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The SIAC Rules 2016: a watershed in the history of arbitration in Singapore

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Following the long-awaited release – on 1 July 2016 – of SIAC's new arbitration rules ("**SIAC Rules 2016**"), practitioners in and outside of Asia have enthusiastically supplied a flurry of commentary and client briefings on this historic moment in the SIAC arbitration. Descriptive or analytical, the commentaries are unanimous in positing that changes in Singapore's institutional arbitration landscape were indeed necessary. The SIAC Rules 2013 – as compared to most other institutional rules in Asia and beyond – lacked a number of provisions that have become increasingly important in the commercial arbitration context, such as, for example, provisions regulating multi-contract and multi-party arbitrations, joinder, and consolidation.

Indeed, the changes made to the SIAC Rules bring the institution up to speed with that of other leading arbitral institutions, which have long been offering joinder and consolidation to varying degrees, with a commitment to refining those provisions in response to the growing complexity of commercial transactions. The SCC, for example, released its draft Arbitration Rules 2017 for public consultation in April this year, with a view to further refining its multi-party and multi-contract disputes provisions.

With the new set of rules, Singapore has not only caught up with these institutional best practices but has also drawn inspiration from investor-state arbitration to tailor what are fundamentally new mechanisms to be applied in the context of commercial arbitration.

Multiple Contracts, Joinder, and Consolidation

The new multi-contract and multi-party provisions in the SIAC Rules 2016 are three-pronged. They contain mechanisms for regulating (i) disputes arising out of multiple contracts; (ii) joinder of additional parties; and (iii) consolidation of several arbitral proceedings.

This SIAC trinity reduces the procedural uncertainty that has long besieged parties arbitrating in Singapore with claims arising out of disparate contracts or relating to a series of transactions:

- Rule 6 allows, amongst others, filing of a single Notice of Arbitration in relation to disputes arising out of multiple contracts. In that scenario, the SIAC will require payment of only a single filing fee. Rule 6 also states that the Registrar is to treat such a Notice of Arbitration as a request to consolidate disputes under the relevant arbitration agreements.
- Rule 7 allows joinder of additional parties prior to the tribunal constitution and empowers the

SIAC Court to decide the joinder applications. The SIAC Court retains the power to revoke any arbitral appointment made prior to its decision on a joinder. The tribunal, when constituted, retains the power to decide any jurisdiction question arising out of the SIAC Court's joinder decisions.

- Rule 8 introduces consolidation to the SIAC arbitration, its mechanisms being largely in line with institutional best practices worldwide. The SIAC Court is empowered to decide consolidation applications prior to the tribunal constitution. The SIAC Court is likely to grant consolidation request if (i) all parties agree to consolidation; or (ii) the claims are made under the same arbitration agreement; or (iii) the claims are made under compatible arbitration agreements, and if the disputes arise out of the same legal relationship or out of the same transaction or series of transactions. It is noteworthy that a party applying for consolidation or joinder has essentially "two bites at the cherry" – the SIAC Court's decision to reject a consolidation or joinder application does not prejudice that party's right to make that same application to the tribunal after it has been constituted.

Early Dismissal of Claims and Defences

What deserves specific mention is the SIAC's new provisions on early dismissal of claims and defences. Rule 29 provides a party with the right to file an objection to dismiss a claim on the basis that the claim is "*manifestly without legal merit*" or "*manifestly outside the tribunal's jurisdiction*". If an early dismissal application is filed, the tribunal is first to decide whether the application may proceed. If the application is allowed to proceed, the tribunal has 60 days to make an order or an award on the application.

The wording of this new rule suggests that it is derived from investor-state arbitration. More specifically, its origins are traceable to Rule 41(5) of the ICSID Arbitration Rules which provides a party with a right to file an objection on the basis that a claim is "*manifestly without legal merit*". The SIAC early dismissal mechanism is broader in scope than the ICSID early dismissal mechanism, because it allows an early dismissal objection to be brought also on the basis of the tribunal's manifest lack of jurisdiction.

With this new provision, the architecture of the SIAC Rules 2016 is such that it now offers a three-step objection process. First, Rule 28.1 grants the SIAC Registrar and the SIAC Court the screening power to determine *prima facie* whether the arbitration shall proceed. Second, under Rule 28, a party may file jurisdictional objections within 14 days after the matter that "manifestly" falls outside the tribunal's jurisdiction has arisen (or no later than in its statement of defence). And finally, the objecting party may have a shot at the same objection through the early dismissal mechanism.

Whilst the early dismissal mechanism is a commendable novelty with the significant potential to filter unmeritorious claims thereby reducing costs, the problem with the three-step objection process is that it is effectively a "no risk" proposition for the respondent. The respondent may make a screening objection and, if it fails, go on to file a preliminary jurisdictional objection and if that fails, an early dismissal application on the same grounds. That is because presumably, none of these three mechanisms would result in a decision that would have *res judicata* effect.

Seat delocalisation

Under Rule 21 of the SIAC Rules 2016, Singapore is no longer the default seat of arbitration. The

SIAC Rules Drafting Committee has introduced this amendment in an attempt to elevate Singapore above the earlier "local" default preference for Singapore as a seat. It gives the SIAC a more global reach, and brings Singapore in line with a number of other "delocalised" arbitral institutions, such as the ICC and the SCC. Other institutions insist on keeping their default seat provisions. The HKIAC Arbitration Rules 2013, for example, list Hong Kong as its default seat provision; the KLRCA Arbitration Rules 2013 name Kuala Lumpur as a default seat; and the LCIA Arbitration Rules 2010 refer to London as a default seat.

A word of caution here is that, because the SIAC Rules 2016 have lost the default seat provision, parties may find themselves locked in a dispute before the tribunal as to where the seat should be unless they specify the seat in their arbitration clauses.

The SIAC Rules 2016 emerge as a result of an extensive public consultation process through which the SIAC has made a commendable, impressive effort to revamp its arbitration rules, and this effort will no doubt bear fruit in the most immediate future.

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