

A new dawn for summary determination in international arbitration: the revised SIAC Rules

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The new edition of the Arbitration Rules of the Singapore International Arbitration Centre (SIAC), which come into effect today, introduces a novel procedure for the early determination of claims or defences that are manifestly without legal merit. The new SIAC procedure is an innovation in international arbitration. It is aimed at addressing a common concern among arbitration users as to the time and cost of arbitral proceedings. If it catches on, SIAC's innovation may lead to an important and desirable shift in international arbitration culture towards more efficient disposal of meritless arguments.

Due Process Paranoia

The 2015 [White and Case / Queen Mary University of London International Arbitration Survey](#) found that 68% of users identified costs and 36% lack of speed as among the worst characteristics of international arbitration. It identified “*a perceived reluctance by tribunals to act decisively in certain situations for fear of the award being challenged on the basis of a party not having had the chance to present its case fully ('due process paranoia')*” as a growing concern in international arbitration.

There are various reasons for the paranoia. The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards provides for enforcement of arbitral awards in most jurisdictions around the world and underpins the success of international arbitration. However, among the limited grounds for challenging enforcement under the New York Convention are where a party was “*unable to present his case*” (Article 5(1)(b)) or on public policy grounds at the place where enforcement is sought (Article 5(2)(b)). Arbitrators may also be concerned that any perceived lack of due process could give grounds for challenging the award in the courts at the seat of arbitration under domestic arbitration law.

As a result, arbitrators tend to be reluctant to determine any claims before hearing full evidence. Even so, while reality varies from jurisdiction to jurisdiction, there is a general sense that national courts are more robust in giving effect to awards in arbitrations where the tribunal has taken fair but firm case management decisions than tribunals may fear.

Nevertheless, unlike in many national court procedures, mechanisms akin to summary judgment or strike-out have never before been included in the rules of the major international commercial arbitration institutions.

SIAC's New Rule 29 Early Determination Procedure

The SIAC Rules 2016, which come into effect today, contain several changes designed to assist with the expeditious and efficient determination of claims where appropriate. The most significant and innovative change is the new early dismissal procedure at Rule 29. Rule 29 is aimed at meeting due process paranoia head on by significantly reducing time and costs in circumstances where parties may otherwise be compelled to go through a full arbitration process to defeat frivolous claims or defences.

From today, under SIAC's Rule 29, any party may, at any time, apply to the tribunal for the early dismissal of a claim or defence that is "*manifestly without legal merits*" or "*manifestly outside the jurisdiction of the tribunal*".

Once an application for early dismissal is filed, the tribunal must assess in its discretion whether to allow the application to proceed. If it is allowed to proceed, the tribunal must issue a reasoned order or award within 60 days of the application "*after giving the parties the opportunity to be heard*". Of course, how arbitrators will apply Rule 29 in practice – and whether it will impact the enforceability of the awards to which it gives rise – remains to be seen. Nevertheless, the two-step process and express requirement that the parties be given the chance to present their case should help allay due process concerns, as should the fact that the procedure has been ratified by an arbitral institution of SIAC's pedigree.

The Implications of Rule 29

This pioneering provision may well attract new users to SIAC, an arbitral institution that has already been growing its reputation beyond its traditional user base in Asia. Rule 29 will help give SIAC particular appeal to historically reluctant users of arbitration, such as financial institutions, which are often particularly concerned that their dispute resolution process should allow quick and efficient determination of straightforward claims. Rule 29 may for example prove useful for dealing with straightforward claims arising from loan agreements.

Rule 29 may also have a wider impact on international arbitration culture. Assuming that the new procedure proves successful and is used in practice, other arbitral institutions will take note. Comparable provisions will surely follow in other institutions' rules. Similarly, Rule 29 may encourage international arbitration practitioners to allow early determination applications more extensively, and not only under the SIAC Rules.

In the meantime, users of international arbitration for whom availability of early determination procedures in appropriate cases is of particular importance may wish to consider incorporating the SIAC Rules in their arbitration agreements. SIAC administers arbitrations seated anywhere in the world: there is no need for parties to arbitrate in Singapore to take advantage of the new Rules.

The revised 2016 Rules, including the new early dismissal procedure, can be found [here](#).

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