

LITIGATION-MEDIATION-LITIGATION PROTOCOL (“LML PROTOCOL”)

1. Application of LML Protocol

- a. This LML Protocol applies where the parties have agreed to resolve the whole or any part of a dispute, controversy or claim (a “Dispute”) in accordance with a Litigation-Mediation-Litigation Clause (“LML Clause”) providing for litigation in the Singapore International Commercial Court (“SICC”) or for dispute resolution under this LML Protocol, or have otherwise agreed to submit to the jurisdiction of the SICC under the LML Clause.
- b. Nothing in this LML Protocol precludes the parties from agreeing to refer a Dispute for mediation other than in accordance with this LML Protocol at any time.

2. Referral to Mediation

- a. Parties may refer a Dispute for mediation in accordance with this LML Protocol, regardless whether the parties have commenced any proceedings in the SICC.
- b. Where the parties have not commenced any proceedings in the SICC, and any party wishes to commence proceedings under this LML Protocol, that party must commence proceedings in the SICC by filing and serving an Originating Application and Claimant’s Statement in accordance with the Singapore International Commercial Court Rules 2021 (“SICC Rules 2021”). The Claimant’s Statement must be accompanied by a letter to the SICC Registry stating that the parties have agreed to refer the Dispute for mediation in accordance with this LML Protocol, must state details of the Dispute, and must be accompanied by a copy of the parties’ written dispute resolution agreement. The defendant to the proceedings must file and serve a Defendant’s Statement in accordance with the SICC Rules 2021. The Defendant’s Statement must state whether the defendant objects to the referral of the Dispute to mediation in accordance with this LML Protocol, and, if so, provide concise reasons for the objection.
- c. Where parties have commenced proceedings in the SICC, and the parties agree to refer the Dispute for mediation in accordance with this LML Protocol, one of the parties (“Party A”) must file with the SICC Registry a letter stating that the parties have agreed to refer the Dispute for mediation in accordance with this LML Protocol. Party A’s letter must be filed within 28 days after the filing and service of the Defendant’s Statement, must be copied to every other party to the proceedings in the SICC, must state details of the Dispute that the parties have agreed to refer for mediation, and must be accompanied by a copy of the parties’ written dispute resolution agreement. Any other party to the proceedings (“Party B”) may object to the referral of the Dispute for mediation in accordance with this LML Protocol by filing with the SICC Registry, within 7 days after the date Party A’s letter is filed, a letter that identifies each party who, to Party B’s knowledge, objects to the referral, and provides concise reasons for the objection.

- d. The Court may, without an oral hearing, determine any objection and give directions in relation to the referral of the Dispute for mediation in accordance with this LML Protocol.
- e. The Court may, at a case management conference, give directions in relation to the mediation of the Dispute under this LML Protocol, or for the fair, expeditious and efficient disposal of the action.

3. Commencement of Mediation

The Claimant or Party A (as the case may be) must, by the date and time (if any) stated in the Court's directions, take the relevant steps under the Mediation Rules of the Singapore International Mediation Centre ("SIMC") to commence mediation.

4. After commencement of mediation

- a. The SIMC must notify the parties by letter of the date on which the mediation was commenced ("Mediation Commencement Date"). The letter will be copied to the SICC Registry.
- b. The Court may grant a case management stay of the SICC proceedings for a period starting on the Mediation Commencement Date and ending on the earlier of the following:
 - i. 8 weeks after the Mediation Commencement Date; or
 - ii. the date on which the mediation ended ("Mediation Conclusion Date"), as set out in SIMC's notification to SICC of that date.
- c. The Court may extend the case management stay for good reasons.
- d. The SIMC will administer the mediation in accordance with the Mediation Rules of the SIMC.

5. Interim Relief and Residual Powers

- a. Despite any case management stay of the SICC proceedings, the Court may, on the application of a party, make such interim or supplementary orders as the Court thinks fit for the purposes of preserving the rights of any party, including but not limited to an order in relation to any of the following matters:
 - i. the appointment of any expert;
 - ii. the determination of any question of law or the construction of any document;
 - iii. the preservation, interim custody or sale of any property that is or forms part of the subject-matter of the Dispute;
 - iv. the preservation and interim custody of any evidence;
 - v. the production of any document;
 - vi. an interim injunction or other interim measure, including but not limited to an interim injunction to ensure that any judgment or order made in the SICC proceedings, or any mediated settlement agreement, is not rendered ineffectual by the dissipation of assets by a party; and

- vii. the enforcement of any obligation of confidentiality.
- b. The applicant in an application to the Court mentioned in clause 5(a) must notify the SIMC by letter (copied to the SICC Registry):
 - i. of the making of the application, within 3 business days after the application is made; and
 - ii. of the Court's decision on the application, within 5 business days after the Court has decided the application.

6. Conclusion of Mediation

- a. After the case management stay has expired, the SICC Registry will convene a case management conference.
- b. If the parties have agreed to adjourn the mediation in respect of any Dispute, the parties may seek directions from the Court, in relation to subsequent mediation sessions, and an extension of the case management stay under clause 4(c), at the case management conference.
- c. If the parties have concluded a mediated settlement agreement in respect of every Dispute referred for mediation, the parties must inform the SICC Registry by letter whether the parties wish to record the terms of the mediated settlement agreement as an order of court and, if so, provide the SICC Registry with a copy of the mediated settlement agreement. The letter must be filed at least 5 business days before the case management conference. The parties may record the terms of the mediated settlement agreement as an order of court at the case management conference.
- d. If the parties have concluded a mediated settlement agreement in respect of one or more, but not all, of the Disputes referred for mediation, the parties must inform the SICC Registry by letter whether the parties wish to record the terms of the mediated settlement agreement as an order of court and, if so, state which Disputes are settled and which Disputes are not settled, and provide the SICC Registry with a copy of the mediated settlement agreement. The letter must be filed at least 5 business days before the case management conference. At the case management conference:
 - i. the parties may record the terms of the mediated settlement agreement as an order of court; and
 - ii. the parties may seek the directions of the Court on the conduct of the proceedings in the SICC in respect of the Disputes that were not settled.
- e. If the parties have not concluded a mediated settlement agreement in respect of any Dispute referred for mediation, the parties may seek the directions of the Court on the conduct of the proceedings at the case management conference.
- f. The parties agree to treat any Dispute that is settled in the course of the mediation as falling within the scope of the LML Clause or a jurisdiction agreement between the parties, regardless whether that Dispute was referred for mediation in accordance with this LML Protocol.

7. Financial Matters

- a. To avoid doubt, the parties shall pay to the Registrar of the Supreme Court, in accordance with the applicable Rules of Court, the applicable fees and charges (however described) upon the commencement and during the continuation of proceedings in the SICC.
- b. To avoid doubt, the parties shall pay to the SIMC, in accordance with the SIMC mediation rules, the applicable fees and charges (however described) upon the commencement and during the continuation of mediation.

8. Definitions

In this LML Protocol, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, namely:

“business day” means any day other than a Saturday, Sunday or a public holiday; and

“public holiday” means any day which is declared to be or proclaimed as a public holiday or which under any written law is to be observed as a public holiday in Singapore.