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SIAC's 2017 Investment Arbitration Rules: An Overview and Key Changes

Jonathan Mackojc (Corrs Chambers Westgarth) · Saturday, February 4th, 2017 · Young ICCA

On 30 December 2016, The Singapore International Arbitration Centre (SIAC) finally released the first edition of its Investment Arbitration Rules (IA Rules). The IA Rules were first published as draft rules on 1 February 2016, and were discussed in a [previous article](#). The IA Rules, which came into effect on 1 January 2017, now reflect more realistic timelines – undoubtedly in response to comments made during the public consultation process.

The IA Rules come at an important time, where a significant number of arbitral institutions continue to search for new ways of maximising business opportunities. Over the last few years, these institutions have sought to differentiate themselves in order to compete for high profile disputes. Leading regional institutions such as the Hong Kong International Arbitration Centre (HKIAC) and SIAC have seen a significant boost in the number of disputes that they handle annually. According to the [2015 Queen Mary International Arbitration Survey](#), both the HKIAC and SIAC are ranked within the top five most preferred arbitral institutions. This, in part, can be attributed to their proactive approach. Both institutions promote engagement via international roadshows, and other initiatives such as the [tribunal secretary accreditation programme](#).

Over the last few years, Singapore and Hong Kong have been regarded less as competitors due to their unique geographical position; Singapore targets Southeast Asia, while Hong Kong caters for businesses situated in Northern Asia. However, international arbitration disrupts this model, as it is a form of dispute resolution that transcends international borders. Parties are increasingly willing to travel the extra mile, if they can benefit from flexible rules and the promise of the prompt resolution of their disputes.

Institutions such as SIAC have realised that, along with other forms of marketing strategies, one of the most effective means of enticing new parties to opt for arbitration is by revising former arbitration rules and introducing new ones. The [IA Rules](#) include several unique provisions which the 2016 SIAC International Arbitration Rules (SIAC Rules) do not feature. The [SIAC Rules](#), which came into effect on 1 August 2016, are also a welcome update to the international arbitration landscape in Asia-Pacific.

Preliminary Considerations

The 2017 SIAC IA Rules are a specialised set of rules which aim to address issues relevant to investment arbitration. As they are essentially a hybrid of specialised investment arbitration rules

and commercial arbitration rules, they are not a bespoke set of rules per se. Nonetheless, they are a welcome addition and parties need to familiarise themselves with their application.

Some key points to note are:

- The parties must agree to adopt the IA Rules in their agreements;
- The rules are applicable to disputes involving States, State-controlled entities, statutes, or other relevant instruments;
- The rules apply to any type of arbitration, and no objective criteria shall be considered (i.e issues regarding the existence of an ‘investment’ or ‘investor’). However, any requirements or restrictions in the underlying instrument shall prevail;
- If parties have previously agreed to adopt the 2016 SIAC Rules, they may subsequently consent to use the 2017 IA Rules instead.

Undoubtedly, the key selling point is that parties do not need to define an ‘investment’ as per Article 25(1) of the ICSID Convention. This not only broadens the scope of disputes that may be heard, but also promotes efficiency. Parties which seek to resolve disputes promptly, and are comfortable with strict deadlines, will also be attracted to these rules.

Features of the 2017 SIAC Investment Arbitration Rules

SIAC has introduced a number of innovative provisions in its IA Rules, which provide parties with greater latitude in conducting the arbitration process. They include:

1. **Default list procedure – Rule 8:** the SIAC Court is now able to adopt a default list procedure where parties fail to appoint their respective arbitrators. In the Draft IA Rules, the time limit for the appointment of either a sole arbitrator or multiple arbitrators was 28 days. The current IA rules now reflect a more lenient timeline, where Rules 6.2 and 7.2 provide for 42 days for a sole arbitrator and 35 days for multiple arbitrators. With respect to the appointment of the presiding arbitrator, Rule 7.3 has not been changed so the period is agreed by the parties or set by the Registrar.
2. **Third Party Submissions – Rule 29:** broadly, two situations exist. Firstly, Rule 29.1 allows a Non-disputing Contracting Party to make written submissions to the tribunal, provided that it gives notice to the Registrar and the parties. The tribunal may also, on its own initiative, invite a Non-disputing Contracting Party to provide written submissions. However, this is only on a question of treaty interpretation directly relevant to the dispute. Secondly, Rule 29.2 allows this to be extended to submissions regarding a matter within the scope of the dispute, provided that the Tribunal considers the non-exhaustive list in Rule 29.3 alongside the views of the parties.
3. **Publication – Rule 38:** unlike Rule 32.12 of the SIAC Rules which addresses the publishing of an award in a relatively limited manner, this provision provides complete transparency. It states that once parties have agreed to use the IA Rules, the parties shall be deemed to have allowed SIAC to publish information on proceedings. This information is limited to several key details such as the nationality of the parties and the tribunal, as well as the date of commencement, and whether proceedings are ongoing or terminated. Redacted excerpts may be published with respect to the reasoning of the tribunal, as well as decisions by the Court on challenges to arbitrators. Other, more identifying, information may only be published with the express consent of the parties to the arbitration.

The following provisions are also worth noting:

1. **Third-party funding – Rule 24(1), Rule 33.1:** the IA Rules tackle the issue of third-party funding directly. The tribunal has the power to order parties to disclose third-party funding arrangements, the identity of the funder, and any other details which the tribunal deems necessary. The tribunal may also take into account any third-party funding arrangements when apportioning the costs of the arbitration. Although other institutional rules have not addressed this, the HKIAC will likely be one of the first to revise its rules in order to reflect recent legislative developments in Hong Kong.

2. **Opt-in Mechanism for an Emergency Arbitrator – Rule 27.4:** parties may apply for emergency interim relief only if they expressly agree on the Emergency Arbitrator provisions.

3. **Early Dismissal of Claims and Defences – Rule 26:** as in Rule 29 of the SIAC Rules, the IA Rules allows parties to apply to the tribunal for the early dismissal of a claim or defence, provided that it is manifestly without legal merit or outside the jurisdiction of the tribunal. The IA Rules include an additional basis: that the claim or defence is manifestly inadmissible.

4. **Challenges – Rules 12.1, 13.1:** as in the SIAC Rules, the Draft IA Rules provided that the party who intends to challenge the arbitrator has a 14 day deadline. The current IA Rules now allow for a 28 day deadline. ICSID Rule 9(1) does not list a deadline, instead encouraging the party to act ‘promptly’. Similarly, the provision in the current IA Rules dealing with the decision on challenge now provides for 21 days as opposed to the 14 days in the Draft IA Rules. The SIAC Rules have a 7-day deadline. Rule 13.3 of the IA Rules also provides the arbitrator with the discretion to continue with proceedings during the challenge, whereas ICSID Rule 9(6) suspends proceedings.

5. **Other Pertinent Deadlines – Rules 30.1, 30.3:** the Draft IA Rules provided that the tribunal must declare the proceedings closed no later than 30 days after the last hearing or the filing of the last submissions. The current IA Rules amended this and are now aligned with ICSID’s approach, where no deadline exists. The deadline for the draft award has also been modified and is now 90 days from the date on which the tribunal declares the proceedings closed. This is in contrast to the 45-day deadline in the Draft IA Rules. Similarly, ICSID Rule 47 does not provide a deadline for the submission of the draft award.

It will be interesting to observe whether the revised rules will have a significant impact on the quantity and quality of disputes SIAC will administer over the next few years. With SIAC being the first arbitral institution to provide parties with two sets of rules, the question remains: will other institutions follow suit?

The 2017 SIAC IA Rules can be viewed [here](#).

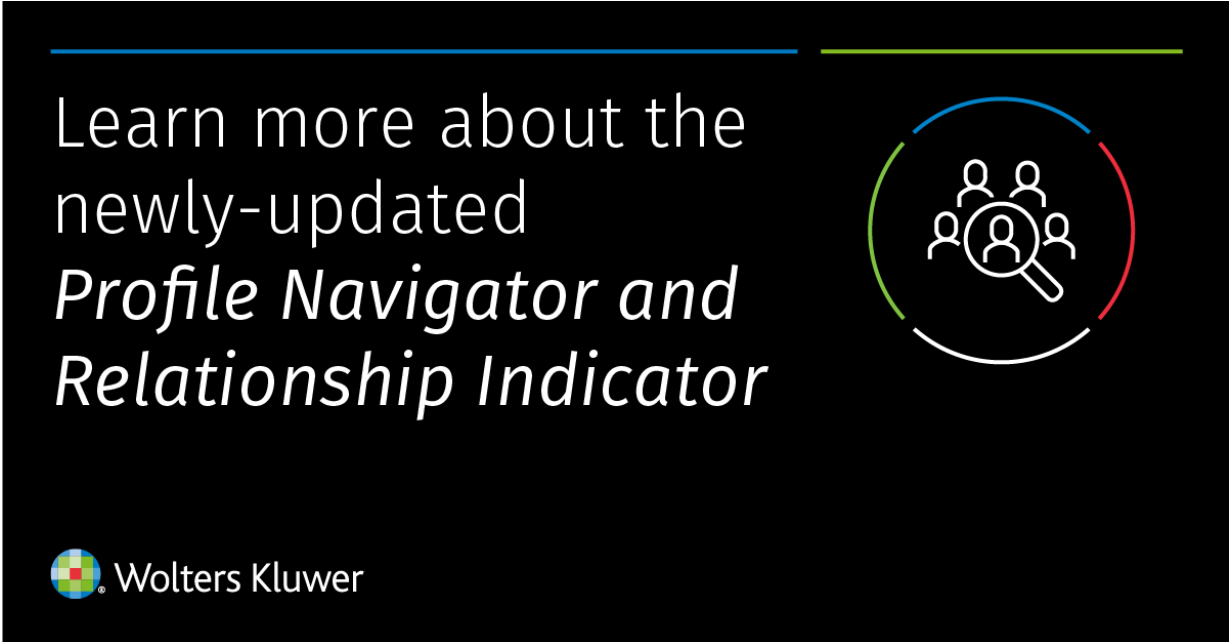
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