2016 Singapore International Arbitration Centre Rules is all set to remove default seat provision[1]

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On the 1st of June 2016, Singapore International Arbitration Centre was to announce its revised Arbitration Rules 2016. Even though SIAC has circulated a brief note about the proposed changes, still has not published the final 2016 Rules. It has also announced that SIAC 2013 Rules will remain in force till the final 2016 Rules is officially posted in the website. One of the most important changes the new rules are going to bring in is, to remove the default seat provision from its arbitration Rules. SIAC Rules 2013 has a provision in its Rules that in case parties choose SIAC Rules and not specified any seat of arbitration in the arbitration clause, then the seat of arbitration would be Singapore. That means if parties in their arbitration clause specify SIAC Rules as the institutional rules applicable to the arbitration and do not specifically mention any seat of arbitration, as per clause 18.1 of SIAC Rules, Singapore would become the seat of arbitration, by default. But in its new 2016 Rules, SIAC has chosen to remove the default clause and place the responsibility to choose the seat on the Arbitral tribunal. The said decision to remove the default clause is viewed as a move of SIAC to gain a Global stature than being a favourite Asian arbitration institution. For the same reason the celebrity arbitration expert Mr Gary Born was brought in by SIAC as President, a year ago. That decision of making Me Born, the President of SIAC brought surely a global image to SIAC. The objective of the article is to discuss the expected positive and negative impacts of the said amendment.

Seat and Arbitral Institutions: Even though the UN convention on Recognition and enforcement of foreign arbitration awards, 1958 was a great milestone in the growth of international arbitration, the real turn point was the UNCITRAL model law 1985 and the co-operation of many countries by adopting similar arbitration laws in their country. After 1985 the courts situated in the leading jurisdictions started settling the arbitration law. Business community started moving the arbitration seats to those seats, in anticipation of a supportive and predictable judicial verdicts in the matters relating international arbitration. In those seats arbitration institutions started flourishing. In this process of growth of Arbitration law London became a most favourite seat for international arbitrations. Then came Paris, New york, Singapore, Hong Kong etc., The arbitration institutions became popular and got recognised as a reliable institution in the minds of the parties not only because of the provisions in their arbitration rules of the institution and its capability to provide effective administration of the arbitrations but mainly because of the supportive, consistent predictable interpretations and pro- arbitration approach of the courts in the default seat of arbitration. In the grand success of London Court of International Arbitration (LCIA), the role of UK courts is very important. The change of approach of UK Courts in arbitration matters particularly applicability of Code and evidence, is worth mentioning. Today in fact, London seat has gained a reputation which is much larger than the reputation of LCIA. Many parties from different continents

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get convinced on London seat, while negotiating the arbitration clause. Except ICC all other popular institutions have a default seat in their Rules. As LCIA has London, Hong Kong International arbitration centre (HKIAC) has Hong Kong and KLRCA has Kuala-lumpur as their respective default seats. Such a default clause helps the parties who failed to specify a seat. This is because an effective arbitration Institution supported by an effective court system coupled with a friendly procedural law can make wonders to the parties.

Determination of Seat in international arbitration: While choosing a seat of arbitration parties also choose the procedural law which will govern the arbitration and also the supervising courts. Many a times, the seat chosen by the parties many not be convenient in terms of travel and expenditure but still they choose that seat for other reasons, mainly the procedural law and the supervising courts. But while determining the seat the tribunal has to apply private international law principles and select the seat which has the close connection to the subject matter. But such a determination on the basis of private international law principles may put parties into trouble, by imposing a seat which is not a mature seat like Singapore.

Global awareness about the arbitral seat: Even though the arbitration law is well settled in various legal jurisdictions of the world, still every day parties enter into incomplete and insufficient arbitration clauses, which lead to interpretations by the courts. More over many countries who were averse to international arbitration awards, are slowly opening up and trying join the main stream. Removal of Singapore as default seat of arbitration may be a conscious and progressive business decision of SIAC but it takes away a great fall back seat of arbitration, which helped hundreds of parties who did not have the assistance of well-informed arbitration lawyers to advise them to incorporate the most appropriate seat of arbitration in the arbitration clause.

Hence in the opinion of the author, every arbitral institution should attach themselves to one or more efficient seats of arbitration and incorporate them as a default seats. Even if SIAC wants to give a global look it ought to have designated more than one efficient default seats spreading to all the continents. Simply taking away the default seat from the SIAC rules will lead to delayed arbitrations, interferences by courts and surely hamper the performance statistics of SIAC in the years to come.

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