

Melding Oil and Water: SIAC Consults on Draft Insolvency Arbitration Protocol

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Introduction

Insolvency and arbitration traditionally do not mix well, as they embody somewhat contrasting legal policies. The Singapore Court of Appeal highlighted in *Larsen Oil and Gas Pte Ltd v Petroprod Ltd (in official liquidation in the Cayman Islands and in compulsory liquidation in Singapore)* [2011] 3 SLR 414 that:

"On the one hand, arbitration embodies the principles of party autonomy and the decentralisation of private dispute resolution. On the other hand, the insolvency process is a collective statutory proceeding that involves the public centralisation of disputes ..."

In the modern era, however, insolvency and arbitration have increasingly overlapped. In its April 2016 [Report](#) ("**Report**"), the Committee to Strengthen Singapore as an International Centre for Debt Restructuring ("**Committee**") noted that:

"...as insolvencies and restructurings have become more complex and more costly, there is a growing trend of employing [alternative dispute resolution] processes, separately or in combination with the main court proceedings, as a tool to help save costs and time in the resolution of large and complex restructuring proceedings ..."

Between 13 December 2024 to 17 January 2025, the Singapore International Arbitration Centre ("**SIAC**") [held a public consultation](#) on the draft [SIAC Insolvency Arbitration Protocol](#) ("**Protocol**"). The Protocol sets out a procedure for

arbitration at SIAC for the resolution of disputes arising in relation to (or in anticipation of) any insolvency proceedings. It can also apply in the context of insolvency, notwithstanding whether such dispute arises in anticipation of, or in relation to, any insolvency proceedings.

Essentially, the Protocol adapts the SIAC Rules "for the time being in force" with relevant modifications to make it suitable for use in the insolvency context, with an emphasis on time-efficiency. The Protocol forms part of Singapore's push towards becoming an international debt restructuring hub.

Below, we consider the applicability of the draft Protocol and review its key differences from the current SIAC Rules.

Usage of the Draft Protocol

The Protocol is intended to provide a procedure for parties to, by agreement, submit their disputes to arbitration:

1. for the resolution of disputes arising in relation to (or in anticipation of) any insolvency proceedings; or
2. for specific use in the context of insolvency, notwithstanding whether such a dispute arises in anticipation of (or in relation to) any insolvency proceedings.

"Insolvency proceedings" are defined to include *"any judicial or administrative proceeding, including an interim proceeding, pursuant to a law relating to insolvency or adjustment of debt, in which proceeding the assets and affairs of a person or entity are subject to, or will be subject to, control or supervision by a court, for the purpose of reorganisation or liquidation"*.

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.

Modifications to Timelines in the SIAC Rules

Where parties choose to utilise the Protocol, they are effectively selecting the SIAC Rules to govern their arbitration, subject to the modifications made by the Protocol and any specific directions of the tribunal. It should be noted that the SIAC Rules have recently been revised with effect from 1 January 2025. For more information, please see our Arbitration Asia article titled ["New SIAC Rules, Schedule of Fees in Effect from 1 January 2025"](#).

The SIAC Rules are a comprehensive code in respect of the procedure required for the conduct of an arbitration. As such, the modifications implemented by the Protocol are not unduly prescriptive. Key modifications include:

	SIAC Rules 2025	Protocol
Filing of Response to Notice of Arbitration	Within 14 days from the date of commencement of the arbitration (" Commencement Date ")	Within seven days from the Commencement Date
Seat of arbitration	Determined by parties' agreement or by the tribunal	Singapore, unless otherwise agreed by the parties or determined by the tribunal
Governing law of the arbitration agreement	Unspecified	Singapore law, unless otherwise agreed by the parties or determined by the tribunal

	SIAC Rules 2025	Protocol
Appointment of tribunal	<p>Sole arbitrator: jointly nominated within 21 days of the Commencement Date</p> <p>Three arbitrators: Claimant to nominate an arbitrator within 14 days of Commencement Date; Respondent to nominate an arbitrator within 14 days of receipt of Claimant's nomination</p>	<p>Sole arbitrator: jointly nominated within 14 days of the Commencement Date</p> <p>Three arbitrators: Claimant to nominate an arbitrator within seven days of Commencement Date; Respondent to nominate an arbitrator within seven days of receipt of Claimant's nomination</p>
Filing of notice of challenge to arbitrator	<p>Within 15 days from the date of receipt of the notice of appointment</p> <p>SIAC Court required to provide reasons for its decision on the challenge</p>	<p>Within three days from the date of receipt of the notice of appointment</p> <p>SIAC Court may determine that no reasons are to be provided in a decision on the challenge</p>
Case management conference	To be held as soon as practicable after the constitution of the tribunal	Within seven days from the date of constitution of the tribunal
Issuance of final award	Unspecified under the general procedure	As soon as practicable, and in any event, within six months from the date of constitution of the tribunal

Additional Aspects of the Protocol

To enable coordination between the arbitration and any relevant insolvency proceedings, the Protocol also provides for a party to:

1. request the tribunal to provide an appropriately anonymised copy of any decision, ruling, order or award;
2. disclose the same in any relevant insolvency proceedings; and
3. seek leave of the tribunal to disclose the status and progress of any arbitration conducted under the Protocol in relevant insolvency proceedings.

Additionally, the Protocol specifically cues arbitrators and parties to consider the use of mediation. If jointly requested by the parties, the tribunal is empowered to suspend arbitral proceedings for three weeks, and may extend the period of suspension at the request of a party. If the dispute is settled by mediation, the settlement may be recorded in the form of a consent award.

Concluding Remarks

The Protocol is a first for an international arbitral institution, and will be accompanied by SIAC's development of a specialist panel of arbitrators with expertise in insolvency-related disputes. It comprises part of Singapore's push towards becoming an international centre for debt restructuring – in July 2016, the Government broadly accepted the

recommendations in the Committee's Report, including the recommendation that SIAC should develop protocols catering specifically for insolvency-related matters.

Other legal infrastructure has also been put into place to pave the way for future use of the Protocol. The Singapore International Commercial Court ("**SICC**") has jurisdiction to hear proceedings under the Singapore International Arbitration Act 1994, such as enforcement and setting aside applications. In 2022, its jurisdiction was extended to include cross-border restructuring and insolvency matters, enabling cross-border insolvency arbitration matters to be heard in one place. For more information, please see our September 2022 Client Update titled "[SICC's Jurisdiction over Cross-Border Restructuring and Insolvency Matters](#)".

More recently, in *Re Sapura Fabrication Sdn Bhd and another matter (GAS, non-party)* [2024] SGHC 241, the Singapore High Court held that where foreign insolvency proceedings against a company have given rise to an automatic stay on proceedings against the company, a carve-out may be granted to allow a third party to pursue an arbitration against the company. The case illustrates how the seeming conflict between insolvency and arbitration can be resolved, as well as how arbitration can be employed in the context of insolvency. For more information, please see our September 2024 NewsBytes article titled "[Issues in Cross Border Insolvency: Court Addresses Carve-Out for Arbitration Proceedings, Protocol for Inter-Court Communication and Draft Judicial Insolvency Network Guidelines](#)".

Altogether, the draft Protocol is a welcome development to enable parties in dispute to cohere the potentially competing frameworks of arbitration and insolvency, allowing them to take advantage of costs and time savings.

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