study the 2010 SIAC Rules on the go, calculate the estimated costs of an SIAC arbitration, or check out the SIAC Panel of Arbitrators, there's now an app. The SIAC has just launched an iPhone and iPad application, to be followed shortly by a BlackBerry app for the late adopters amongst us. The app can be downloaded, for free, from the App Store. For reasons still unclear, it has not yet made it into the Top 25 Apps, but I guess it has only been available for a couple of weeks...

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