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# The SIAC Revises Its Arbitration Rules

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The Singapore International Arbitration Centre ("**SIAC**") has introduced its sixth edition of the SIAC Arbitration Rules (the "**New Rules**"), replacing the fifth edition of 2013. The New Rules incorporate international best practices in relation to the management of complex arbitration, including provisions on multiple contracts, consolidation and joinder. The New Rules also seek to increase the efficiency and reduce the costs of an SIAC arbitration by introducing several key amendments such as early dismissal of claims and defences, expanding the scope of the Expedited Procedures and a specific provision empowering the Tribunal to make an order or award against a non-paying party. The New Rules shall, unless otherwise agreed by the parties, apply to arbitrations commencing on or after August 1, 2016. Some of the significant features of the New Rules are highlighted below.

## Significant Features of the New Rules

***Multiple Contracts and Consolidation (Rule 6 & Rule 8)***

As the nature of commercial disputes submitted for arbitration grows in complexity, there is increasing demand for arbitration rules to address issues arising from multi-contract disputes. Without any express provision in this regard in the 2013 Rules, parties were unable to commence one single arbitration arising from multiple contracts even if the same dispute arises out of or in connection with those multiple contracts. Nor did the 2013 Rules deal with consolidation of multiple arbitration proceedings where the claims were made under the same arbitration agreement.

By contrast, other arbitration centers, such as the International Court of Arbitration ("**ICC**") and the Hong Kong International Arbitration Center ("**HKIAC**"), already include provisions addressing such multi-contract and multiple-proceeding situations in their existing rules. The amendment by the SIAC therefore brings the New Rules in line with international best practices. In fact, the New Rules set new standards for its consolidation mechanism by allowing parties an opportunity to participate in the constitution of the Tribunal after the SIAC Court has made a decision ordering consolidation. By contrast, the current HKIAC Rules on consolidation state that parties shall be deemed to have waived their right to designate an arbitrator once a decision on consolidation has been made. The preservation of parties' right to participate in the constitution of the Tribunal in the event of consolidation should allay user concerns that invoking the consolidation mechanism may result in their "fundamental right" to appoint an arbitrator being denied.

***Joinder and Intervention (Rule 7)***

Further, the New Rules significantly expand on the joinder provision. Whereas the 2013 Rules only permitted joinder of a third party if such third party were a party to the arbitration agreement and further consented to the joinder, the New Rules now also allow for intervention by a non-party to the arbitration agreement provided however that all parties, including the additional party to be joined, consent to such joinder. Where the application for joinder or intervention is made before the constitution of the Tribunal, the New Rules (similar to the rules on consolidation) also seek to preserve the parties' right to participate in the appointment of the arbitrators as appropriate. This can be contrasted with the approach under the current HKIAC Rules which provide that the parties shall be deemed to have waived their right to designate an arbitrator if any additional party is joined before the Tribunal is constituted.

***Early Dismissal of Claims and Defences (Rule 29)***

Another innovative feature of the New Rules is that a party may apply for an early dismissal of a claim or defence on the basis that: (i) a claim or defence is manifestly without legal merit; or (ii) a claim or defence is manifestly outside the jurisdiction of the Tribunal. The early dismissal procedure is no doubt designed to reduce costs in circumstances where parties may otherwise have to contest frivolous claims.

To prevent frivolous applications or any abusive use of the early dismissal mechanism, the Tribunal is required to embark upon a two-stage inquiry. The first stage requires the Tribunal to assess, in its discretion, whether to allow the application to proceed. Once a decision has been made to proceed to the second stage, the Tribunal is required to give the parties the opportunity to be heard before making its final decision on the application for early dismissal. This should allay any concerns that the early dismissal procedure may give rise to increased risks of challenge to the award on the ground that the losing party has not been given a reasonable opportunity to

present its case.

***Expedited Procedure (Rule 5)***

Another amendment which should enhance the cost-effectiveness of SIAC arbitration is the expanded application of the Expedited Procedure. Under the New Rules, a party may apply for the arbitration to be conducted under the Expedited Procedure if the amount in dispute does not exceed SGD6 million (approximately USD4.35 million). The previous monetary threshold under the 2013 Rules was SGD5 million (approximately USD3.6 million).

Furthermore, the Expedited Procedure under the New Rules also provides the Tribunal with the discretion of either conducting the proceedings on the basis of documentary evidence only or to call for a hearing after consulting with the parties. This contrasts with the 2013 Rules where the Tribunal was required to hold a hearing unless the parties agreed that the dispute should be decided on the basis of documentary evidence only.

***Emergency Arbitration Proceedings (Rule 30, Schedule 1 & Schedule of Fees)***

The Emergency Arbitration regime has been widely hailed as a success since it was first introduced in the SIAC Rules in 2010. As at December 31, 2015, SIAC has accepted 47 applications of emergency arbitrator. Its popularity has no doubt been further enhanced by legislative amendments to the Singapore International Arbitration Act (Cap. 143A) in 2012 to provide for the enforceability of the orders or awards rendered by an emergency arbitrator. Similar legislative provisions are also in place under Hong Kong's Arbitration Ordinance (Cap. 609).

Under the New Rules, the emergency arbitrator must be appointed within one day of receipt by the registrar of an application for emergency interim relief and payment of the administration fee and deposits, as opposed to one business day under the 2013 Rules. Whereas there was no deadline within which the emergency arbitrator had to render an order or award under the 2013 Rules, the New Rules require the emergency arbitrator to make an interim order or award within 14 days from the date of appointment, unless the Registrar extends the time in exceptional circumstances. The shortened timelines will likely encourage greater interest amongst the users of SIAC arbitration to consider routing any urgent application through an emergency arbitrator rather than through the courts.

**Remedy against a Non-Paying Party (Rule 27(g))**

The New Rules further empower the Tribunal to issue an order or award for the reimbursement of unpaid deposits towards the costs of the arbitration. Express reference to such powers by the Tribunal is a welcomed tool which any compliant party may deploy against a recalcitrant party who refuses to pay for its share of the costs. The issue of non-payment by a party in an arbitration, usually a respondent, is often a vexing issue for the compliant party, usually the claimant, who is then required to fully fund the arbitration.

Indeed, it is increasingly common for a respondent in an arbitration to refuse to fork out its share of the deposit in an attempt to frustrate the proceedings. While such a strategy may risk shadowing the Tribunal's views on the bona fides of the non-paying party, such party is often willing to risk this in return for creating immediate financial pressure on the claimant. An express provision in the New Rules allowing the Tribunal to issue an order or award for the reimbursement of any unpaid deposit would resolve any ambiguity as to whether the Tribunal has the power to make such order under the applicable laws of the seat of the arbitration. Clarity in this regard should help level the playing field against the tactics of recalcitrant parties.

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