IN THE SUPREME COURT OF THE REPUBLIC OF SINGAPORE

SINGAPORE INTERNATIONAL COMMERCIAL COURT
PRACTICE DIRECTIONS

AMENDMENT NO. 5 OF 2021

It is hereby notified that amendments have been made to Parts XVII and XVIII and Appendix B, and to introduce a new Part XXIV and a new Appendix G, of the Singapore International Commercial Court Practice Directions. These amendments are summarised below:

a) introduction of new paragraph 106A, on summary table for applications for further and better particulars, discovery, production of documents or interrogatories;
b) amendments to paragraph 111A, on giving of evidence by person outside Singapore through live video or live television link in any proceedings;
c) introduction of new Part XXIV, on technology, infrastructure and construction list;
d) amendments to Form 10 of Appendix B, on proposed case management plan;
e) introduction of new Form 12A of Appendix B, on form of summary table for applications for further and better particulars, discovery, production of documents or interrogatories;
f) introduction of new Appendix G Part 1, on pre-action protocol for dispute involving TIC claim; and
g) introduction of new Appendix G Part 2, on simplified adjudication process protocol.

2 The amendments will take effect on 31 August 2021 and will be reflected at https://www.supremecourt.gov.sg/rules/practice-directions/singapore-international-commercial-court-practice-directions from 31 August 2021.

3 Please find attached a document reflecting the marked-up amendments to the Practice Directions.

Dated this 24th day of August 2021.

TEH HWEE HWEE
REGISTRAR
SUPREME COURT

Singapore International Commercial Court Practice Directions

(Amendment No. 5 of 2021)

106A. **Summary Table for Applications for Further and Better Particulars, Discovery, Production of Documents or Interrogatories**

(1) Unless otherwise directed, this paragraph applies to any application made for an order under Order 18, Rule 12, Order 24, Rule 1, 5, 6, 11 or 12 or Order 110, Rule 17, 18 or 22 of the Rules of Court, where:

(a) more than 5 categories or sub-categories of particulars, documents or interrogatories are sought, or the parties agree that this paragraph applies to the application; and

(b) the application is contested.

The Court may also direct that this paragraph applies to any other application.

(2) With a view to enhancing the efficacy of an oral hearing, the parties must complete the summary table in Form 12A in Appendix B of these Practice Directions (the "Summary Table"), in lieu of filing written submissions. In exceptional circumstances (*e.g.* where there are novel issues to be determined), the parties may seek leave of the Court to file written submissions in addition to the Summary Table.

(3) Unless otherwise directed by the Court, the parties must complete the Summary Table in the following manner:

(a) The applicant must complete Columns A and B of the Summary Table, and serve the Summary Table on the respondent, when filing the application. The applicant may also complete Column C of the Summary Table before the applicant serves the Summary Table on the respondent under this sub-paragraph.

(b) If the applicant did not complete Column C of the Summary Table when the application was filed, the applicant must complete Column C of the Summary Table, and serve the Summary Table with Column C completed on the respondent, no later than 8 working days before the date of the hearing.

(c) The respondent must complete Column D of the Summary Table, and serve the Summary Table with Column D completed on the applicant, within 3 working days after receiving from the applicant the Summary Table with Column C completed.

(d) The applicant must complete Column E of the Summary Table, serve on the respondent the completed Summary Table, and file the completed Summary Table using the Electronic Filing Service as an "Other Hearing Related request", within 3 working days after receiving from the respondent the Summary Table with Column D completed and, in any event, no later than 2 working days before the date of the hearing.

(4) Where a party wishes to adduce any evidence for the purposes of the application, or the Court grants a party leave to file written submissions in addition to the Summary Table:

(a) the Court may adjust the timelines mentioned in sub-paragraph (3); and

(b) the party must file and serve the party's affidavit or written submissions (as the case may be) in accordance with the timelines directed by the Court.

111A. **Giving of evidence by person outside Singapore through live video or live television link in any proceedings**

(1) Any application for leave for any person outside Singapore to give evidence by live video or live television link in any proceedings must be made expeditiously and, in any case, unless the Court otherwise directs, not later than eight weeks before the date of commencement of the hearing at which the person is to give evidence. The application may also contain a prayer for the issue of a letter of request, to the relevant authorities of a foreign jurisdiction, for permission for evidence to be given by live video or live television link by a person located in that jurisdiction, if the laws of that jurisdiction require the issue of such a letter of request.

...

(3) An application for the issue of a letter of request, to the relevant authorities of a foreign jurisdiction, for permission for evidence to be given by live video or live television link by a person located in that jurisdiction, if not contained in an application mentioned in sub-paragraph (1), must be made expeditiously and, in any case, unless the Court otherwise directs, not later than eight weeks before the date of commencement of the hearing at which the person is to give evidence.

~~(3)~~ (4) To avoid doubt, the proceedings mentioned in sub-paragraph (1) include all civil proceedings involving the examination of any person.

PART XXIV

TECHNOLOGY, INFRASTRUCTURE AND CONSTRUCTION LIST

153. Application of this Part and definitions

(1) This Part applies to —

(a) every case that is placed in the TIC List under paragraph 155 of these Practice Directions; and

(b) any proceedings under paragraph 155 of these Practice Directions for the placement of a case in the TIC List.

(2) In this Part, unless the context otherwise requires —

"TIC Judge" means any Judge who is appointed by the Chief Justice to hear a case placed in the TIC List;

"TIC List" means the Technology, Infrastructure and Construction List of the Court established under paragraph 155 of these Practice Directions.

154. TIC Claim

(1) In this Part, "TIC Claim" means a claim in relation to which the following requirements are met:

(a) the Court has jurisdiction to hear and try the case in which the claim is made;

(b) the claim involves technically complex issues or questions; and

(c) it is desirable for the case in which the claim is made to be placed in the TIC List.

(2) For the purposes of subparagraph (1)(c), the following matters are to be taken into account when assessing whether it is desirable for a case in which a claim is made to be placed in the TIC List:

(a) whether the placing of the case in the TIC List —

(i) is warranted by the financial value of the claim or the complexity of the claim, or both; or

(ii) will assist in the disposal of the claim;

(b) the effect that placing the case in the TIC List would have on the likely costs of the proceedings, the speed with which the matter can be resolved, and any other questions of convenience to the parties.

(3) Despite subparagraph (2), for the purposes of subparagraph (1)(c), it is desirable for a case in which a claim is made to be placed in the TIC List if the claim is, or relates to, any of the following matters:

(a) any building or other construction dispute;

(b) any engineering dispute;

(c) any claim by or against any engineer, architect, surveyor, accountant or other specialised adviser relating to any service provided by the engineer, architect, surveyor, accountant or specialised adviser (as the case may be);

(d) any claim relating to the design, supply or installation of any computer, any computer software or any related network system;

(e) any claim relating to the quality of any goods sold or hired, or any work done, material supplied or service rendered, for any technology, infrastructure or construction project;

(f) any challenge to a decision of an arbitrator in any construction or engineering dispute (including any application for leave to appeal against any such decision, and any appeal against any such decision).

155. **Placement in TIC List**

(1) A case in which a TIC Claim is made may be placed in the TIC List if —

(a) each party to the case has agreed in writing that the case is to be placed in the TIC List; and

(b) the Court, on its own motion or on the application of a party, orders that the case be placed in the TIC List.

(2) Where there ceases to be any TIC Claim made in a case placed in the TIC List under subparagraph (1), the case may be transferred out of the TIC List by the Court on its own motion or on the application of a party.

(3) Every case placed in the TIC List will be dealt with by one TIC Judge or, where Order 110, Rule 53(1) of the Rules of Court applies, by a Court consisting of 3 Judges who will be assigned taking into account the nature, circumstances and requirements of the case.

(4) If 2 or more parties have agreed in writing to apply a relevant pre-action protocol to any dispute between them involving a TIC Claim or any particular dispute between them involving a TIC Claim, then where any of those parties wishes to commence in the Court, or to have placed in the TIC List, a case concerning any such dispute or that particular dispute (as the case may be), the terms of that protocol will apply.

(5) In subparagraph (4), "relevant pre-action protocol" means the protocol set out in Part 1 of Appendix G of these Practice Directions, or a version of that protocol containing such modifications as may be agreed in writing by the parties.

156. **General matters concerning expert evidence**

(1) Orders 40 and 40A of the Rules of Court apply to every case placed in the TIC List under paragraph 155 of these Practice Directions.

(2) Under Order 110, Rule 3(2) of the Rules of Court, the Court may make any order in relation to expert evidence in addition to, or in place of, any requirement under Order 40 or 40A of the Rules of Court.

157. **Parties to seek approval for expert evidence**

(1) If any party intends to adduce expert evidence, that party must seek the approval of the Court, at the earliest opportunity, to do so.

(2) Before seeking the Court's approval, a party must answer questions 14 to 18 of the Case Management Plan filed under paragraph 81(1) of these Practice Directions.

(3) Where the Court has approved the adducing of expert evidence, the following apply, unless the Court directs otherwise:

(a) The parties must attempt to agree on —

(i) the list of issues to be referred for expert evidence (which must as far as possible be expressed in the form of questions which can be answered with "yes" or "no"); and

(ii) the common set of agreed or assumed facts that the experts are to rely on.

(b) The parties must obtain the Court's approval of any list of issues agreed between the parties and the common set of agreed or assumed facts.

(c) If there is no agreement, the Court may decide the list of issues and the common set of agreed or assumed facts.

(d) The expert evidence must be confined to the approved issues and must rely only on the approved common set of agreed or assumed facts.

158. **Joint statement and joint report by experts**

(1) Where 2 or more experts are appointed to give evidence on a matter, the Court may direct the experts to produce a joint statement setting out the issues on which they agree and the issues on which they disagree, accompanied by a brief statement of the reasons for their disagreement.

(2) The Court may direct the experts to produce a joint report, signed by all of the experts, on the issues on which the experts agree, and to produce an individual report by each expert only on the issues on which the experts disagree.

159. **Court may convene case management conference with experts**

(1) Without affecting Order 40A, Rule 5 of the Rules of Court, the Court may convene a case management conference at any time the Court thinks appropriate, to be attended by such of the experts as are directed by the Court, and by the parties or their counsel or both, as provided for under paragraph 77(1) of these Practice Directions.

160. **Affidavits of evidence-in-chief to be filed before document disclosure**

(1) The Court may, after pleadings have been filed and served but before any documents are produced, order each party to file and serve the affidavits of evidence-in-chief of all or some of that party's witnesses.

(2) In deciding whether to make an order under subparagraph (1), the Court must consider whether there are any circumstances necessitating the earlier production of documents.

161. **Presentation of parties' cases using Scott Schedules**

(1) The Court may direct the parties to submit a Scott Schedule instead of, or in addition to, tendering a list of issues or written submissions (including opening statements or closing submissions).

(2) In this paragraph, "Scott Schedule" means a table in which are set out each issue to be determined by the Court, and each party's case or submissions on that issue (including, where applicable, the evidence relied on).

162. **Simplified adjudication process protocol**

(1) If each party to a case placed in the TIC List has agreed in writing, before the affidavits of evidence-in-chief for the case are filed and served, to apply a simplified adjudication process protocol to the case, then, unless the Court directs otherwise, the simplified adjudication process protocol will apply to the case.

(2) The parties to a case placed in the TIC List must indicate, in the Case Management Plan filed under paragraph 81(1) of these Practice Directions, whether there is any agreement in writing between the parties to apply a simplified adjudication process protocol to the case.

(3) Where the parties to a case have agreed in writing to apply a simplified adjudication process protocol to the case —

(a) the parties must inform the Court of the agreement without delay;

(b) each party must arrange for the forms for the information required to apply the protocol to be completed and signed by the counsel for that party or, if that party acts in person, by that party; and

(c) the parties must file the signed forms mentioned in subparagraph (b).

(4) After the signed forms mentioned in subparagraph (3)(b) are filed, no amendment is to be made to those forms, except in exceptional circumstances and with the approval of the Court.

(5) Where a simplified adjudication process protocol applies to a case under subparagraph (1), the Court may do either or both of the following to facilitate the just, expeditious and economic disposal of the case:

(a) with the consent of the parties, modify the protocol or any provision of the protocol;

(b) give such further directions consistent with the protocol as the Court sees fit to supplement the protocol.

(6) In this paragraph, "simplified adjudication process protocol" means the protocol set out in Part 2 of Appendix G of these Practice Directions or a version of that protocol containing such modifications as may be agreed in writing by the parties.

163. **Alternative dispute resolution**

(1) Each party to a case placed in the TIC List must consider the use of alternative dispute resolution.

(2) To avoid doubt, paragraphs 76(1) and 77(9), (10) and (11) of these Practice Directions apply to a case placed in the TIC List.

(3) To avoid doubt, the parties to a case placed in the TIC List must answer questions 31 and 32 of the Case Management Plan filed under paragraph 81(1) of these Practice Directions.

Form 10

Para 81(1)

Proposed Case Management Plan

[Title as in cause or matter]

[PLAINTIFF'S/DEFENDANT'S] PROPOSED CASE MANAGEMENT PLAN

The [Plaintiff/Defendant] hereby sets out his/her proposed Case Management Plan for the conduct of [case number] as follows:

[To state response in **bold** immediately after every question]

List of Factual, Legal & Technical Issues

1. Have you discussed the factual, legal and technical issues with opposing counsel?
    a. If yes, please categorise the issues according to "Agreed Factual/Legal/Technical Issues" and consolidate the issues into a document entitled "List of Issues" for discussion at the Case Management Conference ("CMC"). Please also see Q2 below.
    b. If not, please take the necessary steps to meet and confer with opposing counsel on parties' respective lists of issues with the objective of preparing a list of factual, legal and technical issues. This should take place before the CMC. Please also see Q2 below.
2. Have you furnished a "List of Issues" to the SICC Registry at least 7 clear working days prior to the first CMC?

Adoption of protocols

2A. Do the parties intend to adopt any of the protocols set out at Appendix F of these Practice Directions? If so, please specify which and whether the parties intend to modify the protocols in any way.

Pleadings

3. Do you intend to amend any pleadings or make a request for particulars? If yes, please state briefly:
    a. What amendments will be made to the pleadings and when can the draft amendment(s) be furnished to the other parties?
    b. What requests for particulars will be made and when can the request for particulars be served on the other parties?

3A. Are the pleadings complex or voluminous? If yes, please state:

a. Whether a summary of pleadings with appropriate cross-references to the relevant paragraphs in the pleadings, or alternatively, a memorial-style brief, which may include a summary of the pleadings, the salient points of evidence and the applicable law, will assist the Court.
b. What directions in relation to form, contents and page limit, if any, are being sought from the Court.

4. Are there any outstanding requests for particulars? If yes, please provide brief details of the outstanding requests and when a response can be expected.

Interlocutory Applications

5. Do you intend to make any applications between now and 4 weeks after the date of the CMC? If yes, what are the intended interlocutory applications and when can they be filed?
6. Have you informed your opposing counsel about your intended interlocutory applications? If yes, what was opposing counsel's response?

Production of Documents

<u>If parties have not completed providing to the Court and all parties documents on which each party relies pursuant to Order 110 rule 14(1):</u>

7. When can you expect to provide to Court and to all parties documents on which you rely?

7A. Whether affidavits of evidence-in-chief should be exchanged prior to discovery and/or the production of documents?

<u>If parties have complied with Order 110 rule 14(1):</u>

8. Do you expect to serve a request to produce pursuant to Order 110 r 15(1) and if so, when will you serve the request to produce and how much time do you expect the opposing party will require to produce the documents?
9. Have you been served with a request to produce? If so, are you objecting to the request to produce? If you are objecting, when can you serve the notice of objection? If not, when can you produce the documents?
10. Have you been served with a notice of objection pursuant to Order 110 r 16(1)? If so, when will you be filing the application to the Court for documents to be produced?

Witnesses

<u>Factual Witnesses</u>

11. How many witnesses of fact do you propose to call to give evidence at trial? Please state the name of each witness and briefly describe the facts to which the witness will attest to.
12. Will an interpreter be required for any of the witnesses listed in Q11 above? If yes, please state which language the witness will be giving evidence in. You are reminded to make the necessary arrangements for interpreters at trial.
13. If you are unable to give the name of any of the witnesses, please explain why.

<u>Experts</u>

14. Do you wish to adduce expert evidence at the trial? If yes:

a. Are parties able to agree on having a single Court expert to give expert evidence?
b. If your answer to Q14a. is in the negative, how many expert witnesses do you propose to rely on at trial?
c. Please give the names of each expert and identify the expert's field of expertise.
d. If you are unable to give the expert's/experts' names, please explain why.
e. Please state whether the parties have any objections to any other parties' individual expert witnesses and if so, the grounds on which the objections are being made.

15. Has the expert(s) named in Q14 above prepared a report?
    a. If yes, has that report been served on the other party/parties?
    b. If not, when can the expert's/experts' reports be served on the other party/parties?

16. When will your expert(s) named in Q14 above be available for a meeting of the experts? Please confer with opposing counsel to propose a range of dates for the meeting of the experts and/or joint inspection.
17. Is this a suitable case for a joint expert, amicus curiae and/or assessor to be appointed for any particular issue/field?
    a. If yes, please state name(s) of the joint expert(s), amicus curiae and/or assessor(s) whom parties propose to use and attach their curriculum vitae.
    b. If not, please explain.

18. Is this a suitable case to employ the concurrent evidence procedure at the trial? Please explain why.

<u>Factual and Expert Witnesses – Video Link</u>

19. Will any of the factual or expert witnesses be required to give evidence via video link? If yes, please state the names of the witness(es) who will be giving evidence via video link and when you propose to take out the relevant application for evidence to be given in such a manner.

Evidence

20. Do you intend to make an application to disapply the Evidence Act (Cap. 97) and to substitute other rules of evidence (and, in particular, whether you wish to make an application for the matter to be determined by reference to documentary evidence only, without the examination of witnesses in open Court)?

Questions of Foreign Law

21. Are there any questions of foreign law involved in the case?
22. If so, do you intend to make an application for questions of foreign law to be determined on the basis of submissions instead of proof?

Confidentiality Orders

23. Do you intend to make an application to seek any confidentiality orders for the proceedings?

Trial

24. How long do you estimate the trial or final hearing will take? You may provide a range of days, if appropriate.
25. What is the earliest date by which you believe you can be ready for trial?
26. Do you intend to make a request for the trial to be heard by a panel of three trial Judges instead of one trial Judge?
27. Do you intend to apply to bifurcate the trial? If yes, what are your grounds?

Costs

28. What is your estimate of your costs incurred to date?
29. What do you estimate your overall costs will likely to be in the event that the matter proceeds to trial?

Any Other Issues

30. Apart from the questions listed above, are there any other issues or concerns that you wish to highlight to the Court and/or opposing counsel? If yes, please state these issues briefly and how you propose for them to be addressed.

Settlement and Alternative Dispute Resolution ("ADR")

31. Have parties attempted mediation or any other form of ADR prior to the commencement of this action? If yes, please provide brief details of when this was done and why litigation remains necessary.
32. Are parties contemplating settlement through mediation or any other form of ADR?
    If yes, please indicate:
    a. Whether parties have agreed to proceed for mediation or any other form of ADR.
    b. When the proposed date of mediation or any other form of ADR would be.
    c. Whether parties require any directions on how they should proceed to mediation or any other form of ADR.

    If no, please state why mediation or any other form of ADR will not be appropriate.

Questions relating to the Technology, Infrastructure and Construction List (or TIC List) of the Court

33. Are the parties of the view that this case contains a TIC Claim (as defined in paragraph 154 of these Practice Directions)? If yes, please indicate whether parties have agreed for this case to be placed in the TIC List under paragraph 155 of these Practice Directions.
34. If the parties have agreed for this case to be placed in the TIC List under paragraph 155 of these Practice Directions, please indicate:
    a. Whether the parties have agreed to apply the pre-action protocol at Part 1 of Appendix G of these Practice Directions, or a version of that protocol containing such modifications as may be agreed in writing by the parties. If yes, please indicate whether that protocol was applied by the parties prior to the commencement of these proceedings.
    [Note: If a modified version of the pre-action protocol was applied, please exhibit a copy of the protocol applied by the parties at the end of this Form.]
    b. Whether the parties have agreed to apply the simplified adjudication process protocol at Part 2 of Appendix G of these Practice Directions, or a version of that protocol containing such modifications as may be agreed in writing by the parties.
    [Note: If the parties have agreed to a modified version of the simplified adjudication process protocol at Part 2 of Appendix G of these Practice Directions, please exhibit a copy of the modified protocol at the end of this Form.]

Dated this day of , 20 .

_____

[The Plaintiff/Defendant or the Counsel for the Plaintiff/Defendant as the case may be]

Form 12A

Para 106A(2)

Form of Summary Table
for Applications for Further and Better Particulars, Discovery, Production of Documents or Interrogatories

Case number	
Case Title	
Application for	Further & Better Particulars / Discovery / Production of Documents / Interrogatories *(Delete as appropriate)*

S/N	A	B	C	D	E
	Category / Request	**Issue / reference to pleading / affidavit***	**Applicant's submissions****	**Respondent's submissions*****	**Applicant's submissions in reply to respondent's submissions**
1.	(E.g. Minutes of Meeting of Board of Directors on 2 Jan 2021)	(E.g. Relevancy, Privilege) (E.g. paragraphs 13 to 15 of the Defence / paragraphs 3 to 6 and page 32 of the affidavit of X dated dd/mm/yy)			
2.					
3.					

** Reference to the specific paragraph and/or page of a pleading or affidavit should be stated. Parties are to categorise the requests and confer on points of agreement.*
*** The applicant is to state the applicant's submissions.*
****The respondent is to state the respondent's submissions. Where the respondent agrees to the request, the respondent may state so in this column.*

APPENDIX G PART 1

Part XXIV

PRE-ACTION PROTOCOL FOR DISPUTE INVOLVING TIC CLAIM

This Protocol is voluntary, and the parties may agree to apply this Protocol or a version of this Protocol containing such modifications as may be agreed in writing by the parties. If the parties agree in writing to apply this Protocol or a modified version of this Protocol, then paragraph 155(4) of these Practice Directions applies.

1. Definition

In this Protocol, "TIC Claim" has the same meaning as in paragraph 154 of these Practice Directions.

2. General

(1) This Protocol seeks to facilitate the early exchange of information about a plaintiff's claims and a defendant's response to those claims in order to:

(a) put the parties in a position to make informed decisions about the possibility of settlement without recourse to litigation; and

(b) support the efficient management of proceedings where litigation is necessary.

(2) This Protocol must not be used to secure an unfair advantage or to incur costs unnecessarily.

(3) The costs incurred from complying with this Protocol should be proportionate to the complexity and monetary value involved in the dispute.

(4) Where litigation is commenced in respect of a dispute involving a TIC claim, any costs incurred by a party from complying with this Protocol before the commencement of the litigation cannot be recovered, unless the party satisfies the Court that those costs constitute costs of or incidental to the litigation proceedings, and that the party is entitled to recover such costs as against any other party under Order 59, Rule 3(1) and (2) or Order 110, Rule 46(1) of the Rules of Court.

3. **Letter of claim**

The plaintiff must send to each proposed defendant a letter of claim which:

(a) states the plaintiff's full name and address;

(b) states the full name and address of each proposed defendant;

(c) contains a brief summary of each claim, including:

(i) a list of the main contractual or statutory provisions relied on in support of the claim;

(ii) a summary of every relief claimed, including, where applicable, the monetary value of the claim and an appropriate breakdown of that monetary value;

(iii) a list of the issues to which expert evidence, if any, will be directed; and

(iv) the names of any experts (who have already been engaged by the plaintiff) on whose evidence the plaintiff intends to rely; and

(d) exhibits, in an annex to the letter of claim, the documents relied on in support of the claim.

4. **Objections to claim**

(1) If a proposed defendant intends to object to the whole or any part of a plaintiff's claim on the ground that:

(a) the court lacks jurisdiction;

(b) the matter should be referred to arbitration; or

(c) the proposed defendant has been wrongly named in the letter of claim as a defendant,

the objection must be raised by the proposed defendant in writing, by way of a letter of objection that is sent to the plaintiff within 28 days after the date the proposed defendant receives the letter of claim.

(2) The letter of objection must specify each part of the claim to which the objection relates, set out the grounds relied on and, where appropriate, identify the correct person to be named as a defendant (if known).

(3) Any failure to take such objection does not affect a proposed defendant's right to do so in any litigation proceedings, but the Court may take such failure into account when considering the question of costs in the litigation proceedings.

(4) Where a proposed defendant sends a letter of objection, the proposed defendant is not required to send a letter of response in accordance with paragraph 5, in relation to any claim or part of a claim to which the letter of objection relates.

(5) If, at any stage before a plaintiff commences proceedings, a proposed defendant withdraws any objection stated in the letter of objection, then paragraph 5 applies to any claim or part of a claim to which the withdrawn objection relates, as if the letter of claim had been received on the date on which the objection is withdrawn.

5. The proposed defendant's response

(1) A proposed defendant must, within 28 days after the date the proposed defendant receives a letter of claim, send a letter of response to the plaintiff.

(2) The letter of response must:

(a) contain a brief summary of the proposed defendant's response to each claim, including:

(i) a list of the main contractual or statutory provisions relied on in resisting the claim;

(ii) a summary of the basis for resisting the claim;

(iii) a list of the issues to which expert evidence, if any, will be directed; and

(iv) the names of any experts (who have already been engaged by the proposed defendant) on whose evidence the proposed defendant intends to rely;

(b) contain, if the proposed defendant intends to make any counterclaim, a brief summary of each counterclaim containing the matters set out in paragraph 3(c); and

(c) exhibit, in an annex to the response, the documents relied on to resist the plaintiff's claim or in support of the proposed defendant's counterclaim.

(3) If a plaintiff does not receive a letter of response within 28 days after the date a proposed defendant receives the plaintiff's letter of claim, the plaintiff is entitled to commence proceedings against that proposed defendant without further compliance with this Protocol, and this Protocol ceases to apply to the dispute.

6. Plaintiff's response to counterclaim

(1) A plaintiff shall provide a response to a proposed defendant's counterclaim within 21 days after the date the plaintiff receives the proposed defendant's letter of response.

(2) The plaintiff's response to the counterclaim must:

(a) contain a brief summary of the plaintiff's response to the counterclaim, including the matters set out in paragraph 5(2)(a); and

(b) exhibit, in an annex to the response, the documents relied on to resist the defendant's counterclaim, if such documents differ from those exhibited in the plaintiff's letter of claim.

7. Pre-action meeting

(1) The parties must convene a pre-action meeting within 21 days after —

(a) the date the plaintiff receives the proposed defendant's letter of response; or

(b) if the proposed defendant has included a counterclaim in the proposed defendant's letter of response — the date the proposed defendant receives the plaintiff's letter of response to the counterclaim.

(2) The pre-action meeting should generally be attended by:

(a) where a party is an individual, that individual, or, where a party is a body corporate, a representative of that body who has authority to settle or recommend settlement of the dispute;

(b) each party's legal counsel, if any;

(c) where an insurer is involved in the matter, a representative of the insurer or the insurer's legal counsel, or both; and

(d) where a claim is made or defended on behalf of some other party (such as, for example, a claim made by a main contractor pursuant to a contractual obligation to pursue claims on behalf of a subcontractor), the party on whose behalf the claim is made or defended or that party's legal counsel, or both.

(3) The aim of the pre-action meeting is to identify the main issues in and root causes of the dispute, and to consider the following matters:

(a) whether, and if so how, the dispute might be resolved without recourse to litigation; and

(b) if litigation is necessary, the steps that ought to be taken to ensure that the litigation is conducted in accordance with the following general principles:

(i) the expeditious and efficient administration of justice according to law;

(ii) procedural flexibility;

(iii) fair, impartial and practical processes;

(iv) procedures compatible with and responsive to the needs and realities of international commerce.

(4) The parties may agree to replace a pre-action meeting with an alternative dispute resolution process such as mediation.

(5) If the parties are unable to agree on a means of resolving the dispute other than by litigation, the parties are to seek to agree on the following matters:

(a) if there is any area where expert evidence is likely to be required, how expert evidence is to be dealt with, including whether a common expert may be appointed and, if so, who that common expert should be;

(b) whether disclosure of documents in the litigation may be dispensed with in view of the disclosure of documents pursuant to this Protocol; the extent and manner of any further disclosure of documents with a view to saving costs; and whether further disclosure should take place only after parties have filed and served the affidavits of evidence-in-chief of all or some of the witnesses;

(c) whether the simplified adjudication process protocol set out in Part 2 of Appendix G of these Practice Directions or a version of that protocol containing such modifications as may be agreed in writing by the parties, should apply in the litigation, and if so, the claims which should be governed by that protocol;

(d) the conduct of the litigation, with the aim of proceeding in accordance with the general principles referred to in paragraph 7(3)(b).

(6) Any party who attends any pre-action meeting is at liberty, and may be required, to disclose to the Court:

(a) that the pre-action meeting took place, the date and time of the meeting and the attendees present;

(b) the identity of any party who refused to attend, and the grounds for such refusal;

(c) any agreements concluded between the parties; and

(d) whether alternative means of resolving the dispute were considered or agreed.

(7) Except as provided in paragraph 7(6), everything said by a party at a pre-action meeting must be treated as being said without prejudice to that party's rights in any litigation that may be commenced.

(8) If no pre-action meeting takes place, any party involved in the discussions concerning the pre-action meeting may be required to disclose to the Court the reasons why the pre-action meeting did not take place.

(9) The process under this Protocol ends at the completion of the pre-action meeting or, if no meeting takes place, 14 days after the date of the expiry of the period in which the meeting should otherwise have taken place.

8. Non-compliance with Protocol

(1) Where litigation is commenced in respect of the parties' dispute, the Court may, where the Court deems it appropriate, impose costs on a party for any non-compliance with this Protocol.

(2) The Court must consider all relevant circumstances when determining whether costs ought to be imposed on a party for non-compliance with this Protocol.

9. Exceptions

(1) If compliance with any part of this Protocol will render a plaintiff's claim time-barred under any applicable law, the plaintiff may commence litigation without first complying with this Protocol, but must apply to the Court for directions as to whether the proceedings ought to be stayed pending compliance with this Protocol.

(2) A plaintiff is not required to comply with this Protocol before commencing litigation, if the proposed proceedings:

(a) include a claim for interim injunctive relief;

(b) will be the subject of a claim for summary judgment under Order 14 of the Rules of Court; or

(c) relate to the same or substantially the same issues that were previously the subject of a formal alternative dispute resolution procedure such as mediation.

APPENDIX G PART 2

Part XXIV

SIMPLIFIED ADJUDICATION PROCESS PROTOCOL

This Protocol is voluntary, and each party to the case may agree to apply this Protocol or a version of this Protocol containing such modifications as may be agreed in writing by the parties. If the parties agree in writing to apply this Protocol or a modified version of this Protocol, then paragraph 162 of these Practice Directions applies.

1. Purpose

This Protocol seeks to provide a cost-effective simplified adjudication process for certain claims in a case placed in the TIC List.

2. Definitions and Application

(1) In this Protocol, unless the context otherwise requires:

"Excluded Claim" means a claim pleaded in a plaintiff's Statement of Claim or a defendant's Counterclaim or third-party notice that is listed, by the agreement of the parties, in a copy of Form A of this Protocol that is signed by the parties;

"Higher Value Excluded Claim" means an Excluded Claim the value of which is equal to or above the Threshold Quantum;

"Lower Value Excluded Claim" means an Excluded Claim the value of which is below the Threshold Quantum;

"Main Claim" means any claim pleaded in a plaintiff's Statement of Claim or a defendant's Counterclaim or third-party notice that is not an Excluded Claim;

"Scott Schedule" has the same meaning as in paragraph 161 of these Practice Directions;

"third party notice" means a third party notice mentioned in Order 16, Rule 1(1) of the Rules of Court;

"Threshold Quantum" means $50,000 or, if the parties have agreed otherwise, such other quantum as the parties have indicated in a copy of Form B of this Protocol that is signed by the parties;

"TIC Claim" has the same meaning as in paragraph 154 of these Practice Directions;

"TIC List" has the same meaning as in paragraph 153(2) of these Practice Directions.

(2) The simplified adjudication process set out in this Protocol applies to every Excluded Claim.

(3) This Protocol applies, with the necessary modifications, to a Counterclaim and to any third-party proceedings as if a defendant that issues a Counterclaim or a third-party notice were a plaintiff and a person against whom a Counterclaim or a third-party notice is issued were a defendant, and to any subsequent party proceedings.

(4) Every Lower Value Excluded Claim is to be determined in accordance with paragraph 3 of this Protocol.

(5) Every Higher Value Excluded Claim is to be determined in accordance with paragraph 4 of this Protocol.

(6) The simplified adjudication process set out in this Protocol does not apply to any Main Claim.

3. Proportionate recovery for Lower Value Excluded Claim

(1) Unless the parties agree otherwise, each party is entitled to recover such percentage of that party's Lower Value Excluded Claims as is proportionate to the percentage of that party's Main Claims that is recovered by that party.

(2) If the parties have agreed to a different basis for determining the percentage of a party's Lower Value Excluded Claims that the party is entitled to recover, the parties must indicate that basis in a copy of Form C of this Protocol that is signed by the parties, and each party is entitled to recover such percentage of that party's Lower Value Excluded Claims as is determined on that basis.

Illustration A: The parties agree that the plaintiff is entitled to recover a percentage of its Lower Value Excluded Claims that is proportionate to the percentage of that party's Main Claims that is recovered by that party. The total value of the plaintiff's Main Claims is $1m. The total value of the plaintiff's Lower Value Excluded Claims is $50,000. If the Court determines that the plaintiff is entitled to 80% of its Main Claims, i.e. $800,000, the plaintiff would be entitled to 80% of its Lower Value Excluded Claims, i.e. $40,000.

Illustration B: The parties agree that the plaintiff would be entitled to recover 100% of its Lower Value Excluded Claims if the plaintiff recovers at least 50% of its Main Claims; otherwise, the plaintiff would not be entitled to any amount of its Lower Value Excluded Claims. The total value of the Main Claims of the plaintiff is $1m. The total value of the Lower Value Excluded Claims of the plaintiff is $50,000.

(a) If the Court determines that the plaintiff is entitled to recover 60% of its Main Claims, i.e. $600,000, the plaintiff would be entitled to recover 100% of its Lower Value Excluded Claims, i.e. $50,000.

(b) If the Court determines that the plaintiff is entitled to recover 40% of its Main Claims, i.e. $400,000, the plaintiff would not be entitled to recover any amount of its Lower Value Excluded Claims.

Illustration C: The parties agree that the plaintiff would be entitled to recover 50% of its Lower Value Excluded Claims regardless of whether it succeeds in its Main Claims. The total value of the plaintiff's Main Claims is $1m. The total value of the plaintiff's Lower Value Excluded Claims is $50,000.

(a) If the Court determines that the plaintiff is entitled to recover 100% of its Main Claims, i.e. $1m, the plaintiff would be entitled to recover 50% of its Lower Value Excluded Claims, i.e. $25,000.

(b) If the Court determines that the plaintiff is not entitled to recover any amount under its Main Claims, the plaintiff would still be entitled to recover 50% of its Lower Value Excluded Claims, i.e. $25,000.

(3) No factual or expert evidence is to be given in relation to any Lower Value Excluded Claim. To avoid doubt, this subparagraph does not prevent any party from adducing factual or expert evidence that is relevant to any Main Claim in the action.

4. Simplified adjudication procedure for Higher Value Excluded Claim

Agreed Bundle of Documents

(1) The parties are to jointly prepare an Agreed Bundle of Documents for the Higher Value Excluded Claims in accordance with the following subparagraphs.

(a) The plaintiff must send to all other parties a copy of the draft index for the Agreed Bundle of Documents.

(b) Each party (other than the plaintiff) must, within 2 weeks after receiving the draft index, inform the plaintiff and every other party in writing of the scope of its agreement to the contents of the Agreed Bundle and of any amendments that it wishes to make to the draft index.

(c) Unless the Court determines otherwise, any party who fails to comply with subparagraph (b) will be treated as having agreed to the contents of the Agreed Bundle.

(d) The plaintiff must indicate the scope of any agreement or disagreement to the contents of the Agreed Bundle in the index for the Agreed Bundle of Documents.

Scott Schedule

(2) The parties must jointly prepare a Scott Schedule briefly setting out the parties' positions on each Higher Value Excluded Claim in the following manner.

(a) The Scott Schedule must set out each Higher Value Excluded Claim in a column.

(b) Each party's case or submissions on liability for, and the quantum of, a Higher Value Excluded Claim are to be set out against that Higher Value Excluded Claim in subsequent adjacent columns.

Evidence

(3) No factual evidence is to be given in relation to any Higher Value Excluded Claim. To avoid doubt, this subparagraph does not prevent any party from adducing factual evidence that is relevant to any Main Claim in the action.

(4) If any person is appointed to give expert evidence of a technical nature on, or on the quantum of, any Main Claim, that person may also give expert evidence on any Higher Value Excluded Claim, if necessary, in accordance with subparagraphs (5) to (8).

(5) The expert evidence is to be confined to a list of issues, and is to be based on a common set of agreed or assumed facts that is determined in accordance with paragraph 157(3) of these Practice Directions.

(6) The persons who will give expert evidence of a technical nature (each called in this paragraph a technical expert) must confer and prepare a joint statement setting out the issues on which they agree, and the issues on which they disagree, accompanied by a brief statement of the reasons for their disagreement. Each party's technical expert must then prepare an individual report, limited to the areas of disagreement. A joint report under paragraph 158(2) of these Practice Directions, in respect of the issues on which the experts agree, need not be prepared.

(7) The persons who will give expert evidence on the quantum of a Higher Value Excluded Claim (each called in this paragraph a quantum expert) must confer and prepare a joint schedule setting out the amount that a party is entitled to recover for each Higher Value Excluded Claim, on the assumption that liability for that Higher Value Excluded Claim is established, in accordance with the following subparagraphs.

(a) The quantum experts must, as far as possible, agree on the amount that a party is entitled to recover for each Higher Value Excluded Claim.

(b) If the quantum experts are unable to agree on the amount that a party is entitled to recover for a Higher Value Excluded Claim, the amount assessed by each party's quantum expert must be stated in the joint schedule, and the quantum experts are to include in the joint schedule a concise joint explanation (not exceeding 250 words for each Higher Value Excluded Claim) on the reasons for their difference in opinion.

(8) Each expert who issued a technical experts' joint statement, a technical expert's individual report, or a quantum experts' joint schedule, must sign the statement, report

or schedule (as the case may be) and exhibit it in an affidavit made by that expert. Unless the Court directs otherwise, no technical expert or quantum expert is to give oral evidence or be cross-examined on the Higher Value Excluded Claims.

Submissions

(9) Unless the Court directs otherwise, the parties may include written closing submissions on the Higher Value Excluded Claims in their written closing submissions for the Main Claims.

(10) Unless the Court directs otherwise, each party's written closing submissions must not exceed 1 page for each Higher Value Excluded Claim, and must not exceed 30 pages in total for all Higher Value Excluded Claims.

(11) Unless the Court directs otherwise, no oral submissions are to be made for Higher Value Excluded Claims.

(12) Subparagraphs (10) and (11) do not affect the Court's power to request further written or oral submissions on any issue identified by the Court, if the Court considers that such further submissions would assist in determining the Higher Value Excluded Claims.

Determination

(13) The Court may determine the issues relating to liability for and the quantum of the Higher Value Excluded Claims based on the documents in the Agreed Bundle of Documents mentioned in subparagraph (1), the parties' Scott Schedule mentioned in subparagraph (2), the expert evidence mentioned in subparagraphs (3) to (8), the parties' submissions mentioned in subparagraphs (9) to (12), and the Court's determination of the Main Claims.

Form A

Claims governed by Simplified Adjudication Process ("Excluded Claims")

Plaintiff's Claims

S/N	Description of plaintiff's claim	Paragraph number(s) of the plaintiff's Statement of Claim where the claim is pleaded	Amount claimed by the plaintiff
1.			
2.			
3.			

Defendant's Claims*

S/N	Description of defendant's claim	Paragraph number(s) of the defendant's Counterclaim or third-party notice where the claim is pleaded	Amount claimed by the defendant
1.			
2.			
3.			

**This table may be omitted if it is not applicable.*

*[signature]***

_____

Solicitors for the plaintiff:

Date:

*[signature]***

_____

Solicitors for the defendant:

Date:

***In the event a party is acting in person, this Form may be signed by the party who is acting in person.*

Form B

Agreed Threshold Quantum

☐ The "Threshold Quantum" is $50,000 as stated in paragraph 2(1) of this Protocol.

OR

☐ The parties agree to vary the "Threshold Quantum" under paragraph 2(1) of this Protocol from $50,000 to $_____.

*[signature]**

_____

Solicitors for the plaintiff:

Date:

*[signature]**

_____

Solicitors for the defendant:

Date:

**In the event a party is acting in person, this Form may be signed by the party who is acting in person.*

Form C

Agreed Proportion of Recovery for Lower Value Excluded Claims

The parties agree that: [*please indicate one of the following*]

☐ the claiming party is entitled to recover a percentage of that party's Lower Value Excluded Claims that is proportionate to the percentage of that party's Main Claims recovered by that party.

☐ the claiming party is entitled to recover [*please state*]% of its Lower Value Excluded Claims in the event that it recovers at least [*please state*]% of its Main Claims; otherwise, the claiming party will not be entitled to recover any amount of its Lower Value Excluded Claims.

☐ the claiming party is entitled to recover [*please state*]% of its Lower Value Excluded Claims regardless of whether that party succeeds in its Main Claims.

☐ the basis for determining the claiming party's entitlement to recover its Lower Value Excluded Claims is as follows:

[*Please state any other agreed basis for determining the claiming party's entitlement.*]

*[signature]***

_____

Solicitors for the plaintiff:

Date:

*[signature]***

_____

Solicitors for the defendant:

Date:

***In the event that a party is acting in person, this Form may be signed by that party.*