

# PRC COURT REFUSES TO ENFORCE AN SIAC AWARD MADE UNDER EXPEDITED PROCEDURE

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**The Shanghai No.1 Intermediate Court (the Shanghai Court) recently refused to enforce a SIAC award under Article V(1)(d) of the New York Convention, which provides that the award may be refused if “[T]he composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties...” The SIAC award was made under the expedited procedure of the 2013 SIAC Rules (5th Edition).**

The parties to the arbitration were the seller and buyer of iron ore. On 29 October 2014, they entered into a sales contract which appended the “globaORE Standard Iron Ore Trade Agreement”. The “globaORE Standard Iron Ore Trade Agreement” contained a clause providing for arbitration under the SIAC Rules then in force and with a three-member tribunal in Singapore.

On 14 January 2015, the seller commenced SIAC arbitration against the buyer and applied for the expedited procedure under the 2013 SIAC Rules. The buyer opposed the application of the expedited procedure and insisted that three arbitrators be appointed pursuant to the arbitration agreement. In the absence of party agreement, the Vice Chairman of SIAC appointed a sole arbitrator for the expedited procedure. The buyer refused to participate in the arbitration and an award was rendered in favour of the seller on 26 August 2015 (the Award).

The seller sought to enforce the Award before the Shanghai Court. One of the key arguments raised by the buyer in resisting enforcement was that SIAC’s appointment of a sole arbitrator

was contrary to the parties’ agreement for a three-member tribunal.

The Shanghai Court upheld the buyer’s argument. It found that the expedited procedure under the 2013 SIAC Rules did not exclude other means of composing a tribunal, nor empower the Chairman of SIAC to compel parties to accept a sole arbitrator despite their agreement to a three-member tribunal. Despite the fact that the arbitration agreement explicitly provided for a three-member tribunal and the buyer had expressly objected, SIAC appointed the sole arbitrator and went ahead with the expedited procedure. The Shanghai Court held that the appointment of the sole arbitrator violated the parties’ arbitration agreement. The court refused to enforce the award under Article V(1)(d) of the New York Convention. In support of its decision, the Shanghai Court emphasised that party autonomy is the foundation of arbitration proceedings.



# PRC Court Refuses To Enforce An SIAC Award... Cont.-

## Commentary

The Shanghai Court's decision was vetted by the PRC Supreme People's Court (SPC), by virtue of the "reporting system" (under which lower courts must report any decision to refuse enforcement of a foreign arbitral award to the SPC for scrutiny). Therefore, the decision is significant and will be referred to as precedent for future decisions of PRC courts. The SPC has indicated a strong intent to safeguard party autonomy in such cases.

SIAC's purported power to appoint a sole arbitrator in expedited proceedings, despite the parties having agreed a three-member tribunal, was also considered by Singapore High Court in *AQZ v ARA* [2015] SGHC 49. This was an application to set aside an arbitral award. A similar argument was raised by the applicant, i.e. that the arbitration should not have been conducted before a sole arbitrator (appointed, in this case, under the expedited procedure in the 2010 SIAC Rules (4 Edition)), since the parties had expressly agreed to arbitration before three arbitrators.

The Singapore High Court rejected this argument and upheld SIAC's appointment of a

sole arbitrator. The court adopted a "commercially sensible" construction of the arbitration agreement and decided that, by adopting the 2010 SIAC Rules into their contract, the parties had recognised the SIAC President's power and discretion to appoint a sole arbitrator where the expedited procedure applied. The Shanghai Court, supported by the SPC, clearly takes a different view from the Singapore High Court.

SIAC has amended its latest rules (2016, 6th Edition), to prevent the same conflict from arising. Article 5.3 of the new rules provides: "[B]y agreeing to arbitration under these Rules, the parties agree that, where arbitral proceedings are conducted in accordance with the Expedited Procedure under this Rule 5, the rules and procedures set forth in Rule 5.2 shall apply even in cases where the arbitration agreement contains contrary terms" (emphasis added).

The Shanghai Court has not released its decision to the public. The information on the decision is derived from third party sources. We will update this post if the decision becomes available.



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