

NEW SIAC RULES 2016: KEY CHANGES APPLY FROM 1 AUGUST 2016



This year, the Singapore International Arbitration Centre (SIAC) celebrated its 25th anniversary and the SIAC congress held in May 2016, which HFW attended as a gold sponsor, was a testament to SIAC's achievements during its 25 years. SIAC continues to play a key role in the city-state's growth as a major international arbitration hub. Despite only releasing the previous edition of its rules in 2013, SIAC has recently released the 6th edition of its Arbitration Rules.

Scheduled to come into force from 1 August 2016, the 2016 Rules incorporate a number of innovative new provisions and amendments to existing processes. These changes highlight SIAC's continuing efforts to respond to and accommodate the needs of its users and to progress and improve arbitration, both in Singapore and internationally.

SIAC Rules 2016

Unless agreed otherwise, the 2016 Rules will govern any SIAC arbitration commenced on or after 1 August 2016, including disputes arising under contracts which have been entered into prior to 1 August 2016.

The 2016 Rules largely implement the amendments initially proposed in the draft rules (please see HFW IA Quarterly Bulletin February 2016¹). Notable changes include:

Multi-contract Disputes and Consolidation (Rules 6 and 8)

In recognition of the increasingly complex nature of the commercial disputes administered through SIAC, the 2016 Rules incorporate a new streamlined procedure for disputes arising under multiple contracts. The 2016 Rules now provide two routes by which a claimant in a multi-contract

1 <http://www.hfw.com/International-Arbitration-Quarterly-Bulletin-February-2016>



dispute can commence proceedings:

- Filing a Notice of Arbitration with SIAC for each contract, whilst concurrently submitting an application for consolidation.
- Filing a single Notice of Arbitration for all contracts, under which the claimant is deemed to have commenced multiple arbitrations for each contract and the Notice of Arbitration serves as the application for consolidation.

The 2016 Rules also allow for a party to make an application for consolidation to either SIAC or the Tribunal, once constituted, after proceedings have been commenced.

This is a welcome addition given that previously arbitrations could only be consolidated by consent. This meant that even where arbitrations were eminently suitable for consolidation, the parties risked incurring extra time and costs in having to conduct multiple arbitrations, where one party refused or failed to agree to consolidation. Whilst SIAC currently can and does take measures to sensibly coordinate related arbitrations in the absence of consolidation, this addition gives SIAC and the Tribunal greater power and flexibility in handling multi-contract disputes.

Joinder of Additional Parties (Rule 7)

The 2016 Rules now enable both parties and non-parties to apply (either prior to or after the constitution of the Tribunal) for joinder of a party to an arbitration, provided that either:

- The additional party is *prima facie* bound by the arbitration agreement.
- All of the parties, including the additional party, consent to the joinder.



Through the introduction of the early dismissal procedure, SIAC is the first major international arbitration centre to provide parties with a process by which they can promptly respond to and eliminate claims which are without merit or outside of the Tribunal's jurisdiction.

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This builds on the position under the 2013 Rules where only parties to the arbitration could apply for the joinder of non-parties.

Early Dismissal of Claims and Defences (Rule 29)

Rule 29 of the 2016 Rules provides that a party may apply for the dismissal of a claim or defence where the relevant claim or defence is either:

- Manifestly without legal merit.
- Manifestly outside the jurisdiction of the Tribunal.

Through the introduction of the early dismissal procedure, SIAC is the first major international arbitration centre to provide parties with a process by which they can promptly respond to and eliminate claims which are without merit or outside of the Tribunal's jurisdiction. This is akin to a summary judgment procedure. The reality is that in most cases, arbitrators are slow to dismiss claims or defences and it will be interesting to see whether or not

this new rule will encourage tribunals to shut bad points out at an early stage.

Seat of the Arbitration (Rule 21)

In recognition of the fact that the majority of disputes which SIAC administers are international in nature, Singapore is no longer the default seat of arbitration under the 2016 Rules. Instead, the Tribunal will determine the seat once constituted unless the parties have agreed otherwise.

Parties should carefully consider their desired seat of arbitration, as it will dictate the procedural laws by which the proceedings are conducted, including the availability of any appeal or review process. Parties should make clear their choice of seat in the arbitration agreement as it cannot be assumed that the seat will be Singapore in the absence of an express provision. In our experience, this is an area which can cause a lot of confusion for parties as the role of, or even need for, an arbitral seat is often misunderstood. If in doubt, SIAC's model clauses are an ideal starting point.



Emergency Arbitration Proceedings (Rule 30)

SIAC's emergency arbitration procedure has gained a significant reputation globally and the 2016 Rules incorporate a number of amendments which aim to provide the parties with even quicker relief where the emergency procedure is invoked. The changes include the following:

- The appointment of an Emergency Arbitrator must now be confirmed within one day from receipt of an application for emergency interim relief, rather than the one business day previously stipulated.
- The timetable for the publication of an order for interim relief is limited to 14 days from the appointment of the Emergency Arbitrator.
- Fees for Emergency Arbitrators are fixed at SGD\$25,000.

Expedited Procedure (Rule 5)

The Expedited Procedure was originally introduced by SIAC to provide a cost-effective and time-efficient arbitration process for the administration of disputes meeting certain criteria. This procedure has been adopted frequently in practice.

The application of the Expedited Procedure has been expanded under the 2016 Rules, with the monetary threshold raised from SGD\$5 million to SGD\$6 million, which means that where the amount in dispute is less than the equivalent of SGD\$6 million, the parties can apply to have the matter heard in accordance with the Expedited Procedure. The two other scenarios in which the parties can apply for the Expedited Procedure, namely where the parties so agree or in cases of exceptional urgency, will continue to apply.

Parties should make clear their choice of seat in the arbitration agreement as it cannot be assumed that the seat will be Singapore in the absence of an express provision. In our experience, this is an area which can cause a lot of confusion for parties as the role of, or even need for, an arbitral seat is often misunderstood.

In addition, the Tribunal now has the discretion to determine a claim under the Expedited Procedure by documentary evidence only. This is a welcome change given that the Tribunal could previously only dispense with an oral hearing where the parties so agreed. In practice this could mean, for example, that where an arbitration was uncontested, the claimant still needed to incur the costs of an oral hearing as the other party had not agreed to dispense with an oral hearing.

HFW perspective

The changes highlighted above are not the only changes introduced by the 2016 Rules but show SIAC's desire to offer a commercial and efficient forum for resolving disputes. The changes seek to address a number of the practical problems which international arbitration can present and a number of the changes, most notably the early dismissal of claims and defences, show SIAC's willingness to innovate.

Now is an opportune time for parties to revisit their arbitration clauses and to consider SIAC as a forum for dispute resolution.



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