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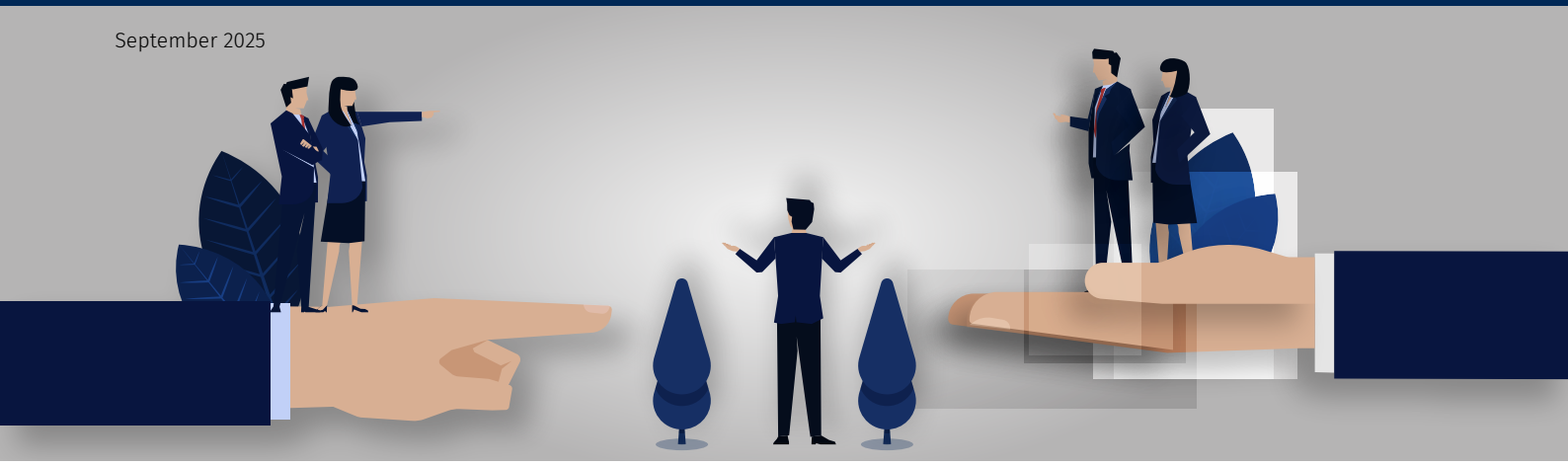

SIAC Restructuring and Insolvency Arbitration Protocol

On 26 August 2025, the Singapore International Arbitration Centre (**SIAC**) launched the Restructuring and Insolvency Arbitration Protocol (**Protocol**), effective from the same date, which provides for a specialised framework for arbitration of restructuring and insolvency related disputes at SIAC.

Scope and Applicability of the Protocol

Pursuant to an agreement of parties to submit disputes under this Protocol, the Protocol applies to three broad categories of disputes: (a) disputes arising from or in connection with laws relating to restructuring, adjustment of debt or insolvency; (b) disputes arising from or connected to actual or anticipated insolvency proceedings, including on recommendation of a court or insolvency office holder; and (c) disputes that do not arise in anticipation of or in relation to insolvency proceedings.[1]

As regards categories (a) and (b) above, SIAC's Guidance Note for Parties and Tribunals on Arbitrations under the Protocol (**Guidance Note**) explains that an agreement to arbitrate under the Protocol is not dependent on the existence or anticipation of any insolvency proceedings. Instead, parties may enter into such an agreement in the context of any business relationships where insolvency has the potential of affecting such relationships even where no formal judicial or other restructuring or insolvency proceedings are underway or anticipated. Therefore, the Protocol can also be employed for disputes relating to the restructuring of solvent entities.[2] As regards category (c) above, the Guidance Note clarifies that the Protocol is intended to be "*permissive rather than prescriptive*" as regards its utilisation. This flexibility, therefore, enables parties to tailor the Protocol to their specific circumstances.[3]

Key Features of the Protocol

The SIAC Rules continue to remain applicable under the Protocol, save for the modifications made under the Protocol, and it prevails over the SIAC Rules in the event of any conflict.[4] The Protocol adapts the currently prevailing edition of the SIAC Arbitration Rules (**SIAC Rules**) to address the unique challenges of insolvency and restructuring disputes, with the focus being on providing an expedited and efficient dispute resolution process. Accordingly, the principal features of the Protocol are as follows:

- **Expedited Timelines for Urgent Resolution:** The Protocol significantly compresses standard SIAC arbitration timelines. The respondent must file their response to a notice of arbitration within just seven days of the date of commencement of arbitration.[5] Additionally, the tribunal must render its final award, which can be in summary form, within six months of its constitution and has to submit the draft award to the SIAC Registrar for scrutiny within 30 days of the last oral or written

1 Restructuring and Insolvency Arbitration Protocol, ¶ 1.
2 Guidance Note for Parties and Tribunals on Arbitrations under the Restructuring and Insolvency Arbitration Protocol, ¶ 3.
3 Guidance Note for Parties and Tribunals on Arbitrations under the Restructuring and Insolvency Arbitration Protocol, ¶ 6.
4 Restructuring and Insolvency Arbitration Protocol, ¶ 3.
5 Restructuring and Insolvency Arbitration Protocol, ¶ 5; Guidance Note for Parties and Tribunals on Arbitrations under the Restructuring and Insolvency Arbitration Protocol, ¶ 10.

submission, save for any extension.[6] To facilitate compliance with the (encouraged) six-month deadline, the tribunal can consider adopting efficiency measures in respect of document production, witness evidence, and the requirement and format of hearings while keeping in mind due process, nature of the dispute and ensuring the enforceability of the award.[7] Having said this, the Guidance Note acknowledges that rigid adherence to the six-month award deadline may not always serve parties' interests. Therefore, tribunals may, after consultation with parties and the SIAC Registrar, determine that longer periods are necessary for fair adjudication of the dispute.[8]

- **Seat of arbitration and governing law:** Unless parties agree otherwise or the tribunal determines otherwise, the seat of arbitration and the governing law of the arbitration agreement under the Protocol will be Singapore and Singapore law respectively.[9]

- **Streamlined tribunal composition:** The default composition of a tribunal under the Protocol is a sole arbitrator unless the Registrar determines, after factoring the parties' views, that the complexity, quantum or other relevant circumstances of the dispute warrants a three-member tribunal.[10] The timelines for appointment of a sole arbitrator and a three-member tribunal as well as to challenge any arbitrator are either the same or truncated as compared to what is provided for in the analogous provisions of the SIAC Rules.[11] Further, an arbitrator can either be nominated and/or appointed from the SIAC Specialist Panel for Restructuring and Insolvency Disputes, which is a published list of specialist arbitrators with experience and expertise in restructuring and insolvency related disputes as stated in the Guidance Note; however, it is not mandatory to do so.[12]

- **Enhanced case management:** Within seven days of being constituted, the tribunal must convene a mandatory case management conference with the parties to discuss the procedures that will be most appropriate and efficient for the dispute.[13] This early intervention allows the tribunal and parties to address critical issues, including the (a) timelines for the conduct of the arbitration keeping in mind any applicable timelines as well as procedural and legal requirements in any related insolvency proceedings to ensure that both sets of proceedings can be aligned or coordinated, (b) necessity to join any third party, such as a creditor or another stakeholder in any relevant insolvency proceedings, (c) preliminary determinations, (d) objections to the tribunal's jurisdiction and (e) potential for settlement.[14]

- **Optional mediation:** The Protocol allows a tribunal to suspend proceedings for up to three weeks (which is extendable upon the request of a party) to allow parties to resolve their disputes in whole or in part through mediation, subject to a joint request to this effect by the parties.[15] If the mediation succeeds, the tribunal can record the parties' settlement as a consent award upon the request of the parties provided that the matters in the settlement agreement / consent award are (a) within the scope of the arbitration agreement and the tribunal's jurisdiction; and (b) not contrary to any applicable law or public policy.[16]

- **Confidentiality framework:** The Protocol and Guidance Note are sensitive to the potential interplay between an ongoing

6 Restructuring and Insolvency Arbitration Protocol, ¶¶ 24, 26 and 28, Guidance Note for Parties and Tribunals on Arbitrations under the Restructuring and Insolvency Arbitration Protocol, ¶ 10.

7 Guidance Note for Parties and Tribunals on Arbitrations under the Restructuring and Insolvency Arbitration Protocol, ¶ 21.

8 Guidance Note for Parties and Tribunals on Arbitrations under the Restructuring and Insolvency Arbitration Protocol, ¶ 22.

9 Restructuring and Insolvency Arbitration Protocol, ¶ 6, Guidance Note for Parties and Tribunals on Arbitrations under the Restructuring and Insolvency Arbitration Protocol, ¶ 11.

10 Restructuring and Insolvency Arbitration Protocol, ¶ 7. Guidance Note for Parties and Tribunals on Arbitrations under the Restructuring and Insolvency Arbitration Protocol, ¶ 12.

11 Restructuring and Insolvency Arbitration Protocol, ¶¶ 8-10 and ¶¶ 13-15, Guidance Note for Parties and Tribunals on Arbitrations under the IAC Restructuring and Insolvency Arbitration Protocol, ¶ 10.

12 Restructuring and Insolvency Arbitration Protocol, ¶ 11; Guidance Note for Parties and Tribunals on Arbitrations under the Restructuring and Insolvency Arbitration Protocol, ¶ 13.

13 Restructuring and Insolvency Arbitration Protocol, ¶ 20; Guidance Note for Parties and Tribunals on Arbitrations under the Restructuring and Insolvency Arbitration Protocol, ¶ 16.

14 Restructuring and Insolvency Arbitration Protocol, ¶ 20.

15 Restructuring and Insolvency Arbitration Protocol, ¶ 18.

16 Restructuring and Insolvency Arbitration Protocol, ¶¶ 18(b) and 19.

arbitration under the Protocol and a related insolvency proceeding, thereby providing a nuanced framework that allows the parties and tribunal to formulate an appropriate balance between confidentiality and transparency. Accordingly, parties may request redacted versions of tribunal decisions for disclosure in related insolvency proceedings. Likewise, the tribunal may permit the parties to disclose the status and progress of an arbitration under the Protocol to the relevant adjudicating authority in any relevant insolvency proceeding, as well as to disclose any decision, order or award of the tribunal in any related insolvency proceeding and/or to any third party.[17]

- **Arbitrability waiver:** The Protocol includes an express waiver wherein the parties expressly waive, to the extent such waiver can be applicably made, any objection to the arbitrability of the dispute and acknowledge the tribunal's jurisdiction.[18] Having said this, the Guidance Note provides that the tribunal must consider whether any party seeks to object to its jurisdiction on the grounds that the arbitration agreement is not valid or enforceable, which would include objections to the scope of the arbitrable issues or any argument that the dispute falls outside the scope of arbitration, and that the tribunal should deal with any such objection in light of what the Protocol stipulates and the applicable law.[19]

Implications

The Protocol raises several theoretical and practical questions for Indian parties and practitioners alike who may seek to utilise it:

- **Arbitrability of insolvency disputes:** While the Protocol permits parties to agree on a seat other than Singapore and/or a governing law of the arbitration agreement other than Singapore law as well as provides for the arbitrability waiver, the question of arbitrability assumes significance for Indian parties since insolvency and restructuring disputes are non-arbitrable in India on account of involving *in rem* rights.[20] The Insolvency and Bankruptcy Code, 2016 (**IBC**) confers exclusive jurisdiction on the National Company Law Tribunal (NCLT) to decide 'any questions of law or facts, arising out of or in relation to insolvency resolution' and explicitly prohibits any civil court or authority from entertaining any proceeding over which the NCLT would have jurisdiction under the IBC.[21]

  Accordingly, the mere presence of an arbitration clause in an agreement would not lead the NCLT to defer the matter to an arbitral tribunal, given the overriding effect of the IBC.[22] This issue is no longer *res integra* in light of the judgment of the Hon'ble Supreme Court of India in ***Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund***,[23] which clarifies that when applications under Section 7 of the IBC (for admission into insolvency) and Section 8 of the Arbitration and Conciliation Act, 1996 (for reference of a dispute to an arbitral tribunal) are simultaneously filed before the NCLT, the NCLT must first determine the existence of a 'debt' and 'default' and that the dispute must only be referred by the NCLT to arbitration where the Section 7 application is dismissed. This raises legitimate concerns regarding the arbitrability of insolvency related disputes as well as enforcement of any award rendered under the Protocol in India since any such award would be susceptible to challenge on the ground of arbitrability under Section 48 of the Arbitration and Conciliation Act.[24] However, there is no legal bar on parallel arbitral proceedings until the admission of the corporate debtor into insolvency, at which stage a moratorium comes into force.

- **Impact of moratorium:** Another key issue is whether an arbitration (in respect of a pre-insolvency debt) under the Protocol can proceed in circumstances where an insolvency application has already been admitted in India. Insolvency proceedings, by their very nature, are 'in rem' proceedings meant for the collective resolution of the corporate debtor. Once an insolvency application is admitted under the IBC, all proceedings 'against' the corporate debtor (including arbitration proceedings)

17 Restructuring and Insolvency Arbitration Protocol, ¶ 29; Guidance Note for Parties and Tribunals on Arbitrations under the Restructuring and Insolvency Arbitration Protocol, ¶ 26.

18 Restructuring and Insolvency Arbitration Protocol, ¶ 30.

19 Guidance Note for Parties and Tribunals on Arbitrations under the Restructuring and Insolvency Arbitration Protocol, ¶ 18.

20 Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532, ¶ 36; Vidya Drolia & Ors. v. Durga Trading Corporation, 2020 SCC OnLine SC 1018, ¶¶ 47-49.

21 Insolvency and Bankruptcy Code, 2016, Sections 60(5) and 63.

22 Insolvency and Bankruptcy Code, 2016, Section 238.

23 2021 SCC OnLine SC 268.

24 Arbitration & Conciliation Act, Section 48(2)(a); Vijay Karia v. Prysmian Cavi E Sistemi SRL, (2020) 11 SCC 1.

come to a standstill by virtue of the statutory moratorium.[25] This means that following admission of an insolvency case, arbitral proceedings in respect of a pre-insolvency debt would not be able to proceed.[26] Further, any pre-insolvency awards will not be enforceable against the corporate debtor or its assets in India during the moratorium period. All claims arising from such arbitration proceedings/awards would have to be resolved through the insolvency framework.

Possible utilisation of the Protocol in India

Despite the above questions, the Protocol may have potential utility in India, especially given the dynamic nature of insolvency laws and the evolving jurisprudence:

- **Proceedings by the corporate debtor during the moratorium:** While the moratorium bars institution or continuation of suits or proceedings 'against' the corporate debtor, it does not bar proceedings 'by' the corporate debtor. Therefore, the resolution professional (**RP**) can commence or continue arbitrations under Protocol where the corporate debtor is the claimant (e.g., for recovery of receivables), if commercially prudent. This may also extend to arbitrations involving claims by and counterclaims against the corporate debtor where the RP considers it commercially prudent and beneficial for the corporate debtor to continue the arbitration proceedings. Having said this, interim measures or orders in such arbitrations that conflict with the moratorium would be barred and non-enforceable. Further, the moratorium would also not be applicable to arbitral proceedings in respect of disputes arising in connection with contracts entered by the corporate debtor after the insolvency commencement date. The Protocol's expedited timelines would facilitate swift resolution of disputes aligning with insolvency deadlines and enable arbitrations to conclude before approval of the resolution plan, supporting comprehensive settlement of mutual disputes within the restructuring window.

- **Proposed changes to the IBC:**[27] India is currently mulling over the introduction of new frameworks governing creditor-led restructurings and cross-border insolvencies, both of which may not conceptualise the use of 'moratorium' in its current form. The proposed creditor-led restructuring process provides for imposition of a moratorium by the NCLT, only upon an application made in this regard by the RP (with the approval of the committee of the creditors).[28] Similarly, in the context of cross-border insolvencies under the UNCITRAL Model Law on Cross-Border Insolvency, while the recognition of 'foreign main proceedings' leads to automatic stay/moratorium on creditor enforcement actions, recognition of 'foreign non-main proceedings' does not lead to such automatic stay/moratorium, which, if required, may be sought from the insolvency court.[29] Where such proposed restructuring frameworks do not envisage an automatic stay on proceedings, swifter dispute resolution through arbitration under the Protocol may find greater impetus and usage. However, the practical challenges of enforcement and the possibility of imposition of stay on proceedings by the NCLT (on an application made in this regard, as highlighted above) may still pose significant questions regarding the adoption of the Protocol in India.

25 Insolvency and Bankruptcy Code, 2016, Section 14.

26 Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund (formerly Kotak India Venture Limited) & Ors, 2021 SCC OnLine SC 268, ¶ 17; Insolvency and Bankruptcy Code, 2016, Section 60(5).

27 Insolvency and Bankruptcy Code (Amendment) Bill, 2025.

28 Insolvency and Bankruptcy Code (Amendment) Bill, 2025, Clause 40.

29 UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation 1997, Articles 20 and 21.

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