The SIAC Arbitration Rules 2016 (the 2016 Rules) came into force on 1 August 2016 and apply to all arbitrations commenced on or after this date (unless specifically provided otherwise). The 2016 Rules set out new provisions for multi-contract arbitrations, consolidation of arbitrations and an innovative rule for early dismissal of claims and defences. They also enhance the rules on joinder of parties to an arbitration (to include intervention), emergency arbitrations and expedited procedures, and delocalise the seat of the arbitration. Other less striking changes should also not go unnoticed. If you are party to SIAC arbitration agreements or interested to incorporate SIAC arbitration into your agreements, you need to be aware of these changes.

SIAC's revisions are designed to keep up to date with and progress modern best practice in international commercial arbitration. Its move into new territory with intervention and early dismissal of claims and defences is perhaps an indication of the direction that international commercial arbitration will head in future. The SIAC Arbitration Rules can be viewed here.

**Multiple Contracts (Rule 6)**

Given the increasingly complex nature of commercial arbitration and to align itself with other international institutions, SIAC now provides a procedure for addressing disputes under multiple contracts (with possible multiple parties) in a single arbitration (Rule 6). The claimant has a choice either to:

1. File a Notice of Arbitration for disputes under each contract and concurrently submit an application for consolidation of the arbitrations. In such case the Registrar will accept payment of a single filing fee for all arbitrations; or

2. File a single Notice of Arbitration for disputes under all contracts with the Notice being deemed to be an application for consolidation. In this case, the Notice of Arbitration must identify each contract and arbitration agreement, and describe how the criteria for consolidation (see below) are satisfied. If an application for consolidation is rejected, in whole or in part, a Notice of Arbitration needs to be filed in respect of each arbitration not consolidated and the relevant filing fee for each will be required.

**Consolidation pre and post constitution of the tribunal (Rule 8)**

The Rules on consolidation differ slightly between applications made prior to and post the full constitution of the tribunal. Prior to the full constitution of the tribunal (Rule 8.1), the SIAC Court may, upon application by a party, consolidate two or more arbitrations pending under the Rules into a single arbitration where:

a) All parties have agreed to consolidation; or

b) All claims in the arbitrations are made under the same arbitration agreement; or

c) The arbitration agreements are compatible and the disputes in the arbitrations arise out of (i) the same legal relationship(s), or (ii) contracts consisting of a principal contract and its ancillary contract(s); or (iii) the same transaction or series of transactions.

After the full constitution of the tribunal (Rule 8.7), the power moves to the tribunal, who may, upon application by a party, consolidate two or more arbitrations pending under the Rules into a single arbitration where:

a) All parties have agreed to consolidation; or

b) All claims are made under the same arbitration agreement and the same tribunal has been constituted in each arbitration or no tribunal has been constituted in the other arbitrations; or

C) The arbitration agreements are compatible, the same tribunal has been constituted in each arbitration or no tribunal has been constituted in the other arbitration(s) and the disputes arise out of (i) the same legal relationship(s),
or (ii) contracts consisting of a principal contract and its ancillary contract(s), or (iii) the same transaction or series of transactions.

As highlighted, the difference between an application pre or post full constitution of the tribunal is the requirement post full constitution of the tribunal (except in cases of party agreement) that the same tribunal has been constituted in each arbitration or no tribunal has been constituted in the other arbitration(s). Parties, therefore, need to carefully consider arbitrator appointments and the timing of any application for consolidation. Without party consent, there is no provision enabling arbitrations to be consolidated once different tribunals have been constituted in each arbitration.

The SIAC Court's decision to reject an application, in whole or in part, is without prejudice to any party later being able to apply for consolidation to the tribunal once it is constituted, giving a party a second chance to secure consolidation, although how frequently made and how successful any such second application might be is questionable. Equally, any objection to the tribunal's jurisdiction as a result of the Court's decision shall be decided by the tribunal.

Where the Court orders consolidation, the arbitrations will be consolidated into the arbitration that is deemed to have commenced first, unless otherwise agreed by the parties or the Court decides otherwise. The Court may revoke the appointment of any arbitrators already appointed and the rules on the number and process for appointment of arbitrators shall apply (again unless agreed otherwise by the parties) with the timelines for appointment running from the date of receipt of the Court's decision on consolidation. Where the tribunal orders consolidation, the Court may revoke the appointment of any arbitrators appointed prior to the tribunal’s decision on consolidation.

Where an application for consolidation is granted by the court or tribunal, any party who has not nominated an arbitrator or participated in the constitution of the tribunal shall be deemed to have waived its right to so nominate or participate. This is without prejudice, however, to such party’s ability to challenge the appointment of an arbitrator.

**Joinder and Intervention (Rule 7)**

Under the ‘old’ SIAC 2013 Rules, upon the application of a party, the tribunal could allow one or more third parties to be joined to an arbitration, provided that such person was a party to the arbitration agreement and had given its written consent to the joinder (Rule 24(b)). Thereafter the tribunal could make a single final award or separate awards in respect of all parties.

The 2016 Rules address joinder in much more detail in a new Rule 7, which opens the door to intervention by a non-party to an arbitration.

An application may now be made by a party or non-party to an arbitration for one or more additional parties to be joined to the proceedings as a Claimant or Respondent. Given the privacy and confidentiality of SIAC arbitrations, in certain instances one might question how a non-party came to know of the existence of the proceedings in order to intervene. An application for joinder may be made to either the SIAC Court (where the tribunal is not constituted) or the tribunal. The grounds on which additional parties can be joined to an arbitration are where:

a) The additional party to be joined is **prima facie** bound by the arbitration agreement, or

b) All parties, including the additional party to be joined, have consented to the joinder.

The criteria that an additional party is **prima facie** (i.e. on its face) bound by the arbitration agreement is not as clear cut as in fact being bound by the arbitration agreement (per the 2013 Rules). Any additional party being joined on this basis

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**Rule 2 – Calculation of Time**

The 2016 Rules clarify the precise time zone applicable for the calculation of time, being Singapore Standard Time (GMT+8), unless the Registrar or the Tribunal determines otherwise (Rule 2.3).

**Rule 3 – Commencement date of the Arbitration**

The date of receipt of the **complete** Notice of Arbitration by the Registrar shall be deemed to be the date of commencement of the arbitration. The Notice will be deemed complete when the claimant has complied or substantially complied with all of the requirements under Rule 3.1 (requirements of the Notice of Arbitration) and, where applicable, Rule 6.1(b) (requirements for filing a single Notice of Arbitration in relation to multiple contracts).
could challenge whether they are bound by the arbitration agreement, which could be costly and time consuming, and potentially lead to difficulties regarding the enforceability of any arbitral awards. Parties should, therefore, carefully assess their position and the importance of joining the additional party, before making any application.

In the same manner as for consolidation, a decision by the SIAC Court to reject an application is without prejudice to any party or non-party to the arbitration being able to later apply for joinder to the tribunal. The Court’s or the tribunal’s decision to allow an application is also without prejudice to the tribunal’s power to later decide any question as to its jurisdiction arising from such decision.

Equally, where the Court grants the application, it may revoke the appointment of any arbitrator(s) already appointed prior to the decision on joinder and the rules on the number and process for appointment of arbitrators shall apply (again unless agreed otherwise by the parties) with the timelines for appointment running from the date of receipt of the Court’s decision on joinder.

Where an application for joinder is granted by the court or tribunal, any party who has not nominated an arbitrator or participated in the constitution of the tribunal shall be deemed to have waived its right to so nominate or participate. This is without prejudice, however, to the additional party’s ability to challenge the appointment of an arbitrator.

The parties, including the additional parties, may also make claims or counterclaims against each other in the arbitration, but any additional claims or counterclaims will require payment of the relevant filing fee.

Rule 15 – Notice of Challenge to an Arbitrator
A party wishing to challenge an arbitrator shall file a notice of challenge within 14 days of receipt of the notice of appointment of the arbitrator or within 14 days after circumstances on which a challenge is based became known or should have reasonably been known to the challenging party (Rule 15.1). This wider requirement of knowledge aligns with a similar provision in the 2013 HKIAC Rules. Parties are advised to be careful of costly distractions in determining when a party should ‘reasonably have known’ of a relevant circumstance.

The challenging party shall pay a fee for the challenge (currently S$8,560 for Singapore parties and S$8,000 for overseas parties), but if it fails to pay the fee within the time limit set by the Registrar, the challenge shall be considered as withdrawn (Rule 15.3).

Rule 19 – Conduct of the Arbitration
The President may at any stage of the proceedings request the parties and the tribunal to convene a meeting to discuss the procedures for running the case (Rule 19.7). This power is unlikely to be exercised in all but exceptional cases.

Rule 23 – Party Representatives
The Registrar and/or the tribunal may request proof of the authority of party representatives (Rule 23.1). After the constitution of the tribunal, any change or addition by a party to its representatives must be notified in writing to the parties, tribunal and the Registrar (Rule 23.2). These Rules align SIAC with standard rules of other institutions, but do not go so far as certain institutional rules, which regulate the conduct of legal representatives i.e. LCIA, ACICA, AAA-ICDR Rules.
with reasons within 60 days of the date the application is filed, although the Registrar may extend this period of time in exceptional circumstances.

It is a high bar to establish a claim or defence as ‘manifestly’ without legal merit or outside the jurisdiction of the tribunal. The Rules do not seek to define what this term means and we wait to see how many applications are made and how successful those applications are in due course.

**Seat of the Arbitration (Rule 21)**
The 2016 Rules remove Singapore as the default seat of the arbitration (except in proceedings for emergency interim relief) and the default seat will now be determined by the tribunal (Rule 21.1).

This change is aimed at making SIAC arbitration truly international, but parties now need to make sure they expressly stipulate and consider carefully their choice of arbitral seat in their contracts. The arbitral seat dictates the procedural law that governs the conduct of the arbitration and parties should seek to avoid costly distractions at the outset of the arbitration as to what is to be the seat of the arbitration, with the uncertainty of which way a tribunal may decide this issue.

**Expedited Procedure (Rule 5)**
Parties can now apply for the Expedited Procedure where the amount in dispute does not exceed the equivalent of S$6m (rather than S$5m under the 2013 Rules) (Rule 5.1(a)). This change means that a greater number of cases will now be able to make use of this popular procedure. As a reminder, this criteria is one of three criteria available to justify applying for the Expedited Procedure, the remaining two criteria of party agreement and exceptional urgency remaining unchanged.

The parties’ right to an oral hearing under the 2013 Rules (unless they agree to the case being decided on a documents-only basis) is removed and replaced in the 2016 Rules with the tribunal deciding, after considering the views of the parties, if the case shall be decided on a documents-only basis or if a hearing is required (Rule 5.2(c)). Whilst there is a risk that one party wanting an oral hearing will now not get it, if a party can show justifiable reasons for an oral hearing or the parties agree on the need for an oral hearing, it is likely the tribunal will order one.

Under the 2013 Rules, the parties had a right to a reasoned award (being any award and not just a final award) in summary form, unless the parties had agreed no reasons were to be given. Under the 2016 Rules, this right is also removed and replaced with the statement that the tribunal may (but is not required to) state the reasons upon which a final (and not any) award is based in summary form (Rule 5.2(e)). Whilst in most cases a reasoned award (interim or final and in summary form or otherwise) is likely to be delivered, if parties specifically want this, they should ask for it.

The parties agree that where proceedings are conducted under the Expedited Procedure, the rules and procedures relating to such proceedings (set out in Rule 5.2) shall apply even in cases where the arbitration agreement contains contrary terms (Rule 5.3). Of particular importance, therefore, is the impact of Rule 5.2(b), which provides that expedited cases shall be referred to a sole arbitrator, unless the President determines otherwise. On its face, this rule would override an arbitration agreement providing for a three member tribunal. It is questionable whether the President will permit the arbitration agreement to be overruled where both parties...
 Upon application by a party, the tribunal may, having regard to further information as may subsequently become available and in consultation with the Registrar, order that the proceedings no longer be conducted under the Expedited Procedure. The constitution of the tribunal shall not change as a result of any such order (Rule 5.4).

Emergency Arbitrator (Schedule 1)

For the most part, timings have been tightened in order to quicken the emergency arbitrator process. The Emergency Arbitrator’s interim order or award must now be made within 14 days from the date of his appointment, unless in exceptional circumstances, the Registrar extends this time (Schedule 1.9). The Registrar may abbreviate any time limits relating to the emergency arbitrator proceedings (Schedule 1.14). Previous references to ‘business days’ have been replaced by ‘days’, so for example, the President shall now seek to appoint an emergency arbitrator within one day (as opposed to one business day) of receipt of the application and payment of fees (Schedule 1.3).

That said, in relation to disclosure by the emergency arbitrator of circumstances giving rise to doubts of independence and impartiality, the 2016 rules increase the time for a challenge to the emergency arbitrator’s appointment to two days (rather than one business day under the 2013 Rules) of the communication by the Registrar of the appointment and the relevant circumstances (Schedule 1.5).

The deposit towards the emergency arbitrator’s fees and expenses is now fixed at S$30,000 and the emergency arbitrator’s fees fixed at S$25,000, unless the Registrar determines otherwise (Schedule of Fees). This is a welcome change in clarity to the 2013 Rules.

Parties are advised to note that the Registrar may increase the amount of the deposits towards the Emergency Arbitrator’s fees and expenses payable by the party making the application. If these are not paid within a time limit fixed by the Registrar, the application for an Emergency Arbitrator shall be considered as withdrawn (Schedule 1.2).

A new rule also provides that in the absence of the parties’ agreement, the default seat of the emergency proceedings shall be Singapore, without prejudice to the tribunal’s determination of the seat of the arbitration in the main proceedings (Schedule 1.4).

What should you do?

It is important that you review your contracts to assess the impact of the changes in the 2016 SIAC Rules upon your business.
Unlike certain other institutional rules, the new rules apply to all SIAC arbitrations commencing on or after 1 August 2016. It is of no consequence that your arbitration agreement was entered into before this date without envisaging these provisions (unless of course your contract specifically identifies an earlier applicable edition of the SIAC Rules).

Act quickly and seek advice in relation to what your dispute resolution agreement means for you now, as opposed to when you signed it.

For more information on the SIAC 2016 Rules and its myriad of changes (more than what appear in this or other published articles on the topic), please contact:

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