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## **Multi-Party and Multi – contract International Arbitrations under SIAC 2016 Rules**

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Arbitration proceedings is a creature of the contract and arbitration agreement between the parties. One of the major challenges faced by the parties in the Arbitration Proceedings is the restriction that only the parties to the same arbitration agreement can be parties to the arbitration arising out of the said contract. That means, even though subject matter of an arbitration may affect adversely or otherwise the rights of some third parties, they cannot become parties to the arbitration. In some cases, there may be situation that one of the parties to the arbitration may be able to have an effective resolution of the disputes, if a non-party is included in the arbitration. In some other cases, for the same subject matter, two or more parallel arbitrations may be going on under different tribunals, with a risk of conflicting arbitral awards. Such eventualities reduced the confidence of the parties to resort to arbitration for resolving their disputes.

Finally, the global arbitration community understood the need for a redesigning of the arbitration mechanism to include the non-parties into the arbitration and to bring in multi contract disputes under one arbitration proceedings, to ensure effective remedy. Hence the Arbitral institutions of the world introduced provisions allowing for the joinder of non-parties in the arbitration proceedings. These developments started happening from 2013 and various international Arbitration institutions including International Chamber of Commerce (ICC), Hong Kong International Arbitration Center (HKIAC) provided for some provisions in their respective Arbitration Rules.

But still, there were many challenges in applying for joinder of parties. The Latest International Arbitration Rules of Singapore International Arbitration Centre (SIAC Rules 2016) brought in a very innovative change by providing complete Rules for joinder of parties and consolidation of arbitrations arising out of multi-contracts. The following are the major features of the said provisions:

**Joinder:** As per the new rules both the parties to the arbitration as well as a non-party can make an application to bring a non-party into the ongoing arbitration.

Under the 2013 Singapore International Arbitration Rules (SIAC), only the parties to the arbitration can make an application to the arbitral tribunal for making one non-party to an arbitration, a party to the proceedings.

As per the earlier provisions of SIAC Rules, such an application seeking joinder of parties can only be made before the tribunal and now it can be made before the Registrar of SIAC, since the non-parties, normally won't have access to the arbitration tribunal. As per the earlier SIAC Rules, only the parties to the same arbitration agreement can be joined in the arbitration proceedings. But, as per SIAC 2016 Rules the party to be joined only needs to be "prima facie bound by the arbitration agreement". This is a considerable extension in the area of joinder of parties in international Arbitration.

In case the SIAC Court chooses to reject the application seeking joinder, it does not come to an end the matter. It is open for the aggrieved party to again make the same application before the arbitral tribunal and the decision of the arbitration tribunal final.

**Consolidation of Proceedings:** The Parties may apply for consolidation of arbitration proceedings either prior or after the constitution of tribunal and if the consolidation application is made prior to the commencement of the arbitration, then any one of the following conditions should be fulfilled for becoming eligible for consolidation:

- All parties concerned agree for the consolidation
- All the claims in the Arbitrations are made under the same Arbitration Agreement or
- Arbitration agreements are compatible and
  - a. The disputes arose out of the same legal relationship(s)
  - b. The disputes arise out of contracts consisting of a Principal contract and its ancillary contract (s); or
  - c. The disputes arise out of the same transaction or series of transactions

When the consolidation application is made prior to formation of the arbitral tribunal, as per the new Rules there is no need to file separate notices of



Arbitration for each contract and seek for a consolidation. Now one notice of Arbitration is sufficient to initiate arbitration in all the contracts together. The Rules also protect the limitation, to avoid parties missing the limitation, in case of dismissal of consolidation application.

When the consolidation proceedings are initiated after the formation of the tribunal, the tribunal requires to apply the same formula and decide if the same tribunal would continue or a different tribunal has to be formed. In case different tribunals are formed in different cases, consolidation cannot be an option unless parties agree to do so.

The above said provisions of SIAC Rules 2016 answers a major problem frequently faced by arbitrating parties in the field of Infrastructure, Construction, International Trade and Oil & Gas.