

Consolidation: putting several arbitrations into one proceedings

TIMOUR SYSOUEV | PARTNER

21 September 2017
Minsk, Belarus

IBA Guidelines for Drafting International Arbitration Clauses (2010)

VI. Drafting Guidelines for Multi-Contract Arbitration Clauses

Multi-Contract Guideline 1: The arbitration clauses in the related contracts should be compatible.

Multi-Contract Guideline 2: The parties should consider whether to provide for consolidation of arbitral proceedings commenced under the related contracts.

Arbitration efficiency increase. Consolidation in focus

- 2014 LCIA Rules, article 22
- 2016 DIFC-LCIA Rules, articles 22.1 and 22.6
- 2016 SIAC Arbitration Rules, article 8
- 2017 ICC Rules of Arbitration, article 10
- 2017 SCC Arbitration Rules, article 15

SCC Rules 2017 – Key Changes

As part of its centenary celebrations in January 2017, the Arbitration Institute of the Stockholm Chamber of Commerce has launched its updated rules.

Major changes concern:

- *development of provisions on multi-party and multi-contract disputes (articles 13-15)*
- *emphasis on the conduct of efficient and expeditious proceedings (article 2)*
- *the use of administrative secretaries (article 24)*
- *power to order security for costs (article 38)*
- *the introduction of a summary procedure (article 39)*
- *an appendix dedicated to investment disputes*

SCC Rules 2017 – Key Changes

Multiple parties, multiple claims – Multiple solutions

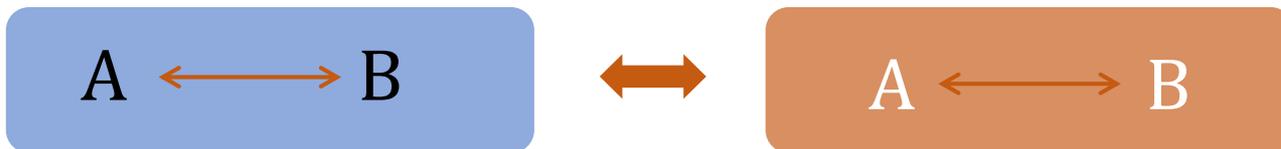
- Joinder and Multiple contracts
- Consolidation

Difference between Joinder and Consolidation

- Joinder



- Consolidation



What is consolidation?

Where there are at least two separate arbitrations pending and one or more parties to one of the arbitrations wants them to be merged into a single proceeding.

2010 SCC Rules

Article 11 Consolidation

If arbitration is commenced concerning a legal relationship in respect of which an arbitration between the same parties is already pending under these Rules, the Board may, at the request of a party, decide to consolidate the new claims with the pending proceedings. Such decision may only be made after consulting the parties and the Arbitral Tribunal.

2017 SCC Rules

Article 15 Consolidation of arbitrations

(1) At the request of a party the Board may decide to consolidate a newly commenced arbitration with a pending arbitration, if:

- (i) the parties agree to consolidate;
- (ii) all the claims are made under the same arbitration agreement; or
- (iii) where the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions and the Board considers the arbitration agreements to be compatible.

(2) In deciding whether to consolidate, the Board shall consult with the parties and the Arbitral Tribunal and shall have regard to:

- (i) the stage of the pending arbitration;
- (ii) the efficiency and expeditiousness of the proceedings; and
- (iii) any other relevant circumstances.

(3) Where the Board decides to consolidate, the Board may release any arbitrator already appointed.

SCC Rules 2017 - Consolidation

- Who shall decide?

The SCC Board decides whether or not to consolidate the arbitrations.

Consolidation is a final administrative decision that cannot be reversed by the arbitral tribunal. At the moment Swedish courts are not entitled to make judgments on consolidation.

SCC Rules 2017 - Consolidation

- What are requirements? (article 15.1)

15 (1) At the request of a party the Board may decide to consolidate a newly commenced arbitration with a pending arbitration, if:

(i) the parties agree to consolidate;

(ii) all the claims are made under the same arbitration agreement; **or**

(iii) where the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions and the Board considers the arbitration agreements to be compatible.

SCC Rules 2017 - Consolidation

Where the two contracts contain different arbitration clauses, arbitration agreements can be found incompatible when:

- Place of arbitration is different
- Language is different
- Mechanism for selecting arbitrators is different
- Number of arbitrators is different

SCC Rules 2017 - Consolidation

15 (2) In deciding whether to consolidate, the Board shall consult with the parties and the Arbitral Tribunal and shall have regard to:

- (i) the stage of the pending arbitration;
- (ii) the efficiency and expeditiousness of the proceedings; and
- (iii) any other relevant circumstances.

SCC Rules 2017 - Consolidation

What are the other relevant circumstances?

- Whether one or more arbitrators have been confirmed or appointed in more than one of the arbitrations and, if so
- Whether the same or different persons have been confirmed or appointed
- Where the Board decides to consolidate, the Board may release any arbitrator already appointed.

THANK YOU FOR YOUR ATTENTION!

SBH LAW OFFICES

BELARUS

Krasnoarmeiskaya str., 20A/1, offices 26-27
Minsk, Belarus, 220030

land.: +375 17 327 53 77

fax: +375 17 327 47 89

e-mail: info@sbh-partners.com

www.sbh-partners.com

