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New SIAC Rules 2016: an overview

Singapore News

I. Introduction

The Singapore International Arbitration Centre (“SIAC”) has presented the 6th edition of the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC Rules 2016”). The new SIAC Rules 2016 are available on the SIAC website and will come into effect on 1 August 2016. In the meantime the SIAC Rules 2013 (5th edition of 1 April 2013) remain in force.

The major changes¹ in comparison to the SIAC Rules 2013 are as follows:

II. Most important changes

A. Multiple contracts and consolidation (Rules 6 & 8 SIAC Rules 2016)

The SIAC Rules 2013 do not contain a Rule related to multiple contracts and consolidation.

A.1. Prior to the constitution of any Tribunal

In case of disputes arising out or in connection with more than one contract, the Claimant has prior to the constitution of any Tribunal; under the SIAC Rules 2016 two (2) options (Rule 6.1 SIAC Rules 2016):

a. File a notice of arbitration in respect of each arbitration agreement invoked and submit at the same time an application with the Registrar in order to consolidate the different arbitrations into a single arbitration.

A party may file such an application provided that any of the following criteria is met (Rule 8.1 SIAC Rules 2016):

- 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 (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.

The party submitting an application for consolidation with the Registrar needs to send a copy of such application to all the parties in the different arbitrations sought to be consolidated and notify the Registrar thereof. The mode of service employed and the date of service has to be specified.

Rule 8.2 SIAC Rules 2016 specifies which information has to be included in the application for consolidation: a) the case reference numbers of the arbitrations sought to be consolidated; b) the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties and their representatives, if any, and any arbitrators who have been nominated or appointed in the arbitrations sought to be consolidated; c) a reference to the arbitration agreement invoked and a copy thereof; a reference to the contract or other instrument out of or in relation to which the dispute arises, and where possible a copy of the contract or other instrument; d) identification of the agreement of consolidation (and where possible a copy thereof), e) a brief statement of the facts and legal basis supporting the application.

After having considered the views of all parties and the circumstances of the case, the Court (meaning the Court of Arbitration of SIAC including a Committee of the Court) shall decide whether to grant, in whole or in part, any application for consolidation.

If two or more Notices of Arbitration are filed, the Registrar shall accept payment of a single filing fee for all the arbitrations sought to be consolidated. In case the application for consolidation, in whole or in part, has not been accepted by the Court, a requisite filing fee in respect of each arbitration which has not been consolidated shall be due.

b. File a single Notice of Arbitration in respect of all the arbitration agreements invoked which shall include a statement identifying each contract and arbitration agreement invoked and a description of how the applicable criteria under Rule 8.1 SIAC Rules 2016 are satisfied. The Claimant shall be deemed to have commenced multiple arbitrations, one in respect of each arbitration agreement invoked and the Notice of Arbitration shall be deemed to be an application to consolidate all the arbitrations pursuant to Rule 8.1 SIAC Rules 2016.

If the consolidation, whether in whole or in part, is not granted, the Claimant will have to file a Notice of Arbitration in respect of each arbitration that has not been consolidated and the Claimant shall be required to make payment of the requisite filing fee under the SIAC Rules 2016 in respect of each arbitration that has not been consolidated.

¹ Note that this Newsletter does not contain a full analysis of all the changes made to the SIAC Rules.

A.2. After the constitution of any Tribunal

After the constitution of any Tribunal in the arbitrations sought to be consolidated, a party may apply to the Tribunal to consolidate two or more arbitrations pending into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated (Rule 8.7 SIAC Rules 2016):

- a. all parties have agreed to the consolidation;
- b. all the claims in the arbitrations are made under the same arbitration agreement, and the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s); or
- c. the arbitration agreements are compatible, the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s), 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.

After having given all the parties the opportunity to be heard and taking into account the circumstances of the case, the Tribunal shall decide whether to grant, in whole or in part, any application for consolidation. Any arbitrations that are not consolidated shall continue as separate arbitrations.

If an application for consolidation is granted, any party who has not nominated an arbitrator or otherwise participated in the constitution of the Tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the Tribunal (Rule 8.12).

B. Joinder of Additional parties (Rule 7 SIAC Rules 2016)

Article 24 of the SIAC Rules 2013 states:

“The Tribunal shall have the power to, upon the application of a party, allow one or more third parties to be joined in the arbitration, provided that such person is a party to the arbitration agreement, with the written consent of such third party, and thereafter make a single final award or separate awards in respect of all parties”

B.1. Prior to the constitution of the Tribunal

In the SIAC Rules 2016 a new Rule 7 has been inserted under the title *“Joinder of Additional parties”*

Prior to the constitution of the Tribunal, a party or a non-party to the arbitration, may file an application with the Registrar for one or more additional parties to be joined in an arbitration if any of the following criteria is satisfied: a) the additional party to be joined is prima facie bound by the arbitration agreement or b) all the parties, including the additional party to be joined, have consented to the joinder of the additional party. The information to be mentioned in the application for joinder is similar to the information to be mentioned in the application for consolidation under Rule 8.1.

The Court shall, after having considered the views of all the parties (including the additional party to be joined), decide whether to grant, in whole or in part, the application for joinder.

B.2. After the constitution of the Tribunal

After the Tribunal has been constituted, an application for joinder can be made by a party or non-party to the arbitration provided that any of the following criteria is satisfied: 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 of the additional party (Rule 7.8 SIAC Rules 2016).

The Tribunal shall give all parties the opportunity to be heard. Taking into account also the circumstances the Tribunal shall decide whether to grant, in part or in whole, any application for joinder (Rule 7.10 SIAC Rules 2016).

If the application for joinder is granted, 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 nominate an arbitrator or otherwise participate in the constitution of the Tribunal. The right of such a party to challenge an arbitrator remains (Rule 7.12 SIAC Rules 2016).

The requisite filing fee shall be due for any additional claims or counterclaims in case an application for joinder is granted (Rule 7.13 SIAC Rules 2016).

C. Expedited Procedure (Rule 5 SIAC Rules 2016)

The threshold for the Expedited Procedure under the SIAC Rules 2013 is SGD 5,000,000 (Rule 5.1). Under the SIAC Rules 2016 the threshold has been increased to SGD 6,000,000 (Rule 5.1).

Under the SIAC Rules 2013 the parties could agree that the dispute was to be decided on the basis of documentary evidence only (Rule 5.2 c). The SIAC Rules 2016 provide that the Tribunal may, in consultation with the parties decide if the dispute is to be decided on the basis of documentary evidence only, or if a hearing is required for the examination of any witness and expert witness as well as for any oral argument (Rule 5.2.c).

When the parties agree that the arbitration has to be conducted under the Expedited Procedure, these rules will prevail in case of a conflict with the terms of the arbitration agreement.

D. Challenge of arbitrators (Rule 15 SIAC Rules 2016)

Rule 12 of the SIAC Rules 2013 does not provide in the upfront payment of a challenge fee. Rule 15.3 of the SIAC Rules 2016 states that the party making the challenge has to pay the requisite challenge fee. The fees for challenges of arbitrators are fixed at SGD 8,000. If the party making the challenge fails to pay the challenge fee within the time limit set by the Registrar, the challenge shall be considered withdrawn.

In case of a challenge the Court may request comments on the challenge from the parties and the challenged arbitrator and the other members of the Tribunal (Rule 16.1 SIAC Rules 2016). The decisions of the Court on any challenge of an arbitrator will have to be reasoned, unless otherwise agreed by the parties. Decisions on challenges by the Court stay final and are not subject to appeal.

E. Seat of the Arbitration (Rule 21 SIAC Rules 2016)

According to Rule 18 of the SIAC Rules 2013 the seat of arbitration is to be agreed by the parties. In case of lack of such an agreement, the default seat is Singapore, unless the Tribunal determines that another seat is more appropriate.

Singapore as default seat has been removed from the SIAC Rules 2016. The Tribunal, taking into account all the circumstances of the case, shall determine the seat of arbitration, unless the parties have agreed on the seat of arbitration (Rule 21 SIAC Rules 2016).

F. Remedy against a Non-Paying Party (Rule 27 SIAC Rules 2016)

Rule 24 h (SIAC Rules 2013) provides that the Tribunal has the power to issue an award for unpaid costs of the arbitration. The SIAC Rules 2016 now expressly state (Rule 27 (g) SIAC Rules 2016) that the Tribunal has the power to issue an order or award for the reimbursement of unpaid deposits towards the costs of the arbitration.

G. Early dismissal of Claims and Defences (Rule 29 SIAC Rules 2016)

The SIAC Rules 2016 have introduced a new procedure related to the early dismissal of Claims and Defences.

A party may file an application with the Tribunal for early dismissal of a claim(s) or defense(s) on the basis that: (a) the claim(s) or defense(s) is manifestly without legal merit; or (b) the claim(s) or defense(s) is manifestly outside the jurisdiction of the Tribunal.

Such application needs to state in detail the facts and legal basis supporting the application. It has to be filed with the Tribunal and a copy is to be sent to the parties specifying the mode of service employed and the date of service.

It is up to the discretion of the Tribunal, after having given the opportunity to the parties to be heard, to decide to grant, in whole or in part, the application for early dismissal. A reasoned order or award has to be issued within 60 days of the date of filing the application. This timeframe might be extended by the Registrar in exceptional circumstances.

H. Emergency arbitration procedure (Rule 30 SIAC Rules 2016 – Schedule 1)

According to Schedule 1 (SIAC Rules 2013) the Emergency Arbitrator has to be appointed within one (1) business day of

the receipt by the Registrar of the application and payment of the required fee.

Schedule 1 of the SIAC Rules 2016 provides that any application for emergency relief shall be accompanied by payment of the non-refundable administration fee and the requisite deposits towards the Emergency Arbitrator's fees and expenses. An Emergency Arbitrator will be appointed within one (1) day of receipt by the Registrar of an application for emergency interim relief and provided that the administration fees and deposits are paid.

The Emergency Arbitrator shall as soon as possible and in any case within two (2) days of his appointment, establish a schedule for consideration of the application for emergency relief (Schedule 1. (5) of SIAC Rules 2016). In the SIAC Rules 2016 the "2 business days" have been replaced by 2 days.

The parties can be heard, by telephone or video conference or on written submissions as alternatives to a hearing in person (Schedule 1.7 of the SIAC Rules 2016).

Interim awards have to be made by the Emergency Arbitrator within 14 days from the date of his appointment unless, in exceptional circumstances, the Registrar extends the time. The interim order or award has to be approved by the Registrar as to its form.

Schedule 1 (12) of the SIAC Rules 2016 explicitly provides that the parties irrevocably waive their rights to any form of appeal, review or recourse to any State court or other judicial authority with respect to the interim order or award insofar as such a waiver may be validly made.

The Registrar may abbreviate any time limits related to emergency arbitrator proceedings commenced under the Rules.

The fees for emergency arbitrator are fixed at SGD 25,000, unless the Registrar determines otherwise.

For more information, please contact:



Dr. Claus Trenner, LL.M. (NUS Singapore)

Attorney-at-Law, Partner
Luther LLP
Singapore
Phone +65 6408-8009
claus.trenner@luther-lawfirm.com



Els Van Poucke, LL.M.

Attorney-at-Law, Counsel
Luther LLP
Singapore
Phone +65 6408 8018
els.vanpoucke@luther-lawfirm.com

Imprint

Luther Rechtsanwaltsgesellschaft mbH, Anna-Schneider-Steig 22,
50678 Cologne, Phone +49 221 9937 0, Fax +49 221 9937 110,
contact@luther-lawfirm.com

Editors: Dr. Claus Trenner, LL.M. (NUS Singapore), Attorney-at-Law, Partner,
Luther LLP, 4 Battery Road, Bank of China Building, #25-01, 049908 Singapore,
Phone +65 6408 8009, Fax +65 6408 8001, claus.trenner@luther-lawfirm.com

Els Van Poucke, LL.M., Attorney-at-Law, Counsel, Luther LLP,
4 Battery Road, Bank of China Building, #25-01, 049908 Singapore,
Phone +65 6408 8018, Fax +65 6408 8001, els.vanpoucke@luther-lawfirm.com

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contact@luther-lawfirm.com

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