

## Singapore International Mediation Centre spearheads Mediation of International Commercial Disputes and Use of innovative Arb-Med-Arb Procedure

### Introduction

The Singapore International Mediation Centre (SIMC) was launched on 5 November 2014. One significant innovation of the SIMC is the Arbitration-Mediation-Arbitration Protocol (AMA Protocol).

This article seeks to highlight some of the key features of the AMA Protocol jointly administered by the SIMC and the Singapore International Arbitration Centre (SIAC).

### SIAC-SIMC Arb-Med-Arb (“Arb-Med-Arb”)

Arb-Med-Arb is a new 3-stage process involving both arbitration and mediation, where a dispute is first referred to arbitration and thereafter to mediation. The dispute then reverts to arbitration for a consent award (if the mediation results in a settlement), or for the tribunal’s adjudication (if there is no settlement).

A party who wishes to commence arbitration under the AMA protocol has to first file with the registrar of the SIAC, a Notice of Arbitration. After the exchange of the Notice of Arbitration and Response to the Notice of Arbitration under the relevant arbitration rules, the Tribunal will stay the arbitration and inform the Registrar of the SIAC that the case can be submitted for mediation at the SIMC.

SIMC will then schedule a date for mediation (the Mediation Commencement Date) to commence under the SIMC Mediation Rules. The mediation is to be conducted and completed within 8 weeks from the Mediation Commencement Date.

During the 8 week period, all steps in arbitration are to be stayed pending the outcome of the mediation at SIMC.

If parties are able to settle their dispute through mediation, parties may request for their mediated settlement to be recorded as a consent award by the arbitral tribunal. The consent award would constitute an arbitral award within the framework of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“the New York Convention”) and would be enforceable as an award in countries which are signatories to the New York Convention.

If parties are unable to resolve their disputes through mediation, the dispute will revert back to arbitration, for the Tribunal to adjudicate the dispute.

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Under the SIAC-SIMC Arb-Med-Arb Protocol, the arbitrator(s) and the mediator(s) will be separately and independently appointed by SIAC and SIMC, respectively, under the applicable arbitration rules and mediation rules of each Centre. Unless the parties otherwise agree, the arbitrator(s) and the mediator(s) will generally be different persons.

## **Arb-Med-Arb Clause**

The SIMC has recommended parties wishing to engage in the AMA protocol should use the following provision:

*All disputes, controversies or differences (“Dispute”) arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC”) for the time being in force.*

*The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the Dispute through mediation at the Singapore International Mediation Centre (“SIMC”), in accordance with the SIAC-SIMC Arb-Med-Arb Protocol for the time being in force. Any settlement reached in the course of the mediation shall be referred to the arbitral tribunal appointed by SIAC and may be made a consent award on agreed terms.*

## **Commentary**

There may be some aspects of the AMA Protocol which may require clarification.

For example, under the current AMA protocol, the arbitration proceedings are stayed (after the exchange of the Notice of Arbitration and Response to the Notice of Arbitration) and the dispute referred to the SIMC for mediation for a period of 8 weeks in the usual case.

It is not immediately clear whether – and how – a disputant can apply for urgent interim relief, whether to an Emergency Arbitrator under Schedule 1 to the 2013 SIAC Rules, or whether to (for example) a Singapore Court under s. 12 of the International Arbitration Act, while the mediation is on-going in the 8 week period.

The answer may lie in clause 7 of the AMA Protocol, which allows the mediation to be effectively terminated before the 8 week period is up (and for the arbitration to resume), if the dispute cannot be settled by mediation prior to the expiry of the 8 week period.

## Conclusion

The SIAC-SIMC Arb-Med-Arb Protocol is a combination of mediation and arbitration – it provides the parties with a speedy, cost-saving mediation mechanism as well as the finality and enforceability of arbitration for the mutual benefit of parties.

It is envisaged that more commercial parties will adopt the AMA protocol in the resolution of their disputes as they become more familiar with it. SIMC's mediation services (which will include the AMA Protocol) will complement Singapore's reputation as a leading venue for the resolution of commercial disputes.