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2016 SIAC Rules

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On 1 August 2016, the sixth edition of the Singapore International Arbitration Centre's ("SIAC") rules will enter into force ("2016 SIAC Rules"), applying to arbitrations commenced on or after that date. They replace the 2013 SIAC Rules.

Since its launch in 1991, SIAC has established itself as one of the world's premier arbitral institutions, with a rapidly expanding and increasingly international caseload. SIAC administered 271 new cases in 2015 alone, and currently handles approximately 600 active cases involving parties from over 50 nationalities.

The 2016 revisions to the SIAC Rules reflect the increasingly multi-national and multi-party character of the disputes administered by SIAC, and ensure that SIAC better serves the needs of the businesses, financial institutions and governments that use SIAC. The 2016 SIAC Rules are the product of an extensive consultative process with SIAC users, with nearly 1000 comments received from law firms and in-house counsel based in more than 15 jurisdictions in, among others, Asia, Europe, the Middle East, Africa and North America.

The 2016 SIAC Rules introduce a number of market-leading innovations, including a groundbreaking provision on the early dismissal of claims and defenses, new provisions to deal with multi-party and multi-contract disputes, and further refinements to SIAC's popular emergency arbitrator and expedited arbitration procedures. Together with other significant improvements, the 2016 SIAC Rules provide a more efficient and flexible set of arbitral procedures that are well-suited to deal with disputes of all sizes and complexities.

Wilmer Cutler Pickering Hale and Dorr's International Arbitration Practice Group is privileged to have played a part in drafting the 2016 SIAC Rules. Gary Born, Chair of the International Arbitration Practice Group and President of the SIAC Court, chaired the SIAC Rules Revision Executive Committee, and Associates Jonathan Lim and Dharshini Prasad worked closely with the SIAC Secretariat in all aspects of the rules revision process.

Key elements of the 2016 SIAC Rules are summarized below.

I. EARLY DISMISSAL OF CLAIMS AND DEFENSES

While claim-filtering procedures to deal with manifestly strong or weak claims (such as applications for summary judgment or motions to dismiss) exist in the court litigation context, no equivalent mechanisms currently exist in international commercial arbitration. This has sometimes been criticized as an impediment to the efficient resolution of disputes.

The 2016 SIAC Rules address this and provide for an entirely new early dismissal procedure in Rule 29 – the first of its kind amongst institutional rules for commercial arbitration promulgated by the major arbitral institutions. Under Rule 29, parties can apply for an early dismissal of claims or defenses that are manifestly without legal merit or that are manifestly outside the jurisdiction of the tribunal.[1]

Rule 29 is modelled on ICSID Arbitration Rule 41(5), which has been utilized in the investment arbitration context, but goes further and allows parties to apply to strike ***both*** claims and defenses. Rule 29 also specifies that the grounds for early dismissal include both the manifest lack of jurisdiction and the manifest lack of merits.

The early dismissal procedure in Rule 29 can be a useful tool for tribunals to filter out frivolous or obviously unmeritorious claims and defenses, particularly at an early stage in the arbitration, which may lead to significant savings in time and costs. The use of language similar to ICSID Arbitration Rule 41(5) will allow an SIAC tribunal to take into consideration the existing body of published awards on ICSID Arbitration Rule 41(5) in interpreting Rule 29. Tribunals may also look to domestic case law on summary judgment procedures, striking out applications or motions to dismiss, where appropriate, in interpreting Rule 29.

To prevent potential abuse of the early dismissal procedure, Rule 29 provides that the Tribunal has complete discretion to allow an application for early dismissal to proceed or not.[2] Moreover, abuse of the Rule 29 procedure may be sanctioned by the tribunal in the form of an adverse costs order.[3] If the application is allowed to proceed, the tribunal has to make an order or Award on the application, with reasons in at least summary form, within 60 days of the date of the filing of the application.[4]

II. EFFECTIVE RESOLUTION OF MULTI-PARTY AND MULTI-CONTRACT DISPUTES

Multi-party and multi-contract arbitration disputes are becoming increasingly common in an ever more complex and multilateral business environment. To better manage the administration of such disputes, SIAC has introduced new joinder, consolidation and multiple contracts provisions. SIAC has also introduced provisions to deal with the appointment of arbitrators in multi-party arbitrations. These provisions reflect, and in many respects advance, current international best practices.

Joinder and Intervention

The new Rule 7 in the 2016 SIAC Rules deals with joinder of and intervention by additional parties. Unlike the 2013 SIAC Rules, which had restricted applications for joinder to parties only,[5] applications under the new Rule 7 may be made by both existing parties to the arbitration and non-parties.

Under Rule 7, parties or non-parties may apply for the joinder of an additional party to the SIAC Court before the tribunal is constituted,[6] or apply to the tribunal after it has been constituted.[7] The 2013 SIAC Rules had only permitted joinder applications to be made to the tribunal.[8] The 2016 SIAC Rules now permit the joinder of all relevant and proper parties even before the tribunal has been constituted, which allows multi-party arbitrations to be managed more efficiently.

Rule 7.8 provides also that an application to the tribunal may be filed with the Registrar, recognizing that a non-party applying for joinder under Rule 7.8 may not always have direct access to the tribunal after it has been constituted.

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[1] 2016 SIAC Rules, Rule 29.
[2] 2016 SIAC Rules, Rule 29.3.
[3] 2016 SIAC Rules, Rule 37 ("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.")
[4] 2016 SIAC Rules, Rule 29.4.
[5] 2013 SIAC Rules, Rule 24.1(b).
[6] 2016 SIAC Rules, Rule 7.4.
[7] 2016 SIAC Rules, Rule 7.8.
[8] 2013 SIAC Rules, Rule 24.1(b).

The grounds for joining an additional party have also been revised under the 2016 SIAC Rules. Under Rule 7, the SIAC Court or tribunal will permit joinder of an additional party if one of two alternative grounds is satisfied, namely where:

a. the additional party to be joined is *prima facie* bound by the arbitration agreement; or

b. all parties, including the additional party to be joined, have consented to the joinder of the additional party.

The revised grounds for joinder are significant for several reasons:

- First, an additional party may be joined if it is "*prima facie* bound by the arbitration agreement." This expands the availability of joinder in comparison to the 2013 SIAC Rules, which require that the person to be joined be a "party to the arbitration agreement."[9] In line with international best practices, the 2016 SIAC Rules make clear that non-signatories, such as a parent company to a party, may also be joined in proceedings in appropriate cases. However, whether joinder would be permitted in such situations depends on whether, under the applicable law of the arbitration agreement, the additional party is *prima facie* bound by the arbitration agreement.

- Second, the SIAC Court or tribunal need only be prima facie satisfied that the additional party is bound by the arbitration agreement to allow joinder. Rules 7.4 and 7.10 also make clear that the decision on joinder is without prejudice to the tribunal's power to decide any question as to its jurisdiction arising out of the joinder. This allows the SIAC Court or tribunal to deal with the question of joinder relatively quickly, leaving the question of jurisdiction to a later stage.

- Third, an additional party may be joined so long as all parties, including the additional party to be joined, have consented to the joinder of the additional party. This ground applies regardless of whether the additional party is a party to or bound by the arbitration agreement, and further expands the availability of the joinder mechanism.

Rule 7.12 also provides that any additional party that is joined, whether by the SIAC Court or the tribunal, is deemed to have waived its right to participate in the appointment of the Tribunal.[10] This is important, because one or more arbitrators may have already been appointed at the point in time the additional party is joined, and Rule 7.12 precludes any argument in challenge or enforcement proceedings that the party joined did not have an opportunity to participate in the constitution of the tribunal. Rule 7.12 also ensures that joinder applications do not derail proceedings by forcing the re-constitution of the tribunal.

Consolidation

The 2016 SIAC Rules also introduce a standalone and comprehensive Rule 8 that deals with the consolidation of two or more arbitrations into a single consolidated arbitration. Under Rule 8, the parties may apply for consolidation with the SIAC Court where no tribunal has yet been constituted in any of the arbitrations sought to be consolidated,[11] or apply to any constituted tribunal in the arbitrations sought to be consolidated.[12]

Under Rule 8.1, the SIAC Court will permit consolidation of two or more arbitrations provided one of three alternative grounds are satisfied, namely where:[13]

a. all parties have agreed to the consolidation; or

b. all the claims in the arbitrations are made under the same arbitration agreement; or

[9] 2013 SIAC Rules, Rule 24.1(b). *See also PT First Media TBK v Astro Nusantara* [2013] SGCA 57.
[10] 2016 SIAC Rules, Rule 7.12.
[11] 2016 SIAC Rules, Rule 8.1.
[12] 2016 SIAC Rules, Rule 8.7.
[13] 2016 SIAC Rules, Rule 8.7.

c. the arbitration agreements are compatible, and: (i) the disputes arise out of the same legal relationship(s); (ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of the same transaction or series of transactions.

The first and second criterions for consolidation are relatively straightforward, and reflect accepted international best practices. The agreement to consolidation under Rule 8.1(a) can be made after the commencement of the arbitrations or in the parties' arbitration agreements.

The third criterion for consolidation goes further than many other institutional rules, and allows consolidation in a broad range of circumstances so long as the arbitration agreements are "compatible" and there is a sufficiently close nexus between the disputes in the arbitrations sought to be consolidated (i.e., where one of the three criteria specified in Rule 8.1(c) is found to exist). The requirement of compatibility is important in order to ensure that the administration of the consolidated arbitration by SIAC is workable and can proceed efficiently. Where the arbitration agreements are incompatible – for example, where they specify different seats of arbitration – the risks of consolidation may outweigh the benefits.

The same criteria apply with respect to consolidation applications before the tribunal, save for one additional requirement where consolidation is sought in the absence of consent by all parties. Such an application can only be made if no tribunal has been constituted in any of the other arbitrations sought to be consolidated, or if the same tribunal is constituted in the other arbitrations sought to be consolidated.[14] This is to avoid having to revoke duly appointed arbitrators in separate arbitrations, which could introduce unnecessary risks and delays. The SIAC Court reserves the power, however, in appropriate cases to revoke the appointment of any arbitrators when allowing the application for consolidation.[15] Such revocation is expressed to be without prejudice to the validity of any act done or order or award made by the arbitrator before his or her appointment was revoked.[16]

Multiple Contracts

Rule 6 of the 2016 SIAC Rules provides a modern procedure for the commencement of disputes arising in connection with multiple contracts.

A party has two options under Rule 6. Under Rule 6.1(a), it can file multiple notices of arbitration for each contract together with an application to consolidate under Rule 8.1. Alternatively, under Rule 6.1(b), it can file a single notice of arbitration for the multiple contracts. In either case, the parties pay only a single filing fee, unless the application for consolidation does not succeed, in which case a separate filing fee is payable for each arbitration that has not been consolidated.[17]

In the second scenario, the claimant is deemed to have filed multiple arbitrations and the notice of arbitration serves as an application to consolidate under Rule 8.1.[18] An important consequence of this is that separate arbitrations are deemed to have been commenced under Rule 3.3.[19] This is a unique feature of the 2016 SIAC Rules and a key advantage over other institutional rules which allow a single filing in respect of multiple contracts, because the commencement of separate arbitrations ensures that the parties' rights are preserved vis-a-vis any limitation periods if an application for consolidation is not allowed in whole or in part and a claimant has to refile a Notice of Arbitration in respect of each separate arbitration that has not been consolidated.[20]

Arbitrator Appointments in Multi-party Arbitrations

The appointment of arbitrators in the context of multi-party arbitrations presents unique challenges, particularly as multiple claimants and/or respondents may not reach consensus on their respective party-

[14] 2016 SIAC Rules, Rules 8.7(b) and 8.7(c).
[15] 2016 SIAC Rules, Rules 8.6 and 8.10.
[16] 2016 SIAC Rules, Rule 8.11.
[17] 2016 SIAC Rules, Rule 6.2.
[18] 2016 SIAC Rules, Rule 6.1(b).
[19] 2016 SIAC Rules, Rule 3.3, ("For the avoidance of doubt, the Notice of Arbitration is deemed to be complete when all the requirements of Rule 3.1 and Rule 6.1(b) (if applicable) are fulfilled….").
[20] 2016 SIAC Rules, Rule 6.3.

appointed arbitrators. Where an appointing authority steps in to make an appointment for one side that has failed to agree on its appointed arbitrator, it might be argued that there is inequality in terms of the opportunity given to the parties on each side to participate in the appointment of the arbitrators, because the other side is able to directly appoint its arbitrator without the intervention of the appointing authority. This very scenario arose in the often-cited *Dutco* case, where the French Court of Cassation set aside the award on the basis that the Tribunal was improperly constituted.[21]

Rule 12.2 of the 2016 SIAC Rules addresses this issue by providing that, in a multi-party situation, all the claimants and all the respondents must jointly appoint their party-appointed arbitrator respectively within 28 days of the commencement of the arbitration, failing which the President of the SIAC Court will appoint ***all*** the arbitrators (for both the claimants and respondents).

III. OTHER REVISIONS TO ENHANCE EFFICIENCY

Emergency Interim Relief

SIAC was the first international arbitral institution in Asia to introduce emergency arbitrator provisions, which allow parties to obtain emergency interim relief prior to the constitution of the Tribunal. Since SIAC introduced its emergency arbitrator provisions in 2010, they have proved extremely popular with SIAC users. SIAC has appointed 50 emergency arbitrators as of 1 June 2016.

The 2016 SIAC Rules enhance the existing emergency arbitrator regime in several respects:

- First, under the 2016 SIAC Rules, SIAC is required to appoint an emergency arbitrator within one day,[22] rather than one ***business*** day under the 2013 SIAC Rules.[23] However, parties now have a two-day time frame to challenge any appointments,[24] as opposed to the one business day under the 2013 SIAC Rules.[25]

- Second, the 2016 SIAC Rules provide clarity on the seat of the emergency arbitration. Under paragraph 4 of Schedule 1, the seat of arbitration agreed by the parties shall be the seat of the proceedings for emergency interim relief.[26] Failing such agreement, the seat of the proceedings for emergency interim relief shall be Singapore, although this is without prejudice to the tribunal's determination of the seat of the arbitration. Singapore's International Arbitration Act was amended in 2012 to allow awards and orders issued by emergency arbitrators to be enforced.[27]

- Third, the 2016 SIAC Rules introduce a 14-day timeline from the date of appointment for the emergency arbitrator to make his decision.[28] In practice, under the 2013 SIAC Rules, an emergency arbitrator appointed under the SIAC Rules took between 8 to 10 days on average to render an award or order, after having heard the parties.[29]

- Fourth, the 2016 SIAC Rules allow the emergency arbitrator to issue preliminary orders which "may be made pending any hearing, telephone or video conference or written submission by the parties."[30] A preliminary order refers to an *ex parte* order made by the tribunal upon request by one party, but without notice to the other party. Preliminary orders may be desirable where the need for interim relief is exceptionally urgent.

- Fifth, the 2016 SIAC Rules also provide clarity on costs by stating that fees for the emergency arbitrator are fixed at S$25,000, and that deposits towards the Emergency Arbitrator's fees and

[21] *BKMI & Siemens v. Dutco*, Cour de Cassation (1er Chambre Civile), 7 January 1992, Revue de l'Arbitrage, Volume 1992 Issue 3, pp. 470 – 472.
[22] 2016 SIAC Rules, Schedule 1, paragraph 3.
[23] 2013 SIAC Rules, Schedule 1, paragraph 2.
[24] 2016 SIAC Rules, Schedule 1, paragraph 5.
[25] 2013 SIAC Rules, Schedule 1, paragraph 3.
[26] 2016 SIAC Rules, Schedule 1, paragraph 4.
[27] Singapore International Arbitration Act (Cap. 143A), Section 2(1).
[28] 2016 SIAC Rules, Schedule 1, paragraph 9.
[29] SIAC Annual Report 2015, at p. 18.
[30] 2016 SIAC Rules, Schedule 1, paragraph 8.

expenses are fixed at S$30,000, unless otherwise specified.

Expedited Procedure

SIAC's Expedited Procedure, under which an award needs to be made within six months of the constitution of the tribunal (unless extended), has also proven popular with its users. From its introduction in 2010 until 31 December 2015, SIAC received a total of 231 applications for the Expedited Procedure, of which 140 were accepted.

Under Rule 5.1 of the 2016 SIAC Rules, the Expedited Procedure will be available so long as any one of three criteria is satisfied, namely where: (a) the aggregate amount in dispute does not exceed S$6,000,000; (b) the parties agree; or (c) in cases of "exceptional urgency."

The revisions to Rule 5 in the 2016 SIAC Rules are significant in several respects:

- First, the 2016 SIAC Rules increase the monetary limit for qualifying claims under Rule 5.1(a) from S$5 million to S$6 million (i.e. approximately US$3.7 million to US$4.4 million). The HKIAC Rules, by contrast, impose a US$3.2 million limit.[31]

- Second, the 2016 SIAC Rules also provide that the tribunal has the discretion, on consultation with the parties, to determine whether a faster, documents-only process would be more suitable, or whether a hearing would be required.[32] Under the 2013 SIAC Rules, a hearing was required unless parties agreed to a documents-only process, which allowed recalcitrant parties to withhold consent and delay proceedings.

- Third, the 2016 SIAC Rules make it unequivocally clear that the rules and procedures set forth in Rule 5.2 apply in cases where the arbitration agreement contains contrary terms.[33] This is meant to preclude challenges to awards made under the Expedited Procedure on the basis that the application of the Expedited Procedure resulted in a procedure in conflict with express terms in the parties' arbitration agreement, such as in *AQZ v ARA* (even though, in that case, the challenge was dismissed by the Singapore High Court).[34]

- Fourth, under the 2016 SIAC Rules, the parties now have a right to request that a case be removed from the expedited process on the basis of new information.[35] This decision is made by the tribunal on consultation with the parties.[36] This flexibility ensures that the pursuit of efficiency does not compromise the need for fairness, when additional facts or an unforeseen increase in complexity of the dispute may demand a more thorough hearing and determination of a dispute over a longer period of time.

Timing Of Jurisdictional Objections

Rule 28.3 of the 2016 SIAC Rules provides that an objection that the Tribunal is exceeding the scope of its jurisdiction should be raised within 14 days of the event giving rise to the objection.[37] Under the 2013 SIAC Rules, parties were only required to make such objections "promptly."[38] The 2016 SIAC rules maintain the requirement that initial jurisdictional objections must be raised no later than the Statement of Defence or Statement of Defence to a Counterclaim.

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[31] 2013 HKIAC Rules, Rule 41.1.
[32] 2016 SIAC Rules, Rule 5.2(c).
[33] 2016 SIAC Rules, Rule 5.3.
[34] *AQZ v ARA* (2015) SGHC 49. *See also* G. Born and J. Lim, *AQZ v ARA: Singapore High Court Upholds Award Made under SIAC Expedited Procedure*, Kluwer Arbitration Blog, 9 March 2015, available at http://kluwerarbitrationblog.com/2015/03/09/aqz-v-ara-singapore-high-court-upholds-award-made-under-siac-expedited-procedure/.
[35] 2016 SIAC Rules, Rule 5.4.
[36] 2016 SIAC Rules, Rule 5.4.
[37] 2016 SIAC Rules, Rule 28.3.
[38] 2013 SIAC Rules, Rule 25.3.

Close Of Proceedings

Under Rule 32.1 of the 2016 SIAC Rules, the tribunal has a duty to close proceedings and commence deliberations on the award "as promptly as possible." By contrast, the 2013 SIAC Rules did not impose any timing requirement at all on the tribunal to close proceedings.[39]

IV. OTHER KEY CHANGES

Arbitrator Challenges

The 2016 SIAC Rules also incorporate the following improvements to the provisions on challenges to arbitrators.

- Rule 16.4 now requires that the SIAC Court's decisions on arbitrator challenges be reasoned, unless the parties agree otherwise.[40] Such decisions will, however, be final and not subject to appeal. This is a positive development that will provide further transparency and clarity on how challenges to arbitrators are decided.

- Rule 15.3 and the Schedule of Fees now provide clarity on the costs of a challenge to an arbitrator by stipulating that a party seeking to challenge an arbitrator must now pay a fixed and non-refundable administrative fee (S$8000 for overseas parties, S$8,560 for Singapore parties) when it files its notice of challenge. There were no provisions specifying the costs of an arbitrator challenge under the 2013 SIAC Rules. Rule 15.3 further provides that the failure to pay the challenge fee within the time limit set by the Registrar means the challenge will be considered as withdrawn, which may help to deter frivolous challenge applications.

Orders Against Non-Paying Parties

Uncooperative or non-participating respondents can sometimes exercise undue and improper leverage by refusing to pay their shares of deposits. The 2013 SIAC Rules did not expressly make clear that the tribunal could order the reimbursement of deposits in such circumstances.

To address this, the new Rule 27(g) of the 2016 SIAC Rules clarifies that that the tribunal can issue an order or award for the reimbursement of deposits against a non-paying party.

Removal Of Default Seat

The 2016 SIAC Rules no longer provide for Singapore to be the default seat of arbitration under the 2016 SIAC Rules. Instead, Rule 21.1 provides that, in the absence of an agreement between the parties, the Tribunal shall determine the seat.

The delocalization of the seat under the 2016 SIAC Rules acknowledges the increasingly multi-national and diverse composition of the parties arbitrating at SIAC, and brings SIAC in line with leading institutions like the International Chamber of Commerce ("ICC") and the Stockholm Chamber of Commerce ("SCC"). This amendment affirms SIAC's position as a global arbitral institution that has grown beyond its regional beginnings. Indeed, 84% of the new cases filed with the SIAC in 2015 involved non-Singaporean elements, and 42% had no connection with Singapore at all.

However, since Singapore is no longer the default seat under the 2016 SIAC Rules, parties would be well-advised to carefully consider and stipulate their choice of seat in their arbitration agreements in order to avoid unnecessary litigation about the choice of seat.

V. CONCLUSION

SIAC has comprehensively revised its Arbitration Rules to address the changing needs of SIAC users. The 2016 SIAC Rules contain a number of important changes, as summarized above, which parties will

[39] 2013 SIAC Rules, Rule 28.1.
[40] 2016 SIAC Rules, Rule 16.4.

need to take into account for any SIAC arbitrations commenced after 1 August 2016. Some of its unique innovations, such as the early dismissal procedure, will no doubt be emulated by other arbitral institutions in the years to come. In many respects, the 2016 SIAC Rules demonstrate SIAC's commitment to provide world class and cost-effective dispute resolution services for users around the world of all sizes and backgrounds, and affirm SIAC's place in the market as the pre-eminent global arbitral institution.

FOR MORE INFORMATION ON THIS OR OTHER INTERNATIONAL ARBITRATION MATTERS, CONTACT:

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