



ReedSmith Energy Trade & Commodities Alert

All Change in International Arbitration Rules

Part 1 of a 2-part series: International Arbitration

Arbitration is the primary method for dispute resolution in cross-border trade and commerce. Arbitration in the sector divides into two types: "trade arbitrations" before an appropriate trade association tribunal and arbitration under the auspices of one of the international arbitral bodies. The former are common in trading contracts. The latter have tended to be selected for longer term infrastructure or investment agreements, but these days are increasingly used for trading contracts. As global trade continues to grow so does the importance of keeping international arbitration in line with the desire and expectations of users for effective, efficient and coherent procedures. Nevertheless, in recent years there have been concerns that international arbitration rules have fallen out of step with modern best practices. This is the first of two alerts on international arbitration. The second will focus on cost.

Responding to pressure from users to remain up to date, many of the major international arbitration institutions have recently embarked on an updating and revising project. Thus 2010–2011 will see revisions to the best known and most widely used international arbitration rules. The Singaporean SIAC Rules and UN Sponsored UNCITRAL Rules have lead the pack while revisions to the ICC and LCIA Rules are expected in the next few months. This Alert summarises the major changes to the UNCITRAL and SIAC arbitration rules.

Parties commonly incorporating arbitration clauses into their contracts are bound to be effected by these changes, but for once, change is not all bad!

UNCITRAL RULES 2010

For over 30 years the 1976 United Nations Commission on International Trade Law ("UNCITRAL") Arbitration Rules (the "UNCITRAL Rules") have provided the international business community with the framework for independent, impartial and binding resolution of cross-border disputes. Negotiated by representatives from states around the world and adopted by UN Resolution, the UNCITRAL Rules are regarded by many as a balanced representation of interests of commercial and state interests from capital exporting and importing countries. As a result they are often adopted in energy sector contracts, particularly when involving state interests.

Entry into effect

The 2010 UNCITRAL Rules are intended to replace the original 1976 version of the Rules but the process will be gradual. Arbitration proceedings commenced under existing arbitration agreements containing a reference to the UNCITRAL Rules will continue to be conducted pursuant to the 1976 Rules. Only parties to arbitration agreements or clauses concluded after 15 August 2010 will be presumed to have intended to adopt the 2010 Rules. This presumption will not apply where an offer made before 15 August was accepted after that date.

Significant Revisions

Due to the overall success and popularity of the 1976 version of the Rules the revision was never intended as a root and branch reform. In many cases arbitration under the revised Rules is likely to be largely the same as under the old rules.

The following are some of the most significant changes:

- Response to the Notice of Arbitration – although not required under the 1976 version of the UNCITRAL Rules, in practice respondents commonly submitted a formal response to the Notice of Arbitration summarising the

respondent's main case. Such a response is now formally provided for under Article 4 of the revised Rules.

- Statements of case – the revised rules clarify that in line with current practice, statements of claim and defence should, in addition to factual allegations, set out the legal arguments and be accompanied with all supporting documents and other evidence relied on.
- Interim measures – the 1976 Rules provided Tribunals with the power to award interim measures but lack of details resulted in lack of uniformity in practice. This is rectified in Art. 26 of the revised rules which sets out the legal test to be satisfied by an applicant, as well as the Tribunal's power to require the applicant to provide security, to alter or terminate the interim measure imposed and use costs and damages awards to prevent or compensate for abuse of the procedure.
- Choice of law – revised Article 35 brings the UNCITRAL Rules into line with other modern international arbitral rules, which require arbitrators, in the absence of an express choice of law by the parties, to apply such substantive laws to the contract the subject of the dispute as they consider appropriate – without reference to any national conflicts of laws rules.
- Fees and expenses of arbitrators – one of the most innovative revisions is the introduction of the right to external review and correction of arbitrators' fees. To the extent that arbitral fees were a real concern in practice, this move will be welcome by parties.
- Appeal? – The UNCITRAL Rules have always permitted appeal from arbitral awards where such appeal is permitted under the relevant national laws (usually of the laws of the "seat" of the arbitration). In that regard the 1976 Rules were out of step with the rules of most modern international arbitration institutions. This aspect of the Rules remains unchanged in the revised Rules. However, to alert parties to what might now be regarded as an anomaly; the revised rules are published with a revamped model arbitration clause, with an optional provision for the exclusion of appeal to national courts.

SIAC RULES 2010

Since its establishment in 1991 the Singapore International Arbitration Centre ("SIAC") has become one of the most popular fora for energy and commodity related disputes resolution in Asia. Like the ICC and LCIA, SIAC acts as an administrator for arbitrations between primarily private commercial enterprises under rules specifically prepared for use in SIAC arbitrations – the SIAC Arbitration Rules.

The new fourth edition of the SIAC Rules took effect on 1 July 2010 and replaced the previous, 2007-published edition of the SIAC Rules.

Entry into effect

Unless the parties agree otherwise the new rules apply to all SIAC arbitrations commenced after 1 July 2010.

Significant Revisions

The new Rules introduce a number of revisions, two of which stand out in particular as likely to make a significant difference:

- Expedited procedure – new Article 5 introduces an expedited arbitration procedure for exceptionally urgent matters or for (relatively) low value matters with less than Sing\$5 million (approximately US\$3.6 million) at stake. The procedure could apply upon the application of either party and should see the conclusion of the arbitration within six months of the constitution of the Tribunal.
- Emergency interim relief – The 2010 Rules adopt a new approach to dealing with requests for interim or emergency relief before an arbitral tribunal has been constituted. The lack of effective interim relief before the constitution of the Tribunal, other than through national courts, has been regarded by some as a weakness of international arbitration. The adoption by SIAC of the emergency arbitrator procedure¹ will provide parties with an arbitral route for seeking emergency interim relief, without excluding potential applications to local courts if these are deemed more appropriate.

Conclusions

Changes to two of the major international arbitration rules modernise and improve the international arbitration services on offer. Even if international arbitration procedures will always remain imperfect in the minds of some, the recent revisions can be expected to improve parties' experience of international arbitration, and so should be welcomed.

-
1. Previously already adopted by the IDRC and the Stockholm Chamber of Commerce.

* * * * *

Reed Smith Announcement

We are delighted to announce the appointment of four new partners to our Energy, Trade & Commodities Group in London. Keith Hartley, Peter Cassidy, Vincent Rowan and Gordon Bell will bring to thirteen the number of London based partners in our market leading Energy, Trade & Commodities Group. Keith and Peter have already joined us whilst Vincent and Gordon will join later in the year.

The four have a wealth of experience of major international energy and infrastructure projects—frequently supporting clients in a project counsel role throughout the life of a project from structuring, bidding, documenting and negotiating through to dispute resolution.

Keith has extensive experience drafting and negotiating major energy infrastructure contracts, particularly in relation to LNG, gas and power, including nuclear and renewables. Peter focuses on the contractor side of the oil and gas, petrochemicals and power sectors. Vincent's practice focuses on the owner/developer side of the oil and gas, power and transport sectors. Gordon meanwhile is an international arbitration specialist.

The expansion of our Energy, Trade & Commodities Group in the last two years has to a large extent reflected the growth and diversification of our core clients' businesses. The appointment of four partners with such depth of experience as project counsel will significantly enhance the support we are able to provide to our producer and trading company clients around the world. We welcome Keith and Peter to the firm and look forward to the arrival of Vincent and Gordon later this year.



Keith Hartley
+44 (0)20 3116 3694
khartley@reedsmith.com



Peter Cassidy
+44 (0)20 3116 3697
pcassidy@reedsmith.com

Client Alert Authors:

- [Shai Wade](#)
Partner, London
+44 (0)20 3116 3620
- [Philip Antcliffe](#)
Associate, London
+44 (0)20 3116 2808

Other Contacts:

- [Suzanne Bainbridge](#)
Partner, London
+44 (0)20 3116 2815
- [Peter Cassidy](#)
Partner, London
44 (0)20 3116 3697
- [Paul Dillon](#)
Partner, London
+44 (0)20 3116 2893
- [Kyri Evagora](#)
Partner, London
+44 (0)20 3116 2914
- [Siân Fellows](#)
Partner, London
+44 (0)20 3116 2809
- [Diane Galloway](#)
Partner, London
+44 (0)20 3116 2934
- [Keith Hartley](#)
Partner, London
+44 (0)20 3116 3694
- [Robert Parson](#)
Partner, London
+44 (0)20 3116 3514
- [Richard Swinburn](#)
Partner, London
+44 (0)20 3116 2933
- [John Varholý](#)
Partner, London
+44 (0)20 3116 2933

About Reed Smith

Reed Smith is a global relationship law firm with nearly 1,600 lawyers in 22 offices throughout the United States, Europe, Asia and the Middle East. Founded in 1877, the firm represents leading international businesses, from Fortune 100 corporations to mid-market and emerging enterprises. Its lawyers provide litigation and other dispute resolution services in multi-jurisdictional and other high-stakes matters; deliver regulatory counsel; and execute the full range of strategic domestic and cross-border transactions. Reed Smith is a preeminent advisor to industries including financial services, life sciences, health care, advertising, technology and media, shipping, energy trade and commodities, real estate, manufacturing, and education. For more information, visit reedsmith.com.

Europe: [London](#), [Paris](#), [Munich](#), [Greece](#)

Middle East: [Abu Dhabi](#), [Dubai](#)

Asia: [Hong Kong](#), [Beijing](#)

United States: [New York](#), [Chicago](#), [Washington](#), [Los Angeles](#), [San Francisco](#), [Philadelphia](#), [Pittsburgh](#), [Oakland](#), [Princeton](#), [Northern Virginia](#), [Wilmington](#), [Silicon Valley](#), [Century City](#), [Richmond](#)

The information contained in this Client Alert is intended to be a general guide only and not to be comprehensive, nor to provide legal advice. You should not rely on the information contained in this Alert as if it were legal or other professional advice.

Reed Smith LLP is a limited liability partnership registered in England and Wales with registered number OC303620 and its registered office at The Broadgate Tower, 20 Primrose Street, London EC2A 2RS. Reed Smith LLP is regulated by the Solicitors Regulation Authority. Any reference to the term 'partner' in connection to Reed Smith LLP is a reference to a member of it or an employee of equivalent status.

This Client Alert was compiled up to and including July 2010.

The business carried on from offices in the United States and Germany is carried on by Reed Smith LLP of Delaware, USA; from the other offices is carried on by Reed Smith LLP of England; but in Hong Kong, the business is carried on by Richards Butler in association with Reed Smith LLP (of Delaware, USA), and in Beijing, by Reed Smith Richards Butler LLP. A list of all Partners and employed attorneys as well as their court admissions can be inspected at the firm's website.