Unveiling the SIAC Arbitration Rules 2016: What this means for Indonesian parties

The Singapore International Arbitration Centre (SIAC) continues to be a popular choice for Asian parties to resolve their cross-border disputes quickly and efficiently. Over the last decade, SIAC's caseload has grown tremendously from handling 78 cases in 2004 to a record 271 cases in 2015, including a case involving the highest ever total disputed sum in SIAC's history (SGD 6.23 billion).

Indonesian parties actively look to the SIAC to resolve their international commercial disputes. Over the years, the SIAC has administered many arbitrations arising out of disputes involving Indonesian companies and foreign investors. These arbitrations involve a wide range of industry sectors, including oil and gas, energy and resources, construction, financial services and telecommunications. 24 new cases involving Indonesian parties were filed in the SIAC in 2015.

Singapore, with its excellent infrastructure together with a pro-arbitration judicial and legislative policy, continues to be a leading seat for international arbitration. Most recently, the White & Case and Queen Mary University 2015 International Arbitration Survey listed Singapore in the top five global destinations for arbitration and identified Singapore as being the most improved seat in the world, over the past five years.

Ten New Guidelines of SIAC Arbitration

- Early dismissal of claims and defences
- Emergency arbitration
- Expedited procedure
- Seat delocalisation
- Remedies against non-paying parties
- Arbitrator challenges
- Multiple contracts and consolidation
- Joinder
- Provisions aimed at increasing efficiency of arbitral proceedings
- Confidentiality

- On 1 July 2016, the Singapore International Arbitration Centre released its long-awaited Arbitration Rules 2016 (the SIAC Rules 2016). The 2016 revisions build upon the SIAC Arbitration Rules 2013 (the SIAC Rules 2013) and are a result of an extensive public consultation process. The 2016 revisions mirror the current market demand for cost- and time- efficient arbitrations, and will cement SIAC's leading position in terms of institutional arbitration in Asia and beyond.

- The SIAC Rules 2016 will come into effect on 1 August 2016. The revised rules will apply to any arbitration commenced on or after 1 August 2016, where parties have agreed to refer their disputes to SIAC for arbitration or to arbitration in accordance with the SIAC Rules (unless agreed otherwise).

- The revisions comprise a wide range of amendments to the SIAC Rules 2013. Ten of these amendments – the Ten New Guidelines of the SIAC Arbitration – are of particular importance to parties arbitrating under the auspices of the SIAC.

Guideline 1: Early dismissal of claims and defences

This is a brand new feature of the SIAC Rules 2016, and a world's first among major commercial arbitration centres. It can operate more swiftly than the Expedited Procedure, allowing parties to obtain awards within 60 days of application:

- Under Rule 29, a party may apply to the tribunal for early dismissal of claims and/or defences on the basis that such claim(s) and/or defence(s) are manifestly without legal merit and/or outside the tribunal's jurisdiction.
- It is understood that parties may rely on summary judgment procedures in courts and the ICSID Rule 41(5) procedure for guidance as to the applicable legal standards for an application under Rule 29.
- To safeguard against unmeritorious applications, the tribunal retains the discretion to refuse to allow an application to proceed, and, if it does so allow, must give the parties an opportunity to be heard before deciding whether to grant the application.

Guideline 2: Emergency arbitration

Emergency arbitration under the SIAC Rules 2016 allows parties to obtain urgent interim relief prior to the constitution of the tribunal. The Singapore International Arbitration Act expressly provides that awards rendered by emergency arbitrators are enforceable in Singapore.

The three key new features of the Emergency Arbitration Provisions are as follows:

- The emergency arbitrator must issue his order or award within 14 days of his appointment.
- The emergency arbitrator, prior to issuing his order or award, may issue preliminary orders (pending submissions by the parties).
- The fees of an emergency arbitrator are now fixed at SGD 25,000. The deposits towards the Emergency Arbitrator's fees and expenses are fixed at SGD 30,000. This enhances the cost effectiveness and predictability of emergency arbitration particularly for higher-value disputes.

Guideline 3: Expedited procedure

The procedure under Rule 5 allows parties to obtain an award by a sole arbitrator within six months of the arbitrator appointment. The Singapore courts have confirmed that such awards are enforceable in Singapore, and this should encourage parties try and resolve their disputes under SIAC Expedited Procedure (the EP).

The three key new features of the EP are as follows.

- The monetary threshold for the applicability of the EP has been raised from SGD 5,000,000 to SGD 6,000,000. This threshold is not absolute. Larger disputes may also be conducted under the EP in cases of exceptional urgency, subject to the decision by the President of the SIAC Court.
- The tribunal is now better equipped to conduct arbitral proceedings fairly and efficiently. Under the SIAC 2016 Rules, the tribunal has the power to decide, in consultation with the parties, that a case conducted under the EP should be decided on a documents-only basis.
- The SIAC Rules 2016 now make clear that should the EP apply, its provisions will prevail over the terms of the arbitration agreement in case of conflict.
- Finally, under Rule 5.4, the tribunal may order that the arbitral proceedings shall no longer be conducted in accordance with the EP. In this scenario, the same tribunal will continue to conduct the arbitration.

Guideline 4: Seat delocalisation

Singapore is no longer the default seat of arbitration under the SIAC Rules 2016. If the parties have not agreed on the seat, it falls upon the tribunal to determine the seat, having regard to the circumstances of the case.

The seat delocalisation amendment elevates the SIAC above the earlier "local" default preference for Singapore as a seat, and gives the SIAC a more global, international reach.

However, because the SIAC Rules 2016 have lost the default seat provision, parties are encouraged to expressly stipulate the seat in their template arbitration agreements to avoid costly procedural debates and uncertainty as to the outcome of the tribunal's determination on the seat.

Guideline 5: Remedies against non-paying parties

Traditionally, recalcitrant respondents refusing to pay their shares of deposits have been a major obstacle hindering effective conduct of arbitral proceedings both for tribunals and institutions.

The SIAC Rules 2016 have undertaken an attempt to solve this problem by clarifying that the tribunal has the power to issue an order or award for the reimbursement of unpaid deposits (Rule 27(g)).

Guideline 6: Arbitrator challenges

The SIAC Rules 2016 now mandate that the party challenging an arbitrator must pay a non-refundable challenge fee of SGD 8,000 (for overseas parties) or SGD 8,560 (for Singapore parties). This is a novel provision aimed at filtering unmeritorious challenges that are used to derail arbitral proceedings.

Importantly, the SIAC Rules 2016 also provide that the decision of the SIAC Court of Arbitration on any challenge shall be reasoned, shall be issued to the parties, and shall be final and not subject to appeal (Rule 16.4). This requirement will form the basis for the challenge case law under the SIAC auspices, making challenge proceedings more transparent and predictable.

Guideline 7: Multiple contracts and consolidation

One of the main revisions to the SIAC Rules 2013 is Rule 6. Where disputes arise out of or in connection with multiple contracts, Rule 6 now allows claimants to commence arbitration under such multiple contracts by filing one notice of arbitration. Rule 6 stipulates that, in that scenario, the claimant is deemed to have commenced multiple arbitrations, one in respect of each contract, and the Notice of Arbitration is deemed to be an application to consolidate all such proceedings in one.

Rule 6 of the SIAC Rules 2016 is reflective of the market need for an efficient way to deal with the risks and costs inherent to consolidation. It also facilitates resolution of disputes arising out of complex transactions which inevitably involve inter-related agreements and a multi-layered contractual architecture.

Another unique feature of the SIAC Rules 2016 is that the SIAC Court of Arbitration is empowered to consolidate multiple arbitrations prior to the constitution of the tribunal (Rule 8).

Guideline 8: Joinder

The 2016 revision builds upon the joinder provision in the SIAC Rules 2013, which allowed joinder only in cases where the additional party that sought to be joined to arbitral proceedings was also a party to the arbitration agreement.

The new joinder rule of the SIAC Rules 2016 (Rule 7) allows joinder even in cases where the additional party is not a party to the arbitration agreement, provided that both the additional party and the parties to the arbitration agreements agree to the joinder, or if the additional party is *prima facie* (i.e. on its face) bound by the arbitration agreement.

Guideline 9: Provisions aimed at increasing efficiency of arbitral proceedings

Various other amendments are reflective of SIAC's commitment to increasing efficiency of arbitral proceedings.

These amendments include:

- Stating that a statement of claim may be filed by the claimant contemporaneously with its notice of arbitration, and for the respondent to similarly file its statement of defence and counterclaim contemporaneously with its response.
- Mandating that any objection that the tribunal exceeds jurisdiction be made within 14 days after the matter arises.
- The tribunal now has a duty to close the arbitral proceedings as promptly as possible.

Guideline 10: Confidentiality

The SIAC Rules 2016 now provide that publication of any award (with identifying information being redacted) can only be done with the consent of the parties and the tribunal. This revision enhances the confidentiality of the arbitral process.

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