Singapore vs London Arbitration (SIAC vs LCIA): What are the differences and what factors should be considered when making a choice?

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Contracts between commercial parties of different nationalities often include arbitration clauses. This is usually because of the relative ease of enforcement of an arbitration award compared to a court judgment. However, when entering into a contract, the parties need to agree how an arbitration would be conducted, including the arbitration venue and what rules to incorporate.

There are of course a number of choices of arbitration venues and rules available. However, in the context of the energy and commodity trading sectors (although it will be relevant to many other sectors and types of contract as well) and particularly where at least one party is located in Asia, it is relatively common that the choice comes down to arbitrating in London under the Rules of the London Court of International Arbitration (**LCIA**) or in Singapore under the Rules of the Singapore International Arbitration Centre (**SIAC**). Indeed, both arbitral bodies have recently announced record caseloads in 2020.

In this article we outline some of the key differences between them and some of the factors to consider when making this choice. The purpose of this article is not to promote one arbitral body or venue over another. Instead, we aim to aid in making a choice by discussing some of the main factors that may be relevant to resolving disputes in SIAC or LCIA arbitration.

Cost: How expensive is it to get your Award?

In our experience, cost and speed are usually the two of the biggest concerns cited by parties contemplating an arbitration. How do Singapore and London compare in terms of cost?

Method of calculation of costs

Firstly, it's helpful to understand that the LCIA and SIAC calculate the costs of an arbitration (i.e. their administration fees and the arbitrators' fees) differently. LCIA charge on the basis of an hourly rate for time spent by its staff and by the arbitrators. SIAC, on the other hand, provide a Schedule of Fees based on which the maximum amount of fees payable is calculated on a sliding scale relative to the amount in dispute. The costs of the arbitration are generally based on the value of the claim and are finally determined based on a reasonable percentage of the maximum fee caps set out in SIAC's Schedule of Fees.

The differing approaches have both positives and negatives. In the case of SIAC, the parties get relative certainty at the outset as they can get an estimate based on an average for the amount in dispute and a maximum amount that the fees could reach. It's possible to use the fee calculator on the SIAC website to get an estimated average and maximum amount of fees that will be payable, based on the value of your dispute.

With the LCIA calculation method it's more difficult to know in advance how much administrative and arbitrator time will be spent on a particular case and therefore the fees that will be incurred. However, with the LCIA it is clear that the parties are only paying for time actually spent, rather than an amount based on the value of the claim.

Under SIAC, it can also mean a relatively large deposit on account of fees is payable at an early stage of the arbitration. This is because the deposit is calculated based on the maximum amount of fees calculated in

accordance with SIAC's Schedule of Fees, plus 15% - 20% to account for any expenses of the arbitrators. This will often be a much larger amount than the actual fees when assessed at the end of the arbitration. However, for a Respondent this may be a positive factor, as it likely helps to avoid spurious or inflated claims being pursued.

How do the actual costs compare in practice?

The LCIA and SIAC last published their costs and duration data in 2016 (for the period 2013 – 2016). Some of the key figures are set out below:

Number of Arbitrators	Median Arbitration Costs (USD)	Average Arbitration Costs (USD)
LCIA		
Sole Arbitrator	60,000	Not published
Three Arbitrators	200,000	Not published
SIAC		
Sole Arbitrator	27,941	39,207
Three Arbitrators	80,230	154,371

The costs identified above include the arbitral body's administration fees and the fees of the arbitrators. They do not include legal fees, costs of venue rental for hearings, experts, and any other associated costs and expenses.

These figures show that the median costs for SIAC arbitration in 2016 were fairly significantly lower than for the LCIA and the average SIAC costs were lower than the LCIA median.

One factor which might explain the difference is if the average value of the amount in dispute was lower in SIAC. In 2016, the average value for new SIAC administered cases USD 42.31 million and (more recently) in 2019, the average value of new SIAC administered cases was USD27.86 million. This data is unfortunately not published by the LCIA so it is difficult to determine if this explains the difference in the figures. However, on the face of the figures set out above, it appears that SIAC arbitration is certainly more cost effective.

Speed: How quickly can you get your Award?

LCIA:

- Median total duration (for arbitrations completed between 2013 – 2016) was **16 months** i.e. from receipt by the LCIA of the Request for Arbitration to issue of the final Award.
- Larger cases can take longer although over 70% of cases with an amount in dispute of below USD 1 million reached a final award within a year.
- The average time taken by the tribunal to issue an award once the parties have completed their submissions (which is included in the above total duration) was three months.

SIAC:

- Median total duration was **11.7 months**. Mean duration was 13.8 months.

Again, SIAC appears to perform well in terms of the speed of getting an Award. It's also worth noting that there are number of steps in the arbitration which happen slightly more quickly under the SIAC Rules which may make a difference. For example:

- **Response to the Request for Arbitration / Notice of Arbitration:** Under the LCIA Rules the response to Request for Arbitration is due within 28 days of the commencement of arbitration. Under SIAC the Response to a Notice of Arbitration is due within 14 days of receipt of the Notice by the Respondent;

- **Appointment of the Tribunal:** Under LCIA, if no Response to the Request for Arbitration is received the tribunal is to be appointed promptly after 28 days from the Commencement Date. Under SIAC, the equivalent time period is 21 days in respect of appointment of a sole arbitrator and 14 days in respect of nomination of a three arbitrator tribunal.

- **Written Submissions:** Under the LCIA Rules each set of written submissions is required to be delivered within 28 days. Under the SIAC Rules, the timetable is to be set by the Tribunal so there may be more flexibility to shorten these time periods as appropriate in the particular case.

- **Time limit for issuing Award:** Under the SIAC Rules, unless the Registrar extends the period of time or unless otherwise agreed by the parties, the Tribunal is required to submit the draft Award to the SIAC Registrar not later than 45 days from the date on which the Tribunal declared the proceedings closed. There is no equivalent time limit in the LCIA Rules.

In addition, SIAC has an expedited procedure available which may be used either when the parties agree or if the amount in dispute does not exceed S$ 6 million. Under this procedure, unless there are exceptional circumstances, an Award will be issued within six months of commencement of the arbitration. The Mercatis team have used this expedited procedure to quickly and cost effectively obtain Awards and it has worked efficiently.

Expert Arbitrators

Another consideration is the depth of expert arbitrators available. London is a very established global dispute resolution hub and an incredibly sophisticated legal market and has a great depth of expert arbitrators. A lot of expert arbitrators are also available in Singapore, whilst perhaps not with the same depth as London.

However, in these times of virtual hearings becoming common practice due to the COVID-19 pandemic, the physical location of the arbitrators probably matters less and its perfectly possible to have UK based arbitrators involved in arbitrations in Singapore and vice versa. Even before the pandemic, this was relatively common and arbitrators might travel for the main hearing of an arbitration with the remainder of the arbitration being dealt with by email and/or telephone hearings.

The recent update to the LCIA Rules effective in October 2020 recognised the primacy of email communication and expressly provided for virtual hearings by video conference. In August 2020 SIAC also published its first SIAC Guide entitled "Taking Your Hearing Remote". As such, it's clear that both bodies are well prepared for the use of virtual hearings and so there may be less importance attached to the physical location of the arbitrators.

Of the 297 arbitrator appointments made by SIAC in 2019, 104 were Singaporean arbitrators and 78 were British arbitrators. The remaining appointments were of arbitrators of thirty other nationalities. Since arbitrators of many nationalities are commonly appointed and hearings can be held virtually, it seems clear that the location of the arbitrators is less relevant to the choice of arbitral body or venue.

Support of Courts and Legal System

Arbitrations are supported by and depend upon the laws of the legal seat of the arbitration. The laws of the jurisdiction in which an arbitration is seated will be the procedural law (or "curial law") that governs the arbitration. For example, challenges to the arbitration agreement, the appointment of arbitrators or of the award may be heard in the courts of the seat of the arbitration. Therefore, parties also need to select where the arbitration is to be seated. Whilst it's not always the case and the parties can agree otherwise, the seat of the arbitration will often be in the same jurisdiction as the relevant arbitral body. Its therefore worthwhile considering the laws of London and Singapore in this regard.

Both London and Singapore have robust laws related to arbitration, grounded in the UNCITRAL Model Law on International Commercial Arbitration. Both are also parties to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the **New York Convention**) so that Awards issued in London and Singapore should be enforceable in other jurisdictions that are party to the New York Convention.

Parties to arbitrations seated in both London and Singapore can also, if necessary, rely on an effective court system experienced in, knowledgeable and supportive of international arbitration. In both jurisdictions there are many decisions which show that the courts will strive to uphold arbitration agreements, enforce foreign awards and express a public policy that the decision of contracting parties to arbitrate their disputes should be upheld and given effect except in the most extreme situations.

Singapore is constantly evolving in order to ensure that it remains at the forefront as an arbitration friendly jurisdiction. For example:

- It has made regular amendments to the Singapore International Arbitration Act, including in 2012, 2016, 2019 and 2020. The most recent amendments which came into force on 7 December 2020 include provisions addressing:
  - a default procedure for appointment of arbitrators in multi-party arbitrations; and
  - express recognition of a tribunal and the Singapore High Court's power to enforce confidentiality obligations.
- In 2018 the Singapore International Commercial Court (**SICC**) was empowered to hear cases related to international arbitration and has heard a number of such cases.

The UK's departure from the EU is unlikely to impact its status as an arbitration friendly jurisdiction. If anything, it may improve the UK's position because it will likely allow scope for the courts to issue anti suit injunctions when litigation is commenced in an EU jurisdiction in breach of an arbitration agreement.

As a result, there is little to choose between the two jurisdictions in which an LCIA or SIAC arbitration may be seated and this is unlikely to be a determining factor in selecting one over the other.

Rights of Appeal

This is one issue where there is a clear difference between Singapore law and English law. However, in the context of LCIA Arbitration, it is unlikely to be a material factor for the reasons explained below.

Under English law, a party to arbitration proceedings may, unless otherwise agreed by the parties and with leave of the court, appeal to court on a question of law arising out of an award made in the arbitration proceedings (section 69, Arbitration Act 1996).

No similar right exists under Singapore's International Arbitration Act. Therefore, in England, a losing party in an arbitration potentially has another opportunity to put its case if it doesn't agree with the tribunal on a point of law.

However, the LCIA Rules expressly exclude this right to appeal to court, so this is not an important factor of difference between LCIA and SIAC. That said, for arbitrations seated in London and conducted under other rules or ad hoc, it may be a relevant factor.

Differences between the LCIA and SIAC Rules of Arbitration

The rules of arbitration of the respective arbitral bodies may be a relevant factor in deciding which arbitral body to use, though recently the differences between the LCIA and SIAC Rules have been reduced. For example, the LCIA published an update to its Rules which came into force in October 2020 which addressed a number of issues that were already covered in previous updates to the SIAC Rules and aligns them more closely (e.g. issues in connection with consolidation of claims and early determination of claims).

Notwithstanding the above, minor differences certainly remain between the LCIA and SIAC Rules. See for example the points outlined in section 2, (Speed: How quickly can you get your Award?) above, including the availability of the expedited procedure under SIAC. However, given the recent updates in most cases the differences between the rules are unlikely to be a significant factor in selecting one arbitral body over the other.

We note that SIAC are currently reviewing their Rules, which they do on a regular basis, and plans to publish a new version of its Rules in the third quarter of 2021. We will provide a further update on the new changes once published.

Conclusion

In addition to the factors outlined above, there may of course be other factors specific to particular parties that are relevant to the choice of arbitral venue. For example, the location of the parties and key witnesses or a desire to have the perception of a neutral venue where neither of the parties is located will often be key considerations in a particular case.

If these additional factors that are specific to the parties do not weigh heavily in favour of a particular arbitration venue, our conclusion from the issues discussed in this article is that a lot of the factors are relatively equal between the LCIA and SIAC. However, in terms of cost and speed to get your arbitration award there are slight differences and, based on the available published information, Singapore appear to have the edge in terms of both cost and speed. That said, both venues obviously offer excellent options for the conduct of international arbitration disputes.

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