Client Alert

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Singapore International Arbitration Centre 2016 Rules Come Into Force

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INTRODUCTION

The sixth edition of the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") comes into force today, August 1, 2016 (the "SIAC Rules 2016" or the "Rules").[2] The Rules were published in July and are the result of a two-month public consultation process headed by the SIAC Secretariat and Rules Revision Committee that considered nearly 1,000 public comments received from parties all over the world. Adopted just three years after the fifth edition, the revised Rules incorporate a number of changes that bring the SIAC in line with the procedures of other leading arbitral institutions. In addition, the revised Rules make one significant and innovative change by introducing a procedure for early dismissal of claims and defences where the claim or defence is "*manifestly without legal merit*" or "*manifestly outside the jurisdiction of the tribunal*."

It is imperative that companies that have adopted arbitration clauses providing for SIAC arbitration or that are considering providing for SIAC arbitration in future familiarize themselves with the changes introduced by the SIAC Rules 2016, which are detailed below.

BACKGROUND

The adoption of the SIAC Rules 2016 follows the adoption by the SIAC of a fifth edition just three years ago (the "SIAC Rules 2013"). The SIAC Rules 2013 had failed to adopt certain innovations that had already been introduced in other institutional rules at that time. The most notable examples were the absence of provisions allowing for commencement of a single arbitration covering disputes arising under multiple contracts, for the consolidation of arbitrations and for the joinder of parties without consent. As the SIAC Rules 2013 lagged behind other institutional rules in this respect, the adoption of the SIAC Rules 2016 is very timely.

THE NEW SIAC RULES 2016

The SIAC Rules 2016 include key amendments in the following areas:

a. Early Dismissal of Claims and Defences

The key innovation contained in the SIAC Rules 2016 is the bold introduction of new Rule 29 allowing parties to file an application for the early dismissal of claims and defences. This makes the SIAC the first major

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[2] The SIAC Rules 2016 are *available at* http://www.siac.org.sg/images/stories/articles/rules/SIAC%202016%20Rules_6th%20Edition.pdf.

international arbitration centre to provide for early dismissal in international commercial arbitration. Under the new Rule 29, a party may make an application to dismiss a claim or a defence on the basis that it is "*manifestly without legal merit*" or "*manifestly outside the jurisdiction of the tribunal*." A tribunal may not dismiss a claim or defence of its own volition.

Procedurally, an application for early dismissal is made after the formation of the Tribunal. The Tribunal has the discretion to allow the application to proceed, and if it does so, the Tribunal must allow the parties an opportunity to be heard before granting, either in whole or in part, any application for dismissal.[3] If dismissal is granted, the Tribunal must issue an order or award stating the reasons, in summary form, for granting the application within 60 days of the date of the application.[4]

Rule 29 addresses one of the major criticisms levelled against arbitration, which is the absence of any procedure like summary judgment by which a party may seek to dispose of weak or frivolous claims without incurring the time and expense of defending the claim all the way to award. The adoption of an early dismissal procedure has the potential to result in significant savings of time and money by quickly eliminating frivolous claims or defenses at an early stage.

The standard set for early dismissal – "manifestly without legal merit" – suggests that Rule 29 has its provenance in Rule 41(5) of the International Centre for Settlement of Investment Dispute Arbitration Rules. Adopted in 2006, Rule 41(5) allows a party to file an objection that a claim is manifestly without legal merit no later than 30 days after the constitution of the Tribunal but before the first session, and the Tribunal is obliged to issue a decision on the objection at the first session or promptly thereafter.

With no precedent in international commercial arbitration, the early dismissal procedure may result in initial difficulties. Unlike the ICSID Arbitration Rules, the SIAC Rules 2016 do not address the timing of the application for early dismissal. The absence of any provision on timing may give rise to premature or otherwise untimely applications. Initially, it is likely that parties to arbitration will overuse the procedure. Further, there is a risk of inconsistent application by tribunals, as Rule 29 envisages that individual tribunals will issue decisions on applications for early dismissal with no involvement by the SIAC Court of Arbitration.

We expect that applications for early dismissal are rarely likely to succeed in practice, as the standard of "manifestly without legal merit" is high, and tribunals are likely to be hesitant to encourage any argument that a party has been denied an opportunity to present its case, which may endanger the enforceability of the award under the New York Convention.

The SIAC Rules 2016 also fail to address the impact of an early dismissal on the arbitration fees payable, which are typically set by reference to the sum in dispute.

To give users more clarity, it is advisable for the SIAC to issue a practice note on the early dismissal procedure as soon as possible.

[3] Rule 29.3.

[4] Rule 29.4.

b. Multi-Contract and Multi-Party Disputes

The SIAC Rules 2016 introduce three new rules in relation to multi-contract and multi-party disputes. The SIAC had found itself significantly behind the curve with respect to procedures governing multi-contract and multi-party disputes as the SIAC Rules 2013 did not contain specific rules governing the arbitration of multi-contract disputes, consolidation of arbitration or joinder of additional parties. By contrast, the International Chamber of Commerce (ICC) had introduced such provisions in its January 2012 rules.

Since the adoption of the SIAC Rules 2013 in April 2013, other arbitral institutions have updated their rules to address the handling of multi-party, multi-contract disputes, including the Hong Kong International Arbitration Centre (HKIAC), the China International Economic and Trade Arbitration Centre (CIETAC), the International Centre for Dispute Resolution (ICDR) and the Swiss Chambers' Arbitration Institution. The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) is considering implementing similar measures in its current draft 2017 rules.

The SIAC Rules 2016 provide the procedure and criteria for: a) commencing a single arbitration to resolve claims arising out of or in connection with multiple contracts (Rule 6); b) joinder of one or more additional parties to an arbitration (Rule 7); and c) consolidation of two or more pending arbitrations into a single arbitration (Rule 8).

By Rule 8, the SIAC has adopted a highly permissive view of consolidation. Unlike the rules of many other arbitral institutions, the SIAC does not require that the arbitrations proposed for consolidation are between the same parties if they do not arise under the same arbitration agreement. In contrast to the ICC Rules, the ICDR Rules, the SCC Rules and the CIETAC Rules, for example, consolidation of disputes with compatible arbitration agreements is possible under the SIAC Rules 2016 provided that: (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.

By the adoption of the SIAC Rules 2016, the SIAC brings its procedures in line with the most advanced procedures of other arbitral institutions and addresses the commercial reality that many business transactions involve multiple parties, who among them, enter into series of related agreements. The SIAC Rules 2016 enable parties to resolve all relevant disputes in a single arbitration, preventing the duplication of work and risk of conflicting results. Furthermore, by removing the requirement of the consent of all parties for consolidation or joinder, the SIAC promotes sensible and efficient arbitration.

c. Enhancement of the Expedited Procedure

The SIAC Rules 2016 refine the procedure for handling arbitration on an expedited basis that was adopted in the SIAC Rules 2010 and 2013 (the "Expedited Procedure"). Rule 5.1 provides that parties may apply for application of the Expedited Procedure where there is agreement to use it, where there is exceptional urgency, or where the aggregate amount in dispute does not exceed a certain amount. The SIAC Rules 2016 have increased the maximum aggregate amount in dispute from SGD 5 million (approximately USD 3.7 million) to SGD 6 million (approximately USD 4.4 million), enabling more cases to be handled in accordance with the Expedited Procedure.

In addition, the SIAC Rules 2016 remove the requirement that the Tribunal must hold a hearing for the examination of witnesses and parties' arguments unless the parties agree for the dispute to be decided on the basis of documentary evidence only. Rule 5.2(c) now provides that the tribunal shall make this decision in consultation with the parties.

The new Rule 5.3 also addresses scenarios in which there is a conflict between the parties' arbitration agreement and the Expedited Procedure as set out in Rule 5.2: by agreeing to apply the SIAC Rules 2016, the parties are taken to agree that the Expedited Procedure set out in Rule 5.2 shall apply even in cases where the arbitration agreement contains contrary terms. This amendment is unusual, in that the express agreement of the parties typically trumps the agreed institutional rules.

d. Enhancement of Emergency Arbitration Procedures

The SIAC Rules 2016 seek to further enhance the efficiency and effectiveness of emergency arbitration (used by parties seeking emergency relief) in two ways. First, the Rules now require that appointment of an emergency arbitrator occur within one day of the Registrar's receipt of an Application for Interim Relief, rather than within "one business day" under the 2013 Rules. Second, the Rules impose on the emergency arbitrator a 14-business day time limit from the date of his/her appointment for issuance of an order or award (*See* Schedule 1, Rule 9). To accommodate cases in which circumstances make it truly impossible or impracticable to issue an order or award within 14 days the Rules permit the Registrar to extend this time limit if necessary.

e. Removal of Singapore as Default Seat of Arbitration

The SIAC Rules 2016 remove the assumption contained in the SIAC Rules 2013 that Singapore shall be the default seat of arbitration absent contrary provision, delocalizing the rules. In arbitration, the seat is a particularly important feature because the laws of that jurisdiction govern the arbitral procedure and any challenges to the award itself.[5]

The new Rule 20 states that in absence of an agreement between the parties, the tribunal shall determine the seat of arbitration. The provisions regarding the seat of arbitration now mirror those on selection of the language of arbitration, allowing the tribunal to determine on a case-by-case basis "*having regard to all the circumstances of the case.*" This is a positive change because it shows the SIAC's international outlook and reflects that most disputes subject to SIAC arbitration have no substantive nexus to Singapore.

However, the absence of a default seat and the provision for the seat to be determined by the tribunal (rather than, for example, by the Registrar or the SIAC Court of Arbitration) may give rise to difficulties in selecting appropriate arbitrators and may result in additional cost as parties dispute the seat at the outset of the arbitration. The ICC Rules – which similarly do not provide for a default seat – avoid this problem by empowering the ICC Court to determine the seat.

[5] See Art. V of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards available at http://www.newyorkconvention.org/english.

Parties should therefore not assume that by not specifying the seat of arbitration contractually, the appropriate seat will be determined to be Singapore and should be mindful of this in selecting their party-appointed arbitrator.

f. Other Changes Implemented by the SIAC Rules 2016

The SIAC Rules 2016 introduce further changes, including that:

- Tribunals now have the power to issue an order or award for the reimbursement of unpaid deposits towards the costs of the arbitration (in the event that a party has had to pay the necessary deposits on behalf of its counterparty who neglected to do so). (Rule 27(g).)

- The SIAC Court of Arbitration is obliged to issue reasoned decisions on all challenges to arbitrators. The introduction of reasoned decisions is a welcome addition, provided that the Court provides thoughtful and substantive reasoning. (Rule 16.4.) It would be a welcomed future development if the SIAC were to publish – like the LCIA – anonymized challenge decisions in order to improve consistency and predictability.

- The English version of the SIAC Rules 2016 shall prevail in the event of any discrepancy or inconsistency between the English version and any other. (Rule 41.3.)

CONCLUSION

The SIAC Rules 2016 introduce important changes and refinements to the SIAC's existing procedures, both bringing these in line with the procedures of other leadings arbitral institutions and introducing a bold and innovative early dismissal procedure. The revised Rules demonstrate the SIAC's intention to maintain and consolidate its position as a leading hub for international arbitration in the Asia Pacific region. It is imperative that companies that have adopted arbitration clauses providing for SIAC arbitration or that are considering providing for SIAC arbitration in the future familiarize themselves with the changes introduced by the SIAC Rules 2016.

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