

Client Alert

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Multi-Party and Multi-Contract Arbitration Under the SIAC Rules 2016

Impact of the SIAC Rules 2016 on Joinder and Consolidation

The latest edition of the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules 2016") introduced ground-breaking innovations and enhancements to provide its users with greater time and cost efficiencies.

This update focuses on two significant changes introduced in the SIAC Rules 2016 – enhancements to applications for joinder and new provisions for consolidation, for the efficient resolution of multi-party and multi-contract arbitrations that are commonly encountered in the oil & gas, energy, and construction space.

Summary

Notably, when compared to its previous edition and the arbitration rules of other major arbitral institutions, the SIAC Rules 2016 on joinder and consolidation provide users with the following benefits:

- **Joinder**: Apart from allowing both parties and non-parties to apply for joinder, and allowing for such applications to be made both prior to or after the constitution of the Tribunal, the SIAC Rules 2016 recognise that a non-party may not always have access to the Tribunal and therefore allow a non-party to file its joinder application with the Registrar instead of insisting on filing with the Tribunal only.
- **Multiple Contracts and Consolidation**: The SIAC Rules 2016 introduce both the usual procedure for the commencement of arbitration for disputes arising out of or in connection with multiple contracts and arbitration agreements, as well as a streamlined one where a claimant only needs to file a single Notice of Arbitration for all the relevant arbitration agreements. By filing the single Notice of Arbitration under the streamlined procedure, the claimant would be deemed to have commenced multiple arbitrations, one for each arbitration agreement, and the Notice of Arbitration itself would be deemed to be an application for consolidation.

We now look in detail at the impact of the SIAC Rules 2016 on joinder and consolidation.



Joinder (Rule 7)

Arbitration Rules	Can non-party apply?	Can application be made prior to constitution of the tribunal?	Threshold for non-party to be bound by the arbitration agreement
SIAC Rules 2016	Yes	Yes	<i>Prima facie</i> threshold
SIAC Rules 2013	No	No	Non-party must be a party to the arbitration agreement
HKIAC Rules 2013	Yes	Yes	<i>Prima facie</i> threshold
ICC Rules 2012	No	Yes	<i>Prima facie</i> threshold
LCIA Rules 2014	No	No	Rules are silent

- Under the previous edition of the SIAC Rules, only existing parties to the arbitration could apply for the joinder of non-parties. The SIAC Rules 2016 now allow both parties and non-parties to apply for joinder.
- The SIAC Rules 2016 also allows the joinder application to be made either prior to or after the constitution of the Tribunal. Under the previous edition, joinder applications could only be made after the constitution of the Tribunal. This allows a joinder of parties to be managed more efficiently.
- Recognising that a non-party may not always have access to the Tribunal, the SIAC Rules 2016 allows a non-party to file its joinder application with the Registrar, instead of insisting on filing with the Tribunal only.
- The criteria for joinder have also been expanded in the SIAC Rules 2016. Under the previous edition, the party to be joined must be a party to the arbitration agreement, whereas under the SIAC Rules 2016, the party to be joined only needs to be "prima facie bound by the arbitration agreement".
 - This clearly extends the availability of joinder. The SIAC Rules 2016 make it clear that any decision of the SIAC Court or the Tribunal to grant the joinder application would not prejudice the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision.



- Further, the SIAC Court's decision to reject an application for joinder would not prejudice any party's or non-party's right to subsequently apply to the Tribunal for joinder after it has been constituted. This means that a party or non-party has two bites at the cherry in seeking joinder.
- The parties' confidentiality obligation has also been modified in the SIAC Rules 2016 to allow for disclosure to third parties for the purpose of the joinder application.
- A comparison of the other arbitral institutional rules on joinder shows that only the HKIAC Rules 2013 go as far as the SIAC Rules 2016 in terms of the availability of joinder to parties and non-parties.

Consolidation (Rules 6 and 8)

Arbitration Rules	Can claims arising out of multiple contracts be made in a single arbitration?	Can party apply for consolidation prior to constitution of the tribunal?	Is consolidation available if the arbitration agreements are compatible?
SIAC Rules 2016	Yes	Yes	Yes
SIAC Rules 2013	NA	NA	NA
HKIAC Rules 2013	Yes	Yes	Yes
ICC Rules 2012	Yes	Yes	Yes
LCIA Rules 2014	No express provision	Yes	Yes

- The SIAC Rules 2016 introduce consolidation of arbitrations and largely follow the regimes under the other major arbitral institutions.
- Notably, the SIAC Rules 2016 go further by introducing both the usual procedure for the commencement of arbitration for disputes arising out of or in connection with multiple contracts and arbitration agreements, as well as a streamlined one:
 - Usual procedure: A claimant files multiple Notices of Arbitration, one for each arbitration agreement, and concurrently submits an application for consolidation; or
 - Streamlined procedure: A claimant only needs to file a single Notice of Arbitration for all the relevant arbitration agreements, in which case the claimant would be deemed to have commenced



multiple arbitrations, one for each arbitration agreement, and the Notice of Arbitration itself would be deemed to be an application for consolidation.

- This streamlined procedure presents an important advantage for SIAC arbitration users because the deemed commencement of multiple arbitrations ensures that the rights of the parties are preserved in relation to limitation periods.¹ This is significant because should an application for consolidation be rejected in whole or in part, a claimant would have to re-file a Notice of Arbitration in respect of the arbitrations that were not consolidated and such filing may subsequently be out of time.²
- As with the rules of other major arbitral institutions, a party may apply for consolidation prior to or after the constitution of the Tribunal.
- Where the application for consolidation is made prior to the constitution of the Tribunal, any one of the following criteria must be satisfied for consolidation by the SIAC Court:
 - all parties have agreed to the consolidation;
 - all the claims in the arbitrations are made under the same arbitration agreement; or
 - the arbitration agreements are compatible, and:
 - a) the disputes arise out of the same legal relationship(s);
 - b) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or
 - c) the disputes arise out of the same transaction or series of transactions.
- The same criteria apply for consolidation by the Tribunal, with an additional requirement for criteria (b) and (c), i.e. that either the same Tribunal has been constituted in each of the arbitrations to be consolidated, or that no Tribunal has been constituted in the other arbitration(s).
 - If a different Tribunal is already constituted in the other arbitration(s), consolidation is no longer an option unless all parties have agreed to the consolidation, in which case the SIAC Rules 2016 are silent on whether the Tribunal constituted first should take precedence. Our view is that the parties' agreement

¹ Gary Born et al, 2016 SIAC Rules, 29 July 2016.

² Gary Born et al, 2016 SIAC Rules, 29 July 2016.



on the consolidation should have included terms on the constitution of the Tribunal for the consolidated arbitration.

- The parties' confidentiality obligation has also been modified in the SIAC Rules 2016 to allow for disclosure to third parties for the purpose of the consolidation application.

Conclusion

- As arbitration proceedings become increasingly complex, involving multiple parties and multiple contracts, the need for an efficient and clear set of arbitration rules to facilitate and manage multi-party and multi-contract arbitrations becomes ever more important. The SIAC Rules 2016 meet this need and it is expected that these rules will allow Singapore and the SIAC to remain at the forefront of developments in international arbitration.
- Should you wish to further discuss the impact of the SIAC Rules 2016 on multi-party and multi-contract arbitrations, especially those encountered in the oil & gas, energy, and construction space, and how to manage the arbitration process favourably in a cost-efficient way, please do contact the team at Baker McKenzie Wong & Leow.

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