

Client Update

New Arbitration Rules of the Singapore International Arbitration Centre Come into Force

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On 1 August 2016, the 6th Edition of the Arbitration Rules of the Singapore International Arbitration Centre (the “2016 SIAC Rules”) came into force. These Rules will apply by default to any arbitration commenced on or after that date, where the parties have agreed to apply the SIAC Rules to their disputes or to refer their disputes to the SIAC without specifying the rules that should apply. The 2016 SIAC Rules, which replace the 2013 SIAC Rules, are intended to improve the efficiency and predictability of SIAC-administered arbitrations, especially in complex disputes involving multiple contracts or parties. Summarized below are the key changes.

EARLY DISMISSAL OF CLAIMS AND DEFENSES

Rule 29 of the 2016 SIAC Rules introduces a new procedure for the early dismissal of claims and defenses. A party can now apply to the tribunal for the early dismissal of a claim or defense that is “manifestly without legal merit” or “manifestly outside the jurisdiction” of the tribunal. Although it remains to be seen how this will work in practice, this innovative early dismissal procedure could offer relief to parties and tribunals from obviously groundless claims and encourage parties to concentrate their attention on the core issues.

JOINDER OF ADDITIONAL PARTIES

Joinder refers to the process by which a party not originally involved in the arbitration is added to the arbitration. The 2013 SIAC Rules provided for joinder only where the additional party to be joined was a party to the arbitration agreement. The new Rules go further, permitting joinder of an additional party that is not *prima facie* bound by the arbitration agreement, if the additional party and the existing parties consent (Rule 7.1(b)). Moreover, whereas the previous Rules reserved to the tribunal the authority to order joinder, the 2016 SIAC Rules also give the SIAC Court of Arbitration (the “SIAC Court”) the power to decide

whether to grant an application for joinder (Rule 7.4). These changes should facilitate participation of additional parties in SIAC arbitrations, especially in the context of complex disputes involving multiple actors.

CONSOLIDATION

The 2016 SIAC Rules include a new procedure for the consolidation of related disputes that arise under multiple contracts (Rule 6) or of separate disputes that arise under the same arbitration agreement (Rule 8.1(b)). The consolidation of such disputes into a single arbitral proceeding can increase efficiency and avoid inconsistent findings from separate tribunals on parallel questions of fact or law.

The new Rules permit the SIAC Court to consolidate arbitrations where a party applies for consolidation. The SIAC Court can approve an application for consolidation even in the absence of the consent of all parties and even if the disputes arise under different arbitration agreements, provided that “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” (Rule 8.1(c)).

EXPEDITED PROCEDURE

The 2013 SIAC Rules had allowed applications for proceedings to be conducted according to an expedited procedure if (a) the amount in dispute did not exceed SGD 5 million; (b) all parties so agreed; or (c) the dispute was exceptionally urgent. Arbitrations conducted under the SIAC Expedited Procedure are generally heard by a sole arbitrator, who is required to make an award within six months of the tribunal’s constitution (unless extended in exceptional circumstances).

The 2016 SIAC Rules incorporate the following changes designed to increase access to the SIAC Expedited Procedure and to facilitate the enforcement of awards rendered under that procedure:

- The cap on the amount in dispute for eligible arbitrations has increased from SGD 5 million to SGD 6 million (Rule 5.1(a)). As before, cases that exceed the cap can be heard according to the Expedited Procedure if the parties so agree or in cases of exceptional urgency.
- The tribunal now has the power, after consulting the parties but without the need for explicit party consent, to decide an Expedited Procedure dispute on the basis of documentary evidence only (Rule 5.2(c)).

- The new Rules clarify that in Expedited Procedure disputes, the Expedited Procedure will supersede contrary terms in the arbitration agreement (Rule 5.3).

The contrary terms clarification in Rule 5.3 reflects the reasoning of a recent Singapore High Court decision in *AQZ v ARA* [2015] SGHC 49. In that case, the High Court rejected an attempt to set aside an award rendered under the SIAC Expedited Procedure on the basis that the appointment of a single arbitrator was incompatible with the terms of the arbitration agreement, which had provided for a three-arbitrator tribunal. The High Court reasoned that the parties' choice of the SIAC Rules constituted acceptance of the Expedited Procedure and overrode the parties' agreement to have three arbitrators. By clarifying that the Expedited Procedure prevails in cases of conflict with the terms of the arbitration agreement, Rule 5.3 should preclude future challenges to awards rendered under the Expedited Procedure on the ground that the Expedited Procedure derogated from the parties' agreement.

OTHER CHANGES

- **Emergency Arbitrator.** The President of the SIAC Court must now appoint an Emergency Arbitrator within one day (including weekends and public holidays) of the SIAC Court Registrar's receipt of the application (Schedule 1(3)). Previously, the time limit was one business day. Additionally, the Emergency Arbitrator is required to make an interim order or award within 14 days of his or her appointment (Schedule 1(9)). The 2013 SIAC Rules did not include a deadline.
- **Challenge to Arbitrator.** Rule 16.4 now requires the SIAC Court's decisions on an arbitrator challenge to be reasoned, codifying current practice. This applies to any arbitrator challenge by a party which is contested by the other party, or where the challenged arbitrator does not resign his or her position voluntarily.
- **Arbitral Seat.** Under the 2016 SIAC Rules, Singapore will no longer be the default seat of arbitration. Rather, this is an issue for the tribunal to decide where the parties fail to agree on a seat (Rule 21.1).
- **Fees.** The tribunal is now explicitly permitted to issue an order or award for the reimbursement of unpaid deposits towards the costs of the arbitration (Rule 27(g)). This addition to the Rules is intended to address cases in which a party fails to pay its share of such deposits. In addition, the fee for an arbitrator challenge and the Emergency Arbitrator's fees are now fixed at SGD 8,000 (plus 7% value-added tax for Singapore parties) and SGD 25,000,

respectively. The 2013 SIAC Rules did not specify fixed fees for those services.

CONCLUSION

With these changes to its rules, the SIAC reinforces its position as a leading arbitral institution in an increasingly competitive marketplace. The early dismissal procedure is especially notable because SIAC is the first commercial arbitral institution to adopt early dismissal procedures in its arbitration rules, although the ICSID (International Centre for Settlement of Investment Disputes) arbitration rules feature a procedure with some similarity. This new procedure can potentially fill a gap, seen by some users of arbitration, that arbitration does not provide for the same summary procedures as litigation. It is likely that other institutions will consider following this lead and at least one, the Stockholm Chamber of Commerce, has included a “summary procedure” in the draft rules that it plans to introduce in 2017. It remains to be seen whether and how the 2016 SIAC Rules’ early dismissal procedure will work in practice; while its success will likely be welcomed by business users desiring the efficient resolution of disputes, there may also be some concern that unlike litigation, there is no safeguard of an appeal mechanism. Nonetheless, the existence of such a procedure may encourage parties not to bring frivolous claims or defenses in the first place, thereby streamlining SIAC arbitrations.

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Please do not hesitate to contact us with any questions.