



**19 December 2017**

## **PROPOSAL ON CROSS-INSTITUTION CONSOLIDATION PROTOCOL**

The Singapore International Arbitration Centre (**SIAC**) is pleased to announce its proposal on cross-institution cooperation for the consolidation of international arbitral proceedings. The SIAC proposal, which was initiated by Mr Gary Born, the President of the SIAC Court of Arbitration, is detailed in letters from Mr Born to other international arbitral institutions together with an attached memorandum. The memorandum proposes the adoption of a protocol by arbitral institutions permitting the cross-institution consolidation of arbitral proceedings subject to different institutional arbitration rules.

Through institutional cooperation, the cross-institution consolidation proposal is designed to facilitate the efficient and enforceable resolution of international commercial disputes, which will lead to significant gains for parties. Mr Born commented, “We welcome cooperation with other leading arbitral institutions around the world in further enhancing the efficiency and efficacy of the arbitral process. The cross-institution consolidation protocol is an important step in this direction and we look forward to working with our colleagues at other institutions in implementing the proposal.”

Rules on consolidation, joinder and intervention in international arbitration play an important role in the international arbitral process. By allowing related issues to be resolved in a single proceeding, consolidation permits more efficient and cost-effective dispute resolution, whilst minimising the risk of inconsistent decisions in related disputes.

These benefits have led a number of arbitral institutions to adopt provisions in their institutional rules that allow the consolidation of related disputes and/or the joinder of additional parties. The 2016 SIAC Arbitration Rules contain a state-of-the art set of provisions for consolidation, as do the rules of other leading arbitral institutions, including the International Chamber of Commerce Court of Arbitration (**ICC**).

Importantly, however, the consolidation provisions of existing institutional rules of leading arbitral institutions do not permit the consolidation of arbitrations that are subject to different sets of institutional arbitration rules (for example, SIAC and ICC arbitrations), even if they satisfy the other criteria for consolidation. Instead, existing institutional rules provide for the consolidation of arbitral proceedings only where the parties’ various arbitration agreements are compatible, including by incorporating the same institutional arbitration rules. Thus, a SIAC arbitration can be consolidated with another SIAC arbitration, but not with an ICC arbitration; likewise, an ICC arbitration can be consolidated with another ICC arbitration, but an ICC arbitration cannot be consolidated with a SIAC arbitration.

The lack of any existing mechanism for “cross-institution” consolidation of arbitrations subject to different institutional arbitration rules substantially limits the types of disputes that can be consolidated. In turn, this prevents related disputes, which otherwise meet the criteria for consolidation, from being heard together and thus limits the ability of arbitration to reach its full potential as a dispute resolution mechanism to serve the needs of users.

SIAC has sought to address this shortcoming in the existing treatment of consolidation by arbitral institutions through enhanced institutional cooperation. In particular, the efficiency and efficacy of the international arbitral process would be materially improved by the adoption of a consolidation protocol by leading arbitral institutions, providing for the cross-institution consolidation of arbitrations, where such proceedings otherwise satisfy the criteria for consolidation.

Mr Born and SIAC have therefore proposed a *cross-institution consolidation protocol*, which leading arbitral institutions could adopt and incorporate into their institutional arbitration rules and utilise for administering consolidated arbitrations:

- a. The consolidation protocol would set out a new, standalone mechanism for addressing the timing of consolidation applications, the appropriate decision-maker (i.e. the institution(s) or the tribunal) and the applicable criteria to determine when arbitral proceedings are sufficiently related to warrant cross-institution consolidation. A joint committee appointed from members of the Courts or Boards of the concerned arbitral institutions would be mandated to decide the applications, with a specific committee being appointed for each application.
- b. Once consolidated, the proceedings should be administered only by one institution applying its own arbitration rules. The institutions can agree on objective criteria to determine which institution should administer the consolidated dispute, such as the number of disputes subject to the different rules or the time of commencement of the first proceeding.

The arbitral institutions’ rules would be amended to incorporate the consolidation protocol. By adopting the institutional rules in their arbitration agreements, parties would in turn give the protocol the same contractual force as other provisions of the institutional rules. The consolidation protocol would not change the current requirement that the arbitration agreements designate the same seat.

The consolidation of arbitral proceedings offers important benefits to parties that help reduce the complexity, cost and time of proceedings. The cross-institution consolidation of arbitrations under different institutional rules takes these benefits further, making arbitration an even more effective system of dispute resolution.

Mr Davinder Singh, SC, Chairman of SIAC, observed that “SIAC is indebted to Mr Born for his continuing efforts to enhance SIAC’s role in thought leadership. Arbitral institutions play an increasingly important role in progressing international arbitration and SIAC is confident that this proposal offers arbitral institutions the opportunity to engage once again in thought-leadership.”

Ms Lim Seok Hui, CEO of SIAC, commented, “This proposal represents an opportunity for arbitral institutions to cooperate in the joint development of a framework for complex arbitrations, and materially enhance the international arbitral process.”

The memorandum that discusses SIAC’s proposal for cross-institution consolidation can be accessed [here](#), and comments on the proposal can be sent to [consolidationconsult@siac.org.sg](mailto:consolidationconsult@siac.org.sg) by 31 January 2018.

SIAC looks forward to receiving comments from, and working together with, users and other arbitral institutions to further explore and implement the proposal for cross-institution consolidation.

**For more information, please contact:**

Singapore International Arbitration Centre

T: +65 6713 9777

E: [corpcomms@siac.org.sg](mailto:corpcomms@siac.org.sg)

W: [www.siac.org.sg](http://www.siac.org.sg)