

Overview of the 2016 SIAC Rules

A Legal Update from Dechert's International Arbitration
Group

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The sixth edition of the arbitration rules of the Singapore International Arbitration Centre (**SIAC**) entered into force on 1 August 2016. To mark the occasion we provide this client briefing on the key features of the new rules.

Speed read

- The 2016 SIAC Rules will apply to disputes referred to SIAC from 1 August 2016, unless the parties agree otherwise.
- SIAC has retained the structure and much of the content of the 2013 SIAC Rules, while fine-tuning some important provisions and introducing some new innovations.
- Specifically, SIAC has introduced a new procedure for the early dismissal of claims and defences, becoming the first international commercial arbitral institution to do so.
- SIAC has also introduced new provisions on multi-party and multi-contract disputes to keep pace with similar procedures already offered by competitor institutions.
- The rules on joinder have been developed to allow a non-party to apply to join an existing SIAC arbitration.
- The rules on emergency arbitrators and expedited proceedings, first introduced by SIAC in 2010, have also been developed to facilitate greater efficiency and cost-effectiveness.

Procedures which largely remain unchanged

Most of the provisions of the 2016 SIAC Rules will be familiar to users of the 2010 and 2013 SIAC Rules. These include the following.

- **Starting the arbitration:** as with the earlier SIAC Rules, a party begins an arbitration by filing a Notice of Arbitration with the SIAC Registrar and serving it on the opposing party or parties. The Notice of Arbitration must include brief particulars of the dispute and information sufficient to identify the parties and address certain procedural aspects of the arbitration.
- **Arbitrators:** as before, parties can nominate their own arbitrator. They can also challenge an opponent's nominee if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess the requisite qualifications on which the parties have agreed.
- **Written submissions:** SIAC has retained the approach adopted in the 2010 and 2013 SIAC Rules (but not the 2007 Rules) of requiring a party to set out its case in full at an early stage of the proceedings. Specifically, a party must set out in full detail the statement of facts and law supporting its claim or defence. This approach, which predominates in international arbitration practice, is in contrast to the style adopted in court procedures in many common law jurisdictions, including Singapore, where parties describe their case in a concise form and only in broad terms.
- **Hearings:** SIAC has carried forward the rule that a tribunal shall hold a hearing for the presentation of evidence and/or oral submissions on the merits of a dispute unless the parties have agreed to a documents-only arbitration. This rule, however, will not apply to arbitrations conducted under the SIAC expedited procedure as explained below.

- **Powers of the tribunal:** SIAC has continued the approach of expressly prescribing the powers of a tribunal (which not all arbitral institutions do). The express powers include the ability to order the disclosure of documents, the inspection of property, the presentation, storage, sale or disposal of property, and requiring a party to refrain from conduct which could undermine the object of the arbitration.
- **Fees:** SIAC has retained its practice of charging fees on an *ad valorem* basis (ie based on the amount in dispute) in the new rules. The administration fees and arbitrator fees prescribed in the 2013 SIAC Schedule of Fees continue to apply (other than the fees and expenses of an emergency arbitrator which have been revised as explained below).

New innovations in the 2016 SIAC Rules

Early dismissal of claims and defences

SIAC is reportedly the first international commercial arbitral institution to introduce a procedure for the early dismissal of claims and defences. Under the 2016 SIAC Rules, a party can apply for another party's claims or defences to be dismissed in whole or in part at any time during the arbitration on the basis that they are 'manifestly without legal merit' or 'manifestly outside the jurisdiction of the tribunal'.

If the tribunal decides to hear an application for early dismissal, it must issue its order or award within 60 days of the filing of the application. (It is an open question whether the non-participation of a respondent in a SIAC arbitration could be grounds in itself for early dismissal of its defence and thus pave the way for an effective default judgment in favour of the claimant.)

Consolidation of multiple arbitrations

SIAC has introduced a new mechanism for the consolidation of two or more arbitrations into a single arbitration. This should help reduce time and costs for related disputes arising out of the same or multiple contracts.

An application for consolidation will be granted where all parties to the dispute consent to the consolidation, where all the claims in the arbitrations are brought pursuant to the same arbitration agreement, or where there is a sufficiently close connection between the disputes in question and the arbitration agreements are compatible.

Multiple contracts

Parties can now pursue a single arbitration under the SIAC Rules in relation to disputes which arise under more than one contract. When doing so, the claimant will be deemed to have commenced multiple arbitrations (ie one in respect of each arbitration agreement relied upon) and the Notice of Arbitration will be regarded as an application to consolidate all such arbitrations into the one proceeding. The claimant will nonetheless still only pay one case filing fee. (This appears intended to ensure that SIAC case numbers do not suffer as a result of its willingness to have multiple-contract disputes determined in the one arbitration. In contrast, the International Chamber of Commerce would consider that an arbitration arising under multiple contracts would be treated as a single arbitration for administrative and statistical purposes.)

Fine-tuning of key procedures available under the 2010 and 2013 SIAC Rules

Emergency arbitrator

The SIAC Rules have incorporated since 2010 a procedure whereby parties can seek urgent interim relief prior to the constitution of the tribunal from an emergency arbitrator. This has proven to be popular, with over 50 applications for emergency interim relief having been accepted by SIAC thus far.

The 2016 SIAC Rules require the SIAC Registrar to appoint an Emergency Arbitrator within one day of receiving an application for emergency interim relief (as opposed to one *business* day which is the case under the 2013 SIAC Rules). In the absence of any exceptional circumstances, the Emergency Arbitrator must issue a decision within 14 days of his or her appointment.

The fees of an Emergency Arbitrator are fixed at S\$25,000 under the 2016 SIAC Rules (whereas the fees under the 2013 SIAC Rules are capped at 20% of a sole arbitrator's maximum fee, which could lead to a higher or lower fee depending on the amount in dispute).

Expedited procedure

The SIAC expedited procedure has also been refined. While the tribunal is still required to render a final award within six months from the date the tribunal is constituted, the financial threshold for when an application for the expedited procedure can be made has been increased. Specifically, a party can apply for the expedited procedure where the aggregate sum in dispute (including the claim, counterclaim and any set-off defence) does not exceed S\$6 million, rather than the ceiling of S\$5 million applicable under the 2013 SIAC Rules.

An arbitration can also be expedited when the parties agree to do so or if ordered by the SIAC President in 'exceptional circumstances'. The 2016 SIAC Rules expressly empower a tribunal operating under the expedited procedure to decide the dispute based on documentary evidence alone even if that is not agreed by the parties. In contrast, under the 2010 and 2013 SIAC Rules, a hearing must be convened unless the parties agree otherwise.

Joinder of additional parties to an arbitration

The joinder procedure has been significantly developed under the 2016 SIAC Rules. Under the 2013 SIAC Rules, only existing parties to an arbitration could apply to join non-parties to the proceedings. The new rules also allow a non-party to apply to be joined to the arbitration. (Given the confidentiality constraints in SIAC arbitration, it remains to be seen how often a non-party could legitimately learn of the existence of the arbitration and apply to join the proceedings, or would wish to do so.)

The joinder of an additional party will be allowed where that party is *prima facie* bound by the arbitration agreement, or where all parties, including the party sought to be joined, consent to the joinder.

Where an application for joinder is made and granted after the constitution of the tribunal, the joining party will be deemed to have waived its right to nominate an arbitrator in the proceedings. The joining party does, however, retain the right to challenge an existing member of the tribunal on the basis of a lack of qualifications or the existence of justifiable doubts as to his or her independence or impartiality.

Conclusion

A record 271 cases were filed with SIAC in 2015, making it the fourth most popular institution for international commercial arbitration in the world. The new rules reflect SIAC's continued efforts to innovate and keep pace with developments in international commercial arbitration, and can be expected to ensure SIAC's continued popularity.

SIAC's first set of rules for investment arbitrations will be released later this year. Both sets of rules will be analysed in the forthcoming second edition of *A Guide to the SIAC Arbitration Rules*, written by Dechert's Mark Mangan et al, and published by Oxford University Press.

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