

## Client Alert

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## New SIAC Rules 2016 make arbitration quicker and more efficient

The new SIAC Rules 2016 (the "2016 Rules") will now allow disputes to be consolidated or parties to be joined to an existing arbitration. Clearly unmeritorious claims and defences can now be dismissed at an early stage. Other changes have also been made to make SIAC arbitration a quicker and more efficient process.

### Key changes

The 2016 Rules will come into effect on 1 August 2016. We summarise the key changes below.

#### *Consolidation and Joinder*

**Changes common to both consolidation and joinder.** The Court of Arbitration of SIAC decides consolidation and joinder applications before a Tribunal is constituted and the Tribunal decides such applications after its constitution.

The parties' obligation to keep the arbitral proceedings confidential has been modified to allow for disclosure to third parties for the purposes of consolidation and joinder applications.

**Consolidation of multi-contract disputes.** Claimants may now file a single notice of arbitration for multiple contracts. By doing so, they will be deemed to have commenced multiple arbitrations in respect of each arbitration agreement invoked and filed an application to consolidate these arbitrations (Rule 6 of the 2016 Rules).

To consolidate arbitrations, one of the following criteria must be satisfied:

- (a) all parties have agreed to the consolidation;
- (b) all the claims in the arbitrations are made under the same arbitration agreements; or
- (c) the arbitration agreements are compatible and (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 (Rule 8 of the 2016 Rules).

If an application for consolidation is made after the constitution of any tribunal in the arbitrations sought to be consolidated, the same tribunal must be constituted in each of the arbitrations or no tribunal has been constituted in the other arbitrations.

**Joinder.** Parties and non-parties may apply for a non-party to join an arbitration at any time. This is in contrast with the 2013 Rules where only existing parties to the arbitration could apply for the joinder of non-parties.

One of the following criteria must be satisfied to join an additional party:

- (a) the additional party is *prima facie* bound by the arbitration agreement; or
- (b) all parties, including the additional party, consent.

If a joinder application is granted by the Court of Arbitration of SIAC prior to the constitution of the Tribunal, it may revoke the appointment of any arbitrators appointed prior to its decision on joinder. The parties will repeat the process of constituting the Tribunal unless otherwise agreed by all parties, including the joined party.

If a joinder application is granted by the Tribunal after its constitution, the joining party is deemed to have waived its right to nominate an arbitrator but remains entitled to challenge an existing member of the Tribunal (Rule 7 of the 2016 Rules).

#### *Early Dismissal*

**Early Dismissal of Claims and Defences.** A party can now apply for the early dismissal of claims or defences on the basis that the claims or defences are either:

- (a) manifestly without legal merit; or
- (b) manifestly outside the jurisdiction of the Tribunal.

The Tribunal has 60 days from the filing of the application in which to issue its order or award (Rule 29 of the 2016 Rules).

#### *Streamlined Expedited Procedure*

The SIAC's expedited procedure ("*Expedited Procedure*") allows for parties to apply for a shortened arbitration procedure where the award shall be made within 6 months from the date of the constitution of the Tribunal unless extended by the Registrar in exceptional circumstances. The Expedited Procedure is available where parties have agreed, in cases of exceptional urgency or where the aggregate amount in dispute does not exceed a certain amount (now S\$6 million).

**Claims of up to S\$6 million may now be submitted to the Expedited Procedure.** The monetary threshold has increased by S\$1 million (previously S\$5 million). This will enable more cases to enjoy the benefits of the fast track procedure (Rule 5.1 of the 2016 Rules).

**Expedited Procedure arbitrations can be determined based on documentary evidence only, at the Tribunal's discretion.** Previously, a hearing could only be dispensed with where the parties had agreed to it (Rule 5.2 of the 2016 Rules).

**Expedited Procedure provisions trump arbitration agreement.** In the event of any conflict between the terms of the arbitration agreements and the provisions under the Expedited Procedure, the latter will apply (Rule 5.3 of the 2016 Rules).

## *Enhanced procedures for Interim and Emergency Interim Relief and Emergency Arbitration*

**16 days for emergency arbitration from start to end.** The 2016 Rules provide that the Emergency Arbitrator is to be appointed within 1 day of receipt by the Registrar of the application for emergency interim relief and payment of the appropriate administration fee and deposits. They further introduce a 14-day period, starting from the date of the Emergency Arbitrator's appointment, in which the Emergency Arbitrator must make his interim order (Rule 30 & Schedule 1 of the 2016 Rules).

**S\$25,000 fixed fee for Emergency Arbitration.** This can be contrasted with the previous rules which merely provided for a range of fees depending on the amount in dispute (Rule 30 & Schedule of Fees of the 2016 Rules).

### *Other changes*

**Default seat removed.** Singapore is no longer the default seat of arbitration. Instead, the Tribunal has the power to determine the seat of the arbitration, unless it has already been agreed by the parties (Rule 21 of the 2016 Rules).

**Remedy against a non-paying party.** The Tribunal has the power to issue an order or award for the reimbursement of unpaid deposits towards the costs of the arbitration (Rule 27(g) of the 2016 Rules).

**Reasoned decisions on arbitrator challenges and S\$8,000 fixed administrative fee for challenges.** The Court of Arbitration of SIAC will issue reasoned decisions on all challenges to arbitrators and the administrative fees payable for such challenges are now fixed at S\$8,000 (excluding 7% GST) (Rule 16.4 & Schedule of Fees of the 2016 Rules).

**English version prevails.** The Rules now expressly provide that the English version of the Rules shall prevail in the event of any discrepancy or inconsistency between the English version and any other languages in which the Rules are published (Rule 41.3 of the 2016 Rules).

## **Comments**

The SIAC is a first mover in introducing an early dismissal mechanism in arbitration proceedings. Early dismissal, together with a 6-month expedited procedure and a 16-day fixed fee emergency arbitration, can be used in potentially powerful combinations to put an efficient end to low value or unmeritorious disputes.

"Compatibility" for the purposes of consolidation is not defined. For instance, compatibility may be in question if the number of arbitrators, the mechanism for selecting arbitrators, the seat, or the law of the arbitration agreement is different. Compatibility may also depend on the circumstances of the case. However, the consolidation and joinder provisions remain a useful tool to efficiently resolve related disputes.

Overall, the SIAC Rules are set to be the arbitration rules of choice for users who require a quick and proportionate way to resolve disputes.