

ONPOINT / A legal update from Dechert's International Arbitration Group

SIAC introduces new arbitration rules tailored for investment disputes

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The first edition of the SIAC Investment Arbitration Rules (the **SIAC IA Rules**) was released on 30 December 2016 and came into force on 1 January 2017. In releasing the SIAC IA Rules, SIAC has become the first commercial arbitration institution in Asia to release a set of rules customised for international investment arbitration.¹ To mark the occasion we provide this client briefing on the key features of the new rules.

Speed read

- If the parties so agree, the SIAC IA Rules will apply to disputes with a state, state-owned entity or intergovernmental organisation which arise out of commercial agreements, legislation or international treaties.
- The SIAC IA Rules are in large part based on the 6th edition of the standard SIAC Rules, which came into force on 1 August 2016 (which are discussed in our briefing [here](#)).
- The SIAC IA Rules include a number of innovations and modifications designed specifically for investment arbitration. These include allowing amicus curiae submissions by third parties, granting tribunals the authority to require the disclosure of any third-party funding arrangements, and making interim relief from an emergency arbitrator available if both parties expressly agree.
- Arbitrations conducted under the SIAC IA Rules will be subject to the same Schedule of Fees as for standard SIAC arbitrations. Accordingly, arbitrations under the SIAC IA Rules should be less expensive than ICSID arbitrations, particularly if there is a relatively low amount in dispute.

Innovations and modifications

While based in large part on the standard SIAC Rules, the SIAC IA Rules contain a number of innovations and modifications designed specifically for investment arbitrations. These are summarized below.

Amicus curiae submissions

Consistent with recent calls for greater transparency and consideration of public interest in investment arbitrations, the SIAC IA Rules grant a tribunal the discretion to allow a non-disputing party which has a 'sufficient interest' in the proceedings to make submissions, have access to related documents and appear at any hearing. While this increased transparency will be welcomed by some users, others may be wary of the loss of privacy and confidentiality which ordinarily attaches to arbitration proceedings.

¹ The Stockholm Chamber of Commerce has issued a new set of its standard rules which also came into force on 1 January 2017 and contains an appendix with limited modifications of its standard rules for investor-state disputes. Consistent with the SIAC IA Rules, these modifications allow for amicus curiae submissions by third parties and provide for a default tribunal of three arbitrators. In all other respects, the standard SCC Rules will apply. Thus, for example, an investor may apply for interim relief from an emergency arbitrator without the agreement of the respondent state or state-owned entity. The Shenzhen Court of International Arbitration's latest set of rules, which came into force on 1 December 2016, also allow the SCIA to administer investor-state arbitrations under the UNCITRAL Rules but without any modifications tailored for SCIA arbitration.

Third-party funding

The SIAC IA Rules are the first rules of any major arbitral institution to grant tribunals the express authority to require the disclosure of any third party funding arrangements.² Some third-party funders and other commentators have expressed unease with this power. The SIAC IA Rules also allow a tribunal to take into account third party funding arrangements when apportioning costs between the parties.

Emergency Arbitrators

Relief can be sought from an emergency arbitrator under the SIAC IA Rules if both parties expressly agree. This strikes a balance between, on the one hand, the desire of SIAC to offer parties to an investment dispute the emergency arbitrator mechanism which has proven popular with commercial users since its introduction into SIAC's standard rules in 2010 and, on the other, the concern of some states that they should not have their sovereign powers fettered on an interim emergency basis.

Confidentiality

SIAC may publish limited information regarding the existence of an investment dispute even without the parties' consent. This information will include, among other things, the nationality of the parties but not their identity (although in the case of a respondent state, this will effectively amount to the same thing). SIAC may also publish redacted awards and decisions on challenges to arbitrators without the parties' consent. All other matters relating to the proceedings will remain confidential, unless otherwise agreed by the parties.

Constitution of the tribunal

The parties may agree to a tribunal of any odd number of arbitrators, including panels of five or more persons. In the absence of an agreement of the parties, the default position under the SIAC IA Rules is that a tribunal will consist of three arbitrators (whereas a sole arbitrator will be appointed under the standard SIAC Rules in such circumstances).

The SIAC Court will use a list procedure when required to select a sole or presiding arbitrator on behalf of the parties. When doing so, the SIAC Court will appoint a sole or presiding arbitrator of a different nationality to the parties unless the parties have agreed otherwise. This formalizes the existing informal practice under the standard SIAC Rules.³

Time limits

The SIAC IA Rules extend certain time limits in recognition of the potential complexity of investment disputes and the delays that states may experience in instructing counsel. For example, the period of time for a respondent state to file its Response to the Notice of Arbitration is extended from 14 days under the standard SIAC Rules to 35 days under the SIAC IA Rules.

Multiple contracts, joinder, consolidation or expedited procedure

A number of innovations in the standard SIAC Rules (such as provisions for arbitrations arising out of multiple contracts, joinder of third parties, consolidation of multiple arbitrations and expedited proceedings which are required to be concluded within six months) have been omitted from the SIAC IA Rules. Again, this is intended to

² Although some ICSID tribunals have ordered such disclosure in the past (e.g. *Muhammet Cap and Sehil Insaat v Turkmenistan and Eurogas v Slovakia*), they did so by relying on their inherent powers as arbitrators.

³ Mark Mangan, Lucy Reed, John Choong, *A Guide to the SIAC Arbitration Rules* (OUP, 2014), paragraph 7.53.

encourage states and state-owned entities, who may not be comfortable with these innovations, to agree to arbitrate disputes under the SIAC IA Rules.

Early dismissal of claims and defences

The SIAC IA Rules do include the mechanism introduced in the 6th edition of the standard SIAC Rules whereby a tribunal may dismiss a claim or defence which is manifestly without legal merit or outside the jurisdiction of the tribunal. Unlike the standard SIAC Rules, however, the SIAC IA Rules also allow a tribunal to dismiss a claim or defence which is manifestly inadmissible.

Submissions

The SIAC IA Rules expressly require that all pleadings be accompanied by any supporting witness statements and expert reports. In contrast, there is greater flexibility under the standard SIAC Rules, with witness statements and expert reports often being tendered after an initial pleadings phase.

Schedule of Fees

The SIAC IA Rules include a Schedule of Fees, which is identical to the Schedule of Fees applicable to standard SIAC arbitrations.

As a consequence, the administrative costs and tribunal fees for an arbitration under the SIAC IA Rules will generally be lower than the equivalent costs and fees of an arbitration under the ICSID Rules. This may prove to be one of the more attractive features of the SIAC IA Rules for investors and states alike.

Other than a fixed filing fee (S\$2,000 under the SIAC IA Rules compared to US\$25,000 under the ICSID Rules), the costs and fees of a SIAC IA arbitration will be calculated on the basis of the amount in dispute whereas ICSID charges fixed rates. For example, the one-off administration fee under the SIAC IA Rules ranges from S\$3,800 to S\$95,000, depending on the amount in dispute, whereas ICSID charges a fixed administration fee of US\$35,000 for each year of a dispute. Arbitrator fees under the SIAC IA Rules are also calculated on the basis of the amount in dispute, whereas arbitrators in ICSID proceedings are entitled to a fee of US\$3,000 per day. As a consequence, arbitrations will generally be cheaper under the SIAC IA Rules unless the amount in dispute is relatively high, in which case the fixed rates under the ICSID Rules may be more economical.

Conclusion

SIAC has produced an innovative set of rules which appear capable of meeting the unique demands of investment arbitration while retaining the core advantages of standard SIAC arbitration proceedings. Given the success of other recent innovations introduced by SIAC, including the availability of emergency arbitrators and expedited proceedings, it will not be surprising if SIAC finds itself administering a burgeoning caseload of investment disputes in the coming years.

The SIAC IA Rules will be discussed at length in the forthcoming second edition of *'A Guide to the SIAC Arbitration Rules'*, published by Oxford University Press and written by Dechert's Mark Mangan et al.

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