

Notice of Market Rules Modification

Paper No: EMC/RCP/40/2008/279
Rule reference: Chapter 3 Section 3.5.5
Proposer: George Lim, Dispute Resolution Counselor
Date received by EMC: 1 September 2008
Category allocated: 3
Status: Approved by EMA
Effective Date: 05 January 2009

Summary of proposed rule modification:

This proposal expands the pool of potential candidates to the Dispute Resolution and Compensation Panel, by expanding the criteria to allow candidates with legal background and experience as arbitrators or mediators in previous disputes. This is in line with the selection guidelines of candidates from other backgrounds (e.g. economics or power system operation), or other comparable setups such as the Singapore Mediation Centre (SMC) and the Singapore International Arbitration Centre (SIAC).

Date considered by Rules Change Panel: 4 November 2008
Date considered by EMC Board: 27 November 2008
Date considered by Energy Market Authority: 19 December 2008

Proposed rule modification:

See attached paper.

Reasons for rejection/referral back to Rules Change Panel (if applicable):

PAPER NO. : **EMC/BD/06/2008/05(d)**

RCP PAPER NO. : **EMC/RCP/40/2008/279**

SUBJECT : **REVIEW OF QUALIFICATIONS FOR MEMBERS OF THE DISPUTE RESOLUTION AND COMPENSATION PANEL**

FOR : **DECISION**

PREPARED BY : **TAN LIANG CHING
SENIOR ECONOMIST**

REVIEWED BY : **PAUL POH LEE KONG
SVP, MARKET ADMINISTRATION**

DATE OF MEETING : **27 NOVEMBER 08**

Executive Summary

As required under the Market Rules (Chapter 3, Section 3.15.1), the EMC Board initiated a review of the Dispute Resolution Procedures by publishing a review notice on 06 Aug 08. Only one submission was received from the Dispute Resolution Counselor (DRC), proposing to broaden the selection criteria for candidates to the Dispute Resolution and Compensation Panel (DRCP).

This paper assesses that including candidates with legal background and experience as arbitrators or mediators in previous disputes, even if they may not have practiced as an advocate and solicitor of the Supreme Court of Singapore, benefits the market by expanding the pool of potential candidates. This is also in line with the selection guidelines of candidates from other backgrounds (e.g. economics or power system operation), or other comparable setups such as the Singapore Mediation Centre (SMC) and the Singapore International Arbitration Centre (SIAC).

For this current review of the DRP, we do not recommend any changes other than the above proposal from the DRC. The next review will be carried out in 3 years time, by 31 December 2011.

The RCP recommend that the EMC Board **adopt** this proposal.

1. INTRODUCTION

The Singapore Electricity Market Rules provide for a set of Dispute Resolution Procedures (DRP), which aims to resolve disputes between parties amicably, avoid incurring unnecessary costs, and maintain relationships that are important in Singapore's electricity market community.

A comprehensive review of the DRP was conducted in 2005, culminating in a set of extensive rule changes that were implemented on 14 Feb 2006. To ensure its continued relevance, the Market Rules require a review of the DRP by 31 December 08 (Chapter 3, Section 3.15.1). In response, the EMC Board initiated the review by publishing a notice on 06 Aug 08, inviting submissions on suggestions to improve the existing DRP by 31 Aug 08. The review is conducted by the RCP in consultation with the DRC, and the terms of the review include:

- a) Whether the current procedures are fair and effective;
- b) Whether any additional procedures are necessary; and
- c) Any other matter that the EMC considers appropriate.

By the close of the submission period, only one submission from the Dispute Resolution Counselor (DRC) was received regarding the selection criteria for candidates to the Dispute Resolution and Compensation Panel (DRCP). This proposal is discussed in detail in Section 3.

2. BACKGROUND OF THE DRCP

Under Section 3.6 in Chapter 3 of the Market Rules, the DRC appoints two separate panels, a mediation panel and an arbitration panel (collectively known as the Dispute Resolution and Compensation Panel) from which he will select suitable mediators or arbitrators for future disputes. The current members on both panels are given in **Annex 1**.

Generally, there are the following three progressive steps in the dispute resolution process:

- Step 1:** When a dispute arises, the disputing parties shall use all reasonable endeavors to resolve the dispute among themselves using their respective Dispute Management Systems (DMS).
- Step 2:** If the disputing parties fail to resolve the dispute among themselves, and the DRC is satisfied that the dispute meets all applicable conditions for mediation, he will appoint a person from the mediation panel to mediate the dispute (Section 3.8.8 of Chapter 3 of MR).
- Step 3:** If the mediation fails or is considered unsuitable, the dispute escalates to the arbitration stage. The disputing parties agree on the selection of one or three persons from the arbitration panel to form the arbitration tribunal (Section 3.9.11 of Chapter 3 of MR)¹, and the findings of the arbitration tribunal shall be binding onto all parties to the dispute (Section 3.9.32 of Chapter 3 of MR)².

¹ If the parties fail to select an arbitration tribunal within the time limit of 20 business day, the DRC shall select one or three persons under Section 3.9.13.

² The determination of the arbitration tribunal is not subject to appeal except under the Arbitration Act (Cap 10).

3. ANALYSIS

The members from both mediation and arbitration panels are vested with the critical responsibilities of managing disputes in the electricity market, which could be wide-ranging in nature. As such, it is important to have a large pool of qualified persons with the appropriate experience from which the DRC or disputing parties can select from. The current criteria for candidates to the Dispute Resolution and Compensation Panel are as follows (Section 3.5.5):

- i) knowledge of the operation of *wholesale electricity markets*;
- ii) qualification and experience in economics;
- iii) experience in energy or money market trading or any other commodity market trading;
- iv) experience in *power system* operation; or
- v) a degree in law and practiced as an advocate and solicitor of the Supreme Court of Singapore for at least five years.

The DRC's rule change proposal suggests that the criteria for candidates with legal background (criterion v above) is overly restrictive, and limits the potential pool of candidates. For example, it excludes suitable qualified candidates with legal academic backgrounds who may have experience practicing as a mediator or arbitrator, but have not practiced as an advocate and solicitor of the Supreme Court of Singapore (e.g. law professors).

At first glance, criterion v does appear restrictive, when compared to the other criteria such as "qualification and experience in economics" and "experience in power system operation", which are quite broad.

It would be instructive to take reference from the qualification guidelines from other comparable setups such as the Singapore Mediation Centre (SMC) and Singapore International Arbitration Centre (SIAC), which are summarised in Table 1 overleaf:

Table 1: Qualification Guidelines of SMC and SIAC

Organisation	Description	Qualification Guidelines
Singapore Mediation Centre (SMC)	<p>The SMC is a non-profit organisation guaranteed by the Singapore Academy of Law and receiving support from the Supreme Court of Singapore, the Subordinate Courts of Singapore and the Singapore Academy of Law.</p> <p>The SMC has a panel of accredited mediators and other neutrals that includes retired Supreme Court Judges, Members of Parliament, former Judicial Commissioners, Senior Counsel and leaders from different professions and industries.</p> <p>As of 1 April 2006, more than 1,000 disputes were referred to the SMC. Of those mediated, about 75% were settled. The types of cases include (and are not limited to) banking disputes, construction disputes, contractual disputes, corporate disputes, contested divorces and divorce ancillary matters, employment disputes, family disputes, information technology disputes, insurance disputes, negligence claims, partnership disputes, personal injury claims, shipping disputes and tenancy disputes.</p>	<p>For the Principal Panel of mediators, SMC seeks nominations from various professional bodies. <u>Although there are no fixed, definitive guidelines for the nominees, they are usually leaders or senior members of their respective industries.</u></p> <p>The guidelines for selection for training and assessment are persons who have the right temperament as well as intellectual capacity for mediation. After going through and passing a training course/workshop, they are nominated to the principal panel, and could be subsequently chosen to mediate for paying cases referred to SMC.</p> <p>The members on the panel come from different industries including the construction industry, accountants, and doctors. About 50% of the Principal panel is legally trained.</p>
Singapore International Arbitration Centre (SIAC)	<p>SIAC is an independent, not-for-profit organization established to meet the demands of the international business community for a neutral, efficient and reliable dispute resolution institution in a fast-developing Asia. It is affiliated with the Singapore Business Federation</p> <p>Broadly, it helps parties in:</p> <ul style="list-style-type: none"> • Appointment of arbitrators when they cannot agree on an appointment • Management of the financial and other practical aspects of arbitration • Facilitation of the smooth progress of arbitration <p>The SIAC has two main panels of arbitrators: the Regional Panel and the International Panel. The only difference between the Regional Panel and the International Panel is that the members of the former reside in ASEAN countries, while members of the latter reside outside the ASEAN region.</p>	<p>For both Panels, the applicant must be within 35 to 75 years old, have at least 15 years of experience after meeting the relevant qualification for the applicant's profession, and have obtained a tertiary education. The 15 years of post-qualification experience (PQE) has thus far been liberally interpreted by the Panel Review Committee to include work of a full-time nature. So a lawyer who is a fulltime teacher in a university should count towards the PQE.</p> <p>Additionally, the applicant must be a Fellow at the Singapore Institute of Arbitrators or have similar status at any equivalent professional arbitration institute. Moreover, the applicant must have served as an arbitrator in at least five cases and have written at least two commercial arbitration awards.</p> <p><u>An applicant may still be accepted to a panel even without meeting all of the general requirements, if</u></p>

Organisation	Description	Qualification Guidelines
		<p><u>discretionary factors support admission.</u> The discretionary factors that may be considered include: the applicant's involvement as counsel in at least five arbitration proceedings; letters of reference from internationally known arbitration practitioners or persons otherwise known to the Review Committee; the applicant's published writings in ADR journals or legal periodicals; and the opportunity for a personal interview if granted by the Deputy Chairman of SIAC.</p>

Source: SMC and SIAC websites, and email correspondences with both organisations.

From the table above, both SMC and SIAC do not have rigid qualifying guidelines for candidates to their respective mediation and arbitration panels. For example, SMC have "no fixed, definitive guidelines for the nominees", while SIAC may accept applicants to a panel "even without meeting all of the general requirements, if discretionary factors support admission". Both organisations have guidelines that are stringent, yet broad enough to include candidates from a wide variety of backgrounds and experiences.

The selection criteria of both SMC and SIAC is consistent with, and supports, the DRC's proposal to broaden the DRCP's selection criteria; the actual selection of persons from either the arbitration and mediation panels can be left to the good sense of the DRC and/or disputing parties, depending on the nature of the dispute. However, to ensure that candidates have at least some experience in mediation or arbitration, it is proposed to specify that the candidate has had acted as an arbitrator or mediator in previous disputes.

In addition, with the conclusion of this round of DRP review, the next review will be carried out in 3 years time by 31 December 2011. Correspondingly, Chapter 3, Section 3.15.1 should be amended to this revised date.

A summary of the rule changes is given below, with the detailed rule changes in **Annex 2**:

Table 2: Rule Changes Arising from the Review of the Dispute Resolution Procedures

Chapter	Section	Reason for Rule Change
3	3.5.5.6	To include an alternative criteria to allow candidates with a law degree and experience acting as an arbitrator or mediator in previous disputes to be appointed to the Dispute Resolution and Compensation Panel.
3	3.15.1	To revise the timeline for the next review of the Dispute Resolution Procedures, from 31 December 2008 to 31 December 2011.

4. Conclusion

This paper supports the rule change proposal to broaden the selection criteria for the Dispute Resolution and Compensation Panel, as the existing criteria for candidates with legal backgrounds are more restrictive than those from other backgrounds (e.g. economics or power system operation) or other comparable setups (i.e. SMC and SIAC). The proposed revision will qualify candidates who may not have practiced as an advocate and solicitor of the Supreme Court of Singapore for at least five years, but have experience acting as an arbitrator or mediator in previous disputes.

For this current review of the DRP, we do not recommend any changes other than the above proposal from the DRC. We recommend that the RCP conclude the review by expanding the selection criteria for candidates to the DRCP. The next review will be carried out in 3 years time, by 31 December 2011.

5. Consultation

The proposed review was first published on EMC's website for comments on 16 September 2008. No inputs were received for consideration.

6. Legal Sign Off

The text of the rule modification has been vetted by EMC's external legal counsel whose opinion is that the modification reflects the intent of the rule modification proposal as expressed in the analysis section of this paper.

7. Recommendations

The RCP unanimously recommends that the EMC Board conclude the DRP review required under the Market Rules, by considering only the rule change to expand the selection criteria for candidates to the DRCP. The next review will be carried out in 3 years time, by 31 December 2011.

Further, the RCP unanimously recommends that the EMC Board

- a. **adopt** the rule modification proposal to expand the DRCP selection criteria by including a new Section 3.5.5.6 (MR Chapter 3), and update the timeline for the next DRP review to 31 December 2011 in Section 3.15.1 (MR Chapter 3), as set out in **Annex 2**;
- b. **seek** EMA's approval of the rule modification proposal; and
- c. **recommend** that the rule modification proposal come into force **one business day** after the date on which the approval of the Authority is published by the EMC.

Current Members of the Mediation and Arbitration Panels**Mediation Panel**

S/N	Member	Credentials
1	Mr. Chandra Mohan s/o K Nair	<ul style="list-style-type: none"> • President of the NUS Society (since 2005) • Nominated Member of Parliament (2001-2004) • Chairman, International Relations Committee, Law Society of Singapore (since 1998) • Vice President and Senate Member, Singapore Academy of Law (1995-1998)
2	Mr. Daniel John	<ul style="list-style-type: none"> • Member, Panel of Arbitrators, Singapore Institute of Arbitrators (since 2006) • Member, Regional Panel of Arbitrators, Singapore International Arbitration Centre (since 2003) • Member, Panel of Principal Mediators, Singapore Mediation Centre (since 2002) • Fellow, Singapore Institute of Arbitrators (since 1993)
3	Ms. Shirli Kirschner	<ul style="list-style-type: none"> • Law Society Mediator Panel (Since 2004) • Lecturer, Facilitation – Running Effective Meetings, Masters of Law programme, The University of New South Wales
4	Mr. Yu Ah Inn Robert	<ul style="list-style-type: none"> • Member, Inquiry Panel under S84 of the Legal Profession Act (2005 – 2007) • Judge Advocate, Singapore Armed Forces (1992-1995)

Arbitration Panel

S/N	Member	Credentials
1	Prof. Lawrence G.S. Boo	<ul style="list-style-type: none"> • Singapore International Arbitration Centre (since 2003) • Kuala Lumpur Regional Centre for Arbitration (since 2000) • Hong Kong International Arbitration Centre (since 2000) • Fellow, Arbitrators and Mediators Institute of New Zealand (since 1998)
2	The Honourable Gerald Edward Fitzgerald, AC, QC	<ul style="list-style-type: none"> • Fellow, Australian Centre for International Commercial Arbitration Ltd (since 2005) • Fellow, Institute of Arbitrators and Mediators

S/N	Member	Credentials
		Australia (since 2004) <ul style="list-style-type: none"> • Member, World Intellectual Property Organisation Arbitration and Mediation Centre's List of Neutrals (since 2004)
3	The Honourable Sir Anthony Mason, AC, KBE	<ul style="list-style-type: none"> • Member of the Advisory Committee of Gilbert and Tobin Centre of Public Law, University of New South Wales (since 2002) • Non-permanent Judge, Hong Kong Court of Final Appeal (since 1997)
4	Mr. Naresh Mahtani	<ul style="list-style-type: none"> • Council Member, Singapore Institute of Arbitrators (since 2006) • Lay Person Panel, Disciplinary Committee of Singapore Institute of Architects (since 2005) • Member, Adjudication Panel of the Financial Industry Disputes Resolution Panel (since 2004)
5	Prof. Tan Cheng Han, SC	<ul style="list-style-type: none"> • Director, NTUC Income (since 2006) • Member, Competition Commission of Singapore (since 2005) • Member, Military Court of Appeal (since 2004)
6	Mr. Tan Ching Tiong	<ul style="list-style-type: none"> • Member, Strata Title Board (since 2000) • Member, Singapore Institute of Arbitrators • Panel Member, Singapore Mediation Centre
7	Mr. George Tan Keok Heng	<ul style="list-style-type: none"> • Fellow, Chartered Institute of Arbitrators • Fellow, Singapore Institute of Arbitrators • General Secretary, Singapore institute of Arbitrators (1994-1996)

Proposed Rule Changes Arising from the Review of the Dispute Resolution Procedures

Existing Rules (Release: 1 July 2008)	Proposed Rules Changes (Deletions represented by strikethrough text and additions represented by double underlined text)	Remarks
<u>CHAPTER 3</u>	<u>CHAPTER 3</u>	
<p>3.5 DISPUTE RESOLUTION COUNSELLOR APPOINTS THE DISPUTE RESOLUTION AND COMPENSATION PANEL</p> <p>...</p> <p>3.5.5 Each member of the <i>dispute resolution and compensation panel</i> shall have at least one of the following:</p> <p>3.5.5.1 knowledge of the operation of <i>wholesale electricity markets</i>;</p> <p>3.5.5.2 qualification and experience in economics;</p> <p>3.5.5.3 experience in energy or money market trading or any other commodity market trading;</p> <p>3.5.5.4 experience in <i>power system</i> operation; or</p> <p>3.5.5.5 a degree in law and practiced as an advocate and solicitor of the Supreme Court of Singapore for at least five years.</p>	<p>3.5 DISPUTE RESOLUTION COUNSELLOR APPOINTS THE DISPUTE RESOLUTION AND COMPENSATION PANEL</p> <p>...</p> <p>3.5.5 Each member of the <i>dispute resolution and compensation panel</i> shall have at least one of the following:</p> <p>3.5.5.1 knowledge of the operation of <i>wholesale electricity markets</i>;</p> <p>3.5.5.2 qualification and experience in economics;</p> <p>3.5.5.3 experience in energy or money market trading or any other commodity market trading;</p> <p>3.5.5.4 experience in <i>power system</i> operation; or</p> <p>3.5.5.5 a degree in law and practiced as an advocate and solicitor of the Supreme Court of Singapore for at least five years.; <u>or</u></p>	<p>To open up the pool to more candidates with appropriate backgrounds to be considered for nomination to the Dispute Resolution and Compensation Panel</p>

Existing Rules (Release: 1 July 2008)	Proposed Rules Changes (Deletions represented by strikethrough text and additions represented by double underlined text)	Remarks
	3.5.5.6 <u>a degree in law and has acted as an arbitrator or mediator in the resolution of disputes.</u>	
<p>3.15 EMC REVIEW OF DISPUTE RESOLUTION PROCEDURES</p> <p>3.15.1 The <i>EMC Board</i> shall conduct a review of the dispute resolution procedures in section 3 by 31 December 2008.</p>	<p>3.15 EMC REVIEW OF DISPUTE RESOLUTION PROCEDURES</p> <p>3.15.1 The <i>EMC Board</i> shall conduct a review of the dispute resolution procedures in section 3 by 31 December 2008 <u>2011</u>.</p>	<p>To update the timeline, for the next review to be conducted in 3 years time.</p>