



The Effect of Sanctions on Arbitration: Alternative Venues

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Introduction

- Certain Russian arbitration users have questioned the neutrality of arbitral institutions located in countries that have imposed sanctions against Russia
- The extent to which arbitral institutions established in those countries are able to administer disputes involving certain Russian parties remains unclear
- Some arbitration practitioners are considering alternative venues free of sanctions
- Both the Hong Kong International Arbitration Centre (“HKIAC”) and the Singapore International Arbitration Centre (“SIAC”) are now both competing strongly for Russian/CIS business
- In this light, both the HKIAC and SIAC have recently hired Russian-speaking counsel and are promoting their capacity to handle Russia/CIS arbitrations

Potential concerns about European venues

- Perception of reduced neutrality
- Additional compliance requirements. The ICC, for example, may call on parties to submit additional information if:
 - one of the parties or its related entities in the arbitration is listed by a sanctions regime;
 - the subject matter of the dispute itself falls within a sanctions regime; or
 - the parties want to nominate an arbitrator, mediator or expert from a sanctioned country

Information requested by the ICC may include:

- the identity of the parties e.g. identity of and information on ultimate beneficial owner(s)
- the identity of all related entities in the dispute between the parties
- Potential delay where the arbitral institution needs to consider complex sanctions issues
- Potential problems paying arbitrator fees and arbitral institution costs (especially where paying banks have sanctions concerns)
- Legal issues, e.g. enforceability of awards

Is the flight to alternative venues misjudged?

- The European arbitral institutions the London Court of International Arbitration (LCIA), the International Chamber of Commerce (ICC) and the Stockholm Chamber of Commerce (SCC) published the joint article: ‘The potential impact of the EU sanctions against Russia on international arbitration administered by EU-based institutions’
- The article seeks to respond to fears about the effect of sanctions on arbitration:
 - The sanctions do not explicitly target the arbitral procedure
 - The EU sanctions apply to a limited number of persons and entities
 - The European institutions do not prevent parties of sanctioned countries from referring disputes to arbitration under European rules
 - The arbitral procedure remains the same
 - Limited administrative measures have been added (eg. information on ownership structures)
 - A designated party can still file a request for arbitration
- But query whether Russian arbitration users are concerned not only with potential legal or practical difficulties of participating in arbitrations administered by EU-based institutions, but rather also the perception of reduced neutrality in adjudication

Alternative venues: HKIAC and SIAC

HKIAC	SIAC
Oldest international institution outside of Europe and North America (est. 1985)	Established 1991
Predominantly handles disputes involving Chinese, Taiwanese and Korean parties	Predominantly handles disputes involving Chinese and Indian parties
2014 caseload: 252 new arbitrations	2014 caseload: 222 new arbitrations
Both signatories to New York Convention	
Both have detailed set of rules on joinder, intervention and consolidation of arbitrations	
Both have emergency arbitrator provisions (SIAC was the first Asian arbitral institution to institute such provisions)	

Key Advantages

- Costs: HKIAC and SIAC-administered arbitrations are generally cheaper than arbitration proceedings under ICC or LCIA Rules.
 - Filing fees are US\$ 1,000 for HKIAC arbitration and US\$ 1,500 for SIAC arbitration
 - Administration fees to the arbitral institution depend on dispute value. A US\$ 10 million arbitration would not exceed US\$ 19,000 in HKIAC / US\$ 31,000 in SIAC
 - Arbitrator fees can be either based on hourly rates or dispute value-based rates. If dispute-value based, a three-arbitrator US\$10 million arbitration would not exceed US\$ 372,000 in HKIAC/ US\$ 385,000 in SIAC.

- Perception of Neutrality:
 - Both HKIAC and SIAC are 'sanctions-free'
 - Hong Kong: 4th in World Economic Forum Judicial Independence Index 2014-2015
 - Singapore: 5th in world for neutrality in Transparency International's Corruption Perceptions Index 2011.

- Russian/CIS- friendly:
 - Russian arbitrators on HKIAC and SIAC Panels
 - Rules available in Russian

Key Differences (1)

- No Default Choice of Law
 - Neither the HKIAC nor the SIAC Rules provide default provisions concerning the determination of the law governing the arbitration agreement.
 - Parties opting for HKIAC/SIAC arbitration should specify the governing law in their arbitration agreement.

- Default Choice of Seat
 - HKIAC: Hong Kong
 - SIAC: Singapore
 - Defaults to the relevant jurisdiction (as in LCIA Rules, but not ICC/SCC Rules)

- Default Number of Arbitrators
 - HKIAC: if not specified, left to the discretion of the HKIAC
 - SIAC: one by default


Key Differences (2)

- Nationality of sole arbitrator/chairperson:
 - HKIAC: must differ from the parties' nationality.
 - SIAC: silent on issue (although in practice parties will agree to select an arbitrator/chairperson of a different nationality)

- Speed of constitution of tribunal:
 - HKIAC: Respondent has 30 days to nominate co-arbitrator
 - SIAC: Respondent must nominate in Response to the Notice, normally due within 14 days from the date of receipt of the Notice.

- HKIAC and SIAC institutions have power to make a prima facie assessment as to the existence of an arbitration agreement
 - This may save considerable time and costs. The LCIA Rules do not have similar provisions.

- SIAC Rules (not HKIAC rules) have provisions on the scrutiny of arbitral awards similar to those found in the ICC Rules.



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