THE 2016 SIAC RULES - SIMPLIFYING AND STREAMLINING THE ARBITRAL PROCESS

The sixth edition of the Singapore International Arbitration Centre Rules (the "**2016 Rules**") came into force on 1 August 2016. The rules are noteworthy as they amend the procedures under the old rules by promoting quicker resolution of disputes.

The 2016 Rules introduce provisions that allow parties to consolidate arbitrations by either (i) combining multiple disputes under different contracts under one consolidated arbitration proceeding; or (ii) combining two or more arbitrations arising out of the same contract into a single proceeding. Other provisions relating to the joinder of additional parties, summary judgment through early dismissals of claims and defences and 'document only' arbitrations have been added to the rules in an effort to expedite the dispute resolution process.

Types of Consolidated Arbitration

Multiple Contracts:

The 2013 SIAC rules had no provision regarding the handling of disputes involving multiple contracts. The 2016 Rules change all that by defining the consolidation process.

Under Rule 6, relating to multiple contracts, a party can file an application before the Registrar to consolidate multiple disputes "arising out of or in connection with more than one contract" for resolution through a single arbitration proceeding. A party can achieve consolidation either by (i) filing a Notice of Arbitration in respect of each arbitration agreement involved along with an application to consolidate (under Rule 6.1(a)); or (ii) filing a single Notice of Arbitration in respect of all the agreements invoked and adding a statement identifying the individual contracts involved and stating reasons for the application (under Rule 6.1(b)). By filing one Notice of Arbitration in respect of each arbitration agreement involved as stated in (i), the claimant is deemed to have commenced multiple arbitrations and applied to consolidate such arbitrations under Rule 8.1.

Multiple Arbitrations:

Rule 8 outlines the procedure for consolidation of multiple pending arbitrations and also the application to consolidate referenced in Rule 6.1 in relation to multiple-contract disputes. Applications to consolidate can be made both before and after the tribunal is constituted.

An application under Rule 8.1 to consolidate prior to the constitution of a tribunal will generally be allowed provided that (i) all parties involved agree to the consolidation; (ii) all claims in the arbitration have been made under the same arbitration agreement; or (iii) the separate arbitration agreements are compatible and the disputes have arisen out of the same legal relationship, out of the same contract and its ancillary contracts, or the same transaction or series of transactions. Applications under Rule 8.1 are made to the Registrar and are adjudicated by SIAC's Court of Arbitration.

Rule 8.1's criteria also applies to applications made after the tribunal is constituted (Rule 8.7). An additional condition, however, must be met: either the same tribunal has been constituted in each of the pending arbitrations or no tribunal has been constituted in the other arbitrations.

Because of this additional condition, it is best to determine at the outset whether consolidation is appropriate and achievable. Applications made under Rule 8.7 are made to the tribunal. Consolidation of multiple arbitrations into one process will reduce the parties' costs and time.

The 2016 Rules, however, provide a party a second bite of the cherry by allowing a subsequently-constituted tribunal to decide whether it has jurisdiction. That tribunal can choose to uphold or overturn a prior decision of a SIAC Court on a subsequent application relating to consolidation, effectively preserving the right of a tribunal to decide the limits and exercise of its jurisdiction.

By allowing a second application, the 2016 Rules have left the final decision regarding jurisdiction in the hands of the constituted tribunal. The danger, of course, is that proceedings could be delayed if parties choose to seek adjudication on the same issue twice by turning the tribunal into a court of appeal from the SIAC Court's decision.

Prior to passing an order based on an Application for Consolidation, under either rule, the ruling body will grant all parties a hearing, if they seek one. If the ruling body rules adversely on an application, the separate disputes will continue as separate proceedings.

Joinder of Additional Parties:

Under the Rule 7, a party as well as a non-party to an arbitration may file an application with the Registrar (if the tribunal has not yet been constituted) or the tribunal (if it has been constituted) for one or more additional parties to be joined in the arbitration so long as (i) the party to be joined is *prima facie* bound by the agreement; or (ii) all parties—including the additional party to be joined—have consented to the joinder. The SIAC Court decides the application, without prejudice to a subsequently-constituted tribunal's right to also decide on its own jurisdiction at a party's request.[1]

This change is significant because under the prior rules, a third party could be joined only upon application by a party and where that third party was a party to the arbitration agreement and provided written consent to be joined (2013 SIAC Rule 24(b)).

The addition of Rule 7 adds to the theme of eliminating duplicate or multiple proceedings and arbitrations through consolidation and joinders. The idea to expedite adjudication of disputes through as few proceedings as possible is a welcome change. Nonetheless, by also allowing parties to file a joinder application after a tribunal has been constituted[2], the Rules present Parties with the opportunity to dispute an issue twice, which may lead to delays and costs.

Interestingly, if joinder is granted before a tribunal is constituted, a prior appointment of an arbitrator by one of the parties may be revoked and the additional party joined may, together with the claimant/respondent, nominate a new arbitrator to the panel. However, if the joinder is granted after a panel has been constituted, the party joined does not have the right to nominate/appoint an arbitrator.

[1] *See* Rule 7.4
[2] *See* Rule 7.8

The Early Dismissal of Claims and Defences:

Rule 29 introduces a procedure for the early dismissal of claims or defences which are: (a) manifestly without legal merit (Rule 29.1(a)); or (b) manifestly outside the jurisdiction of the arbitral tribunal (Rule 29.1(b)).[3] An application under Rule 29 must state in detail the facts and legal basis supporting the application. The tribunal has the discretion to decide whether to entertain the application. If it does, the parties are then given the opportunity to be heard, and the tribunal can issue an award either rejecting the application or allowing it either in whole, or in part.[4]

Interestingly, while this procedure appears to be akin to that of a summary judgment, i.e. an order passed on an application after hearings are conducted, there is nothing in the wording of the rule that precludes such an application being filed after written submissions in a manner akin to a motion to dismiss for failure to state a claim or defence. Consequently, it is open to interpretation as to whether a party may file an application for early dismissal immediately upon the filing of all written submissions on the grounds that the pleadings filed do not establish a claim or defence and that the matter can be decided without conducting hearings.

This is a notable provision in institutional commercial arbitration practice and has the potential to address one of the criticisms levelled at arbitration, namely the lack of a mechanism to strike out meritless claims or to obtain summary judgment on claims to which the respondent has no real defence. It remains to be seen how this provision is used in practice. In the hands of a robust tribunal, this could prove a very useful tool to secure cost-effective disposal of disputes. It may herald greater use of SIAC arbitration by banks in loan agreements where historically the absence of a summary judgment procedure has often led banks to prefer national court litigation.

Further Additions:

The newly enacted rules include other additions designed to improve the efficiency of SIAC arbitration. First, under Rule 5.2(c), tribunals now have greater autonomy over expedited arbitration through a document-only arbitration. Under the Rule 5.2(c), a tribunal does not need consent from the Parties for a document-only arbitration and the only requirement is that the tribunal consult the parties before deciding whether a dispute is to be decided on the basis of documents submitted only, thereby dispensing with the need to examine witnesses and oral arguments.

Second, under Rule 16, decisions relating to challenges to arbitrators are to become more transparent as the SIAC Court is now required to provide reasons for decisions given while adjudicating a challenge.

Finally—reflecting the fact that half of SIAC's caseload has no connection with Singapore—the default seat of SIAC arbitrations is no longer Singapore. If parties have not determined the seat, this shall be determined by the tribunal.

Conclusion:

The additions to the SIAC Rules are long-due as they are aimed at streamlining the dispute resolution process and seek alignment with other major arbitral organizations. As a practical matter, though, it remains to be seen how the provisions relating to document-only expedited arbitration and early dismissals are utilized by parties and enforced by tribunals.

[3] *See* Rule 29.1
[4] *See* Rule 29.4

Similarly, the impact of provisions relating to consolidation in multi-party and multi contract disputes will also be determined by how parties and the SIAC Court and tribunals approach and deal with the concerned applications. If these rights are utilized appropriately, they will prove to be welcome additions to the rules.

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