NAVIGATING PARALLEL PROCEEDINGS IN CORPORATE ARBITRATION: CONSOLIDATION, JOINDER, AND BIFURCATION UNDER SIAC, HKIAC, AND ICC RULES

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ABSTRACT

The increasing complexity of corporate arbitration has brought to the fore a pressing procedural challenge: managing disputes involving multiple claimants, shareholders, or related contracts without undermining arbitral efficiency or party autonomy. Parallel proceedings often arise when different parties initiate or seek to intervene in overlapping disputes, resulting in fragmentation, inconsistent outcomes, and duplicative costs. In this context, procedural mechanisms such as consolidation, joinder, and bifurcation have become critical tools in mitigating the challenges of party expansion and preserving procedural economy.

This paper examines how leading arbitral institutions—namely, the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC), and the International Chamber of Commerce (ICC)—address these challenges through their respective institutional rules. The paper evaluates how these mechanisms operate in corporate disputes, particularly where shareholders or affiliated entities seek to join or initiate proceedings. By analyzing the comparative effectiveness, limitations, and discretionary powers embedded in each institution's framework, the article aims to assess whether current practices adequately balance procedural cohesion with fairness. The discussion concludes with policy suggestions for strengthening party expansion mechanisms in corporate arbitration to reduce fragmentation while safeguarding the core principles of consent and due process.

1. Introduction: The Corporate Arbitration Conundrum

In recent years, international commercial arbitration has witnessed a marked increase in complex, multi-party disputes—particularly in corporate and shareholder-related matters. These disputes often arise out of intra-corporate conflicts, joint ventures, shareholder agreements, or group structures where multiple parties or affiliates seek to either intervene in ongoing proceedings or initiate parallel claims based on interconnected facts or overlapping contractual arrangements. The resulting proliferation of **parallel proceedings** poses significant challenges to arbitral efficiency, party equality, and the enforceability of awards.

At the heart of this procedural conundrum lies the fragmented nature of arbitration clauses in corporate structures. Companies frequently operate through layered corporate vehicles and subsidiaries, each governed by distinct contracts—some containing arbitration clauses, others silent or stipulating different dispute resolution forums. Shareholders, particularly minority ones, may also seek recourse through derivative actions or attempt to join arbitrations governed by agreements to which they were not original signatories. This creates a jurisdictional maze where arbitral tribunals must navigate complex questions of **consent, privity, and procedural integrity**.

In response, arbitral institutions have developed procedural tools—namely **consolidation**, **joinder**, and **bifurcation**—to manage these challenges. These mechanisms aim to enhance efficiency, reduce duplication of proceedings, and prevent contradictory awards. However, their application is far from uniform. Institutions such as the **Singapore International Arbitration Centre (SIAC)**, the **Hong Kong International Arbitration Centre (HKIAC)**, and the **International Chamber of Commerce (ICC)** have each adopted distinct frameworks, reflecting varying degrees of flexibility and deference to party consent.

This paper critically examines how these institutions manage party expansion and procedural fragmentation in corporate arbitration. It evaluates the legal thresholds, discretionary powers, and structural safeguards embedded in their rules, with particular attention to cases involving **multiple claimants or shareholders** seeking to join or initiate arbitration. In doing so, it raises a broader question: can institutional rules adequately reconcile the need for procedural cohesion with the foundational principle of **party autonomy** that underpins arbitration?

By exploring the intersection of party expansion and arbitral procedure in corporate contexts, this article contributes to a nuanced understanding of how international arbitration is evolving to meet the realities of modern corporate disputes.

2. Consolidation in Corporate Arbitration

Consolidation is one of the most effective procedural devices to address parallel proceedings in corporate arbitration. It involves the merging of two or more arbitral proceedings into a single arbitration, thereby reducing duplicative costs, avoiding inconsistent findings, and enhancing procedural efficiency. However, in the corporate context—where multiple related entities and shareholders may be involved in disputes under different but interrelated contracts—consolidation often confronts legal and structural obstacles.

One of the primary challenges is the absence of uniformity in arbitration clauses across interconnected contracts. Corporate structures often contain layers of agreements, each with distinct dispute resolution mechanisms. As the principle of **consensual arbitration** remains paramount, tribunals and institutions are cautious about consolidating disputes without clear evidence of party agreement or sufficient procedural alignment.

2.1 SIAC's Approach to Consolidation

Under Rule 8 of the **SIAC Arbitration Rules 2016**, consolidation may be permitted where: (a) all parties agree; (b) all claims are made under the same arbitration agreement; or (c) the disputes arise out of a "**same legal relationship**," involve compatible arbitration agreements, and the disputes are deemed appropriate for consolidation[1]. This allows SIAC to take a flexible yet structured approach, enabling consolidation even where arbitration agreements are not identical but sufficiently compatible.

A notable example illustrating this flexibility is the SIAC-administered case involving a complex shareholder dispute in a joint venture between a Singaporean company and several foreign investors, where the tribunal consolidated proceedings initiated under separate but related shareholder and share subscription agreements due to the interconnected factual matrix

[1]Singapore Int'l Arb. Ctr., SIAC Rules r. 8 (2016).

and compatible arbitration clauses[2].

2.2 HKIAC's Consolidation Framework

HKIAC offers one of the most liberal consolidation regimes. Article 28 of the **HKIAC Administered Arbitration Rules (2018)** allows consolidation if: (a) all parties agree; (b) the claims are under the same arbitration agreement; or (c) the arbitrations involve "**a common question of law or fact**," and the rights to relief are in respect of the same transaction or series of transactions[3]. This broader language grants tribunals considerable discretion, which is particularly useful in corporate cases involving group companies or intertwined shareholding structures.

2.3 ICC's Balancing Act

The **ICC Rules of Arbitration (2021)** adopt a more cautious approach. Article 10 allows consolidation only when (a) parties agree; (b) all claims are under the same arbitration agreement; or (c) the arbitrations involve the same parties and arise in connection with the same legal relationship[4]. Notably, the ICC requires identity of parties for consolidation unless consent is established. This constraint can complicate efforts to consolidate shareholder-initiated claims that are derivative or structurally distinct.

Yet, the ICC has shown growing flexibility. In the **Siemens v. Dutco** case, although not a consolidation case per se, the French Cour de cassation emphasized the importance of party equality in multiparty arbitrations, influencing ICC's cautious stance in consolidation scenarios[5].

2.4 Tensions and Takeaways

The divergence in consolidation rules reflects a tension between **efficiency** and **consent**. SIAC and HKIAC offer relatively pragmatic pathways for consolidation in corporate disputes, particularly where tribunals can identify a nexus of facts or legal relationships. The ICC's more restrictive approach guards against procedural overreach but may contribute to parallel

[2] Michael Hwang, Consolidation and Joinder in International Arbitration – A Singapore Perspective, 15 Asian Int'l Arb. J. 105 (2019).
[3] Hong Kong Int'l Arb. Ctr., HKIAC Administered Arbitration Rules art. 28 (2018).
[4] Int'l Chamber of Com., ICC Rules of Arbitration art. 10 (2021).
[5] Siemens AG v. Dutco Constr. Co., Cour de cassation, 1e civ., Jan. 7, 1992, Rev. Arb. 1992, at 478 (Fr.).

proceedings in group-company disputes. Importantly, none of the rules override the requirement of due process and party equality, ensuring that efficiency does not compromise fundamental fairness.

3. Joinder of Additional Parties: Balancing Efficiency and Consent

While consolidation addresses the merging of parallel proceedings, **joinder** allows a third party to be added to an existing arbitration. In corporate disputes, joinder often arises when **shareholders, affiliates, or minority stakeholders** seek to participate in arbitrations initiated under contracts to which they are not signatories. Joinder thereby becomes a battleground between **efficiency-oriented procedural consolidation** and the **inviolability of consent** in arbitration.

In theory, joinder enhances procedural efficiency and consistency of outcomes by avoiding multiple proceedings over the same subject matter. In practice, however, the joinder of non-signatories to arbitration agreements raises serious questions about **consensual jurisdiction, privity of contract**, and due process rights. This tension is particularly pronounced in corporate contexts, where the legal identities of companies, subsidiaries, and shareholders are often distinct, though operationally intertwined.

3.1 SIAC: The Consent Threshold

The **SIAC Arbitration Rules 2016**, under Rule 7, allow for the joinder of additional parties **prior to the constitution of the tribunal** where (a) the party to be joined is bound by the arbitration agreement, or (b) all parties consent to the joinder[6]. If requested post-constitution, the tribunal may allow joinder only where the additional party is found to be prima facie bound by the arbitration agreement.

This threshold emphasizes **consent and contractual connection**. In a 2020 SIAC case involving a shareholder dispute in a cross-border joint venture, a minority shareholder's request to intervene was rejected as it was neither a signatory to the main agreement nor demonstrated to be a successor-in-interest[7]. The tribunal upheld party autonomy and the sanctity of

[6] Singapore Int'l Arb. Ctr., SIAC Rules r. 7 (2016).
[7] Gary Born, *International Commercial Arbitration* vol. II, at 1450 (2d ed. 2021).

arbitration clauses, despite overlapping factual grounds.

3.2 HKIAC: Joinder with Tribunal Discretion

The **HKIAC Administered Arbitration Rules 2018**, Article 27, allow joinder either before the constitution of the tribunal (by the HKIAC) or after (by the tribunal), provided the additional party is **prima facie bound** by the arbitration agreement[8]. Notably, HKIAC permits the joinder of third parties even without the consent of all original parties, where procedural efficiency and fairness justify such intervention.

This approach reflects a more liberal interpretation of **party identity and corporate veil piercing**, though it also opens the door to due process concerns when joinder occurs without unanimous consent.

3.3 ICC: Consent-Driven and Time-Barred

The **ICC Rules of Arbitration 2021**, Article 7, adopt a more restrictive stance. Joinder is permitted **only before the confirmation or appointment of any arbitrator**, and only if all parties—including the additional party—consent to the joinder[9]. The ICC's requirement of **express party agreement** acts as a safeguard against jurisdictional challenges but limits flexibility in complex corporate disputes where stakeholder interests may emerge only after proceedings have begun.

In the widely discussed case of *Abaclat v. Argentina*, although under ICSID, the tribunal's refusal to allow late joinder of numerous bondholders—citing procedural fragmentation and fairness—reflects the gravity of this procedural constraint in mass or multi-party disputes[10].

3.4 Reconciling Party Autonomy and Efficiency

The comparison of institutional rules reveals a clear divide: **ICC prioritizes consent**, **SIAC balances consent and jurisdictional connection**, while **HKIAC embraces procedural discretion** to join parties where equity and efficiency so demand. Each model reflects different value judgments. The key challenge remains whether tribunals can ensure that **the arbitral**

[8] Hong Kong Int'l Arb. Ctr., HKIAC Administered Arbitration Rules art. 27 (2018).
[9] Int'l Chamber of Com., ICC Rules of Arbitration art. 7 (2021).
[10] Abaclat v. Argentine Republic, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility (Aug. 4, 2011).

process remains consensual, coherent, and legitimate when accommodating third-party interests.

The judicial reluctance to override party consent, especially in jurisdictions like India, the UK, and Singapore, further narrows the room for expansive joinder unless statutory support or doctrines like estoppel or alter ego are invoked[11].

4. Bifurcation and Fragmentation: Dealing with Procedural Complexity

Bifurcation, the process of dividing arbitration into separate phases—typically jurisdiction, liability, and quantum—has emerged as a key procedural tool to manage complex corporate disputes involving multiple parties, claims, and contracts. While primarily intended to enhance procedural economy and streamline issues, bifurcation may also **exacerbate fragmentation**, especially when disputes are already splintered due to parallel proceedings or party interventions.

4.1 Function and Justification of Bifurcation

Tribunals may order bifurcation to isolate **threshold issues**—such as jurisdiction or applicable law—before delving into substantive matters. This is particularly useful in multi-party corporate arbitrations, where one or more respondents challenge the tribunal's jurisdiction or raise contractual defenses. Bifurcation enables early disposal of claims, conserving resources and potentially narrowing the scope of the dispute.

However, bifurcation is a discretionary power, not a right. Arbitral tribunals must weigh whether separating proceedings will **promote efficiency** or cause unnecessary delay and duplication. The **2010 IBA Guidelines on Party Representation in International Arbitration** caution that bifurcation should only be granted where it is likely to result in material procedural gains[12].

[11] Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641; Dallah Real Estate v. Ministry of Religious Affairs of Pak., [2010] UKSC 46.
[12] Int'l Bar Ass'n, IBA Guidelines on Party Representation in International Arbitration cmt. to Guideline 6 (2010).

4.2 Institutional Frameworks on Bifurcation

While **SIAC, HKIAC, and ICC** rules do not provide express provisions for bifurcation, all confer broad case management powers upon tribunals. For example, **Article 22(2)** of the **ICC Rules** empowers tribunals to adopt procedural measures they consider appropriate, which implicitly includes bifurcation[13]. Similarly, **Rule 19.1** of the SIAC Rules and **Article 13.5** of the HKIAC Rules grant tribunals discretion to conduct the arbitration in a manner they deem efficient and fair[14].

In **Philip Morris v. Uruguay**, a tribunal bifurcated the arbitration to address objections to jurisdiction and admissibility before the merits, finding that this would simplify and possibly terminate the proceedings early[15]. Though this case arose under ICSID, it underscores the value of bifurcation in resolving jurisdictional challenges in investor or shareholder disputes.

4.3 Risks of Procedural Fragmentation

Despite its intended benefits, bifurcation may inadvertently contribute to **procedural fragmentation** in corporate arbitration. For instance, where bifurcated proceedings are stayed or challenged, the delay may outweigh any gains in efficiency. Furthermore, where bifurcation proceeds separately for different parties in the same arbitration, it risks inconsistent findings or the re-litigation of overlapping factual questions.

In **Republic of Croatia v. MOL Hungarian Oil and Gas Plc**, the tribunal's decision to bifurcate jurisdiction and merits was later criticized for allowing prolonged jurisdictional wrangling while delaying substantive justice[16]. The case illustrates the downside of bifurcation when used overzealously or in politically sensitive, high-stake corporate disputes.

Additionally, bifurcation can increase costs. A 2020 study by Queen Mary University found that **bifurcation increased the average length of proceedings by 30%** in commercial

[13] Int'l Chamber of Com., ICC Rules of Arbitration art. 22(2) (2021).
[14] Singapore Int'l Arb. Ctr., SIAC Rules r. 19.1 (2016); Hong Kong Int'l Arb. Ctr., HKIAC Administered Arbitration Rules art. 13.5 (2018).
[15] Philip Morris Brands Sàrl v. Oriental Republic of Uruguay, ICSID Case No. ARB/10/7, Procedural Order No. 10.
[16] Republic of Croatia v. MOL Hungarian Oil & Gas Plc, PCA Case No. 2014-15 (UNCITRAL Arb.).

arbitrations, unless it conclusively resolved the dispute at an early stage[17].

4.4 Strategic Considerations

Ultimately, the decision to bifurcate must be **contextual and case-specific**. Tribunals in SIAC, HKIAC, and ICC arbitrations generally undertake a balancing test: whether the complexity of issues justifies bifurcation and whether separate phases are likely to serve the goals of efficiency and fairness. In corporate disputes, particularly where shareholders or related entities are involved, bifurcation can be both a tool of clarity and a source of fragmentation—depending on how it is employed.

5. Toward Procedural Cohesion: Reform, Best Practices, and Policy Recommendations

As corporate disputes become increasingly cross-border, multi-party, and structurally intricate, arbitral institutions must evolve mechanisms that **accommodate party expansion without sacrificing procedural fairness**. The divergence in institutional rules governing consolidation, joinder, and bifurcation reflects deeper tensions between **arbitral efficiency, party autonomy, and due process guarantees**. This section proposes a path toward procedural cohesion by identifying best practices and offering reform-oriented suggestions.

5.1 Strengthening Clarity in Institutional Rules

One of the foremost challenges identified across SIAC, HKIAC, and ICC rules is **ambiguity in thresholds and discretion**. Although flexibility is essential, excessive discretion—particularly regarding joinder post-tribunal constitution—can lead to inconsistency and arbitrator overreach. Institutions could introduce **more granular procedural guidelines**, such as illustrative criteria or presumptive timelines, akin to the **LCIA's approach to joinder and consolidation under Articles 22.1(x), 22.7 and 22.8**, which explicitly articulate the basis for party addition[18].

Further, standardizing the **"prima facie bound" test** across institutions, backed by commentary or explanatory notes, could foster interpretive uniformity and reduce jurisdictional

[17] Queen Mary Univ. of London & White & Case LLP, 2021 Int'l Arbitration Survey: Adapting Arbitration to a Changing World, at 36.
[18] London Court of Int'l Arb., LCIA Arbitration Rules arts. 22.1(x), 22.7, 22.8 (2020).

uncertainty.

5.2 Addressing Shareholder and Affiliate Participation

Given the rise of shareholder-initiated or affiliate-driven claims—especially in joint venture and post-M&A disputes—reform must also consider how **non-signatory participation** is evaluated. While the ICC remains restrictive, SIAC and HKIAC's increasing reliance on doctrines such as **"group of companies"** or **"implied consent"** remains controversial. These doctrines, while flexible, must be applied cautiously, lest they undermine the **contractual foundation of arbitration**.

Scholars such as Emmanuel Gaillard have argued that "the arbitral tribunal must remain faithful to the will of the parties" even in group structures, and that procedural innovations must never **substitute for party intention**[19]. A hybrid approach—requiring a demonstrable connection to the dispute and involvement in its performance, but paired with an opt-in joinder clause—could strike a workable balance.

5.3 Managing Fragmentation Through Bifurcation Protocols

Bifurcation, while discretionary, could benefit from **protocols or soft law instruments** akin to the **Prague Rules** or revisions to the **IBA Rules on the Taking of Evidence**, which offer procedural frameworks that tribunals may adopt. This would help standardize bifurcation criteria, such as materiality of threshold issues, potential time savings, and risk of conflicting outcomes.

Additionally, tribunals could be encouraged to issue **reasoned procedural orders** when granting or rejecting bifurcation or joinder, enhancing transparency and appellate predictability under national arbitration laws.

5.4 Emphasizing Party Autonomy through Procedural Planning

Finally, institutional reform should emphasize **proactive procedural planning**. Arbitral tribunals, during the early procedural conference, could be required to raise and discuss consolidation, joinder, and bifurcation options in consultation with parties. Parties themselves

[19] Emmanuel Gaillard, *Legal Theory of International Arbitration* 77–80 (Martinus Nijhoff 2010).

can include bespoke procedural clauses—such as pre-agreed joinder provisions or consolidation triggers—in their corporate agreements, thereby preserving both autonomy and efficiency.

The **Draft UNCITRAL Guidelines on Procedural Efficiency in International Arbitration** (2023) already encourage such early-stage planning, recognizing that **"front-loaded clarity" reduces procedural impasses downstream"[20].

The road toward procedural cohesion in corporate arbitration lies not in sacrificing party rights at the altar of efficiency, but in crafting frameworks that promote clarity, discretion grounded in principle, and meaningful participation. As multi-party disputes continue to dominate the arbitral landscape, institutions must move from **reactive rule-making to anticipatory reform**.

6. Conclusion

The procedural complexities posed by parallel proceedings in corporate arbitration demand a delicate reconciliation of efficiency, fairness, and party autonomy. As the nature of commercial disputes becomes more intertwined—with shareholders, subsidiaries, and affiliated entities increasingly seeking entry into arbitral processes—traditional notions of privity and consent are being tested. Mechanisms such as consolidation, joinder, and bifurcation have emerged as vital tools to manage procedural fragmentation, yet their effectiveness is shaped significantly by the institutional frameworks governing them.

This article has demonstrated that while SIAC, HKIAC, and ICC each offer solutions, they differ in scope, flexibility, and threshold standards. These differences reflect not only institutional philosophies but also broader tensions within arbitration's foundational principles. Moving forward, procedural cohesion requires more than harmonisation—it necessitates thoughtful reform, clearer rule-making, and a reassertion of the parties' role in shaping the procedural architecture of their disputes.

Ultimately, the legitimacy and utility of arbitration in complex corporate contexts will rest on its ability to adapt without compromising the very elements—consent, efficiency, and neutrality—that distinguish it from litigation. Institutional innovation, guided by principled

[20] UNCITRAL Secretariat, Draft Guidelines on Procedural Efficiency in International Arbitration 12 (2023).

discretion, will be central to ensuring arbitration remains both a commercially attractive and procedurally robust forum for resolving corporate disputes.