

Note for Public Consultation on the Draft SIAC Insolvency Arbitration Protocol

1. The SIAC Insolvency Arbitration Protocol (the “**Protocol**”) is a specially designed mechanism to provide a procedure for arbitration at SIAC for the resolution of disputes arising in relation to, or in anticipation of any insolvency proceedings, or for specific use in the context of insolvency notwithstanding whether such a dispute arises in anticipation of, or in relation to, any insolvency proceedings.
2. This note serves as an aid for public consultation on the Protocol and to provide context to the manner in which the Protocol is structured.
3. The Protocol is intended to provide for an agreement among parties in any of the insolvency scenarios mentioned in (1) above to submit their disputes to arbitration. The current broad wording on the applicability of the Protocol is intended to be permissive as to the insolvency-related situations in which the Protocol may be utilised.
4. The Protocol adapts the SIAC Rules for use in the insolvency context with modifications made to ensure that the process is adapted to the nature of proceedings, and is time-efficient.
5. The SIAC Rules are a comprehensive code in respect of the procedure required for the conduct of an arbitration. Therefore, the Protocol is not unduly prescriptive as to matters of procedure or the powers of the Tribunal except where there is a need to do so in the context of the objectives of the Protocol and the nature of the proceedings.
6. The Protocol is intended to apply where parties have agreed to use the Protocol to resolve their disputes by arbitration in the insolvency context. Practically, such consent may be contained in agreements executed prior to any dispute or insolvency proceedings, in agreements entered into during any insolvency proceedings, or on the recommendation of a court or other person such as an insolvency professional or liquidator to consider utilising arbitration for the resolution of disputes and claims in the context of any insolvency proceedings. Agreements to adopt the Protocol may also be made where there are no insolvency proceedings afoot or anticipated at the time of the agreement.
7. The timelines in the existing SIAC Rules that have been modified in the Protocol are as follows:
 - a. The timeline for the response to the notice of arbitration has been truncated to 7 days in the Protocol.
 - b. The timeline for the parties to attempt agreement on the nominee for appointment as sole arbitrator has been truncated to 14 days in the Protocol.
 - c. The timeline for parties to make nominations of a co-arbitrator to a three-member tribunal has been truncated to 7 days in the Protocol.

- d. The timelines for joint nominations of arbitrators in the case of multiple parties have been truncated to 15 days in the Protocol.
 - e. The timelines for dealing with a challenge to an arbitrator have been truncated in the Protocol.
 - f. The final award is to be made as soon as practicable and in any event within 6 months from the date of constitution of the Tribunal. This is similar to the timeline prescribed for a final award to be made under the SIAC Expedited Procedure.
 - g. The draft award is to be submitted to the Registrar for review within a truncated timeline of 30 days from the date of the last directed oral or written submission in respect of the proceedings to which the award pertains.
8. The Protocol provides that, unless the parties agree otherwise or the Tribunal determines otherwise, Singapore shall be the seat of the arbitration, and Singapore law shall govern the agreement of the parties to submit disputes to arbitration under the Protocol. If Singapore is the seat of arbitration, the Singapore International Arbitration Act 1994 or the Singapore Arbitration Act 2001, as the case may be, will apply to the conduct of the arbitration.
9. While Singapore is specified as the default seat and Singapore law as the default governing law of the arbitration agreement in the Protocol, parties are free to agree on any alternative seat or governing law of the arbitration agreement.
10. The Protocol provides that a sole arbitrator shall be appointed to any arbitration unless the Registrar determines, after considering the views of the parties, the complexity, the quantum involved, or other relevant circumstances of the dispute, that three arbitrators ought to be appointed.
11. The Protocol provides that an arbitrator nominated or appointed under this Protocol may, but is not required to be, an arbitrator listed under the SIAC Specialist Insolvency Disputes Panel. SIAC will develop a specialist panel of arbitrators with expertise in insolvency related disputes.
12. The Protocol provides a specific cue to arbitrators and parties to consider mediation to resolve any disputes that are brought to arbitration. This is intended to promote the use of mediation in the context of insolvency-related disputes even within the confines of an arbitration process. The understanding in the Protocol is that such a mediation is a separate process, and subject to any applicable law, no member of the arbitral tribunal appointed shall act as a mediator in such a mediation. The Protocol provides for the suspension of arbitration proceedings for a period of 3 weeks to allow parties to attempt mediation (subject to extensions as agreed or directed), and the ability of parties to secure a consent award from the appointed Tribunal following a successful mediated settlement agreement, if they wish to do so.
13. The Protocol provides that, in making a consent award on agreed terms, the Tribunal ought to consider and ensure that the matters dealt with in the terms of settlement are not contrary to any applicable law or public policy. In addition, the Tribunal ought to ensure that the matters dealt with in the consent award are within the scope of the arbitration agreement and the Tribunal's jurisdiction.

14. The Protocol provides a cue to Tribunals to elicit the views of the parties at the outset of proceedings as to the need to join any other party to the arbitration. This is intended to ensure that Tribunals are alive to the necessity for, subject to the views of the parties, all relevant and interested parties to be party to the arbitration.
15. The Protocol also provides for the ability of parties to request an anonymised or redacted copy of any decision, order, ruling, or award, for the purpose of disclosure in any relevant insolvency proceedings, and for parties to seek and obtain the leave of the Tribunal to disclose the status and progress of any arbitration conducted under the Protocol in any relevant insolvency proceedings, in order to ensure any coordination among the arbitration and insolvency proceedings.