

# **SCL(S) PROTOCOL FOR THE USE OF EXPERTS' JOINT STATEMENTS IN ARBITRATION**

First edition launched in January 2026

Society of Construction Law (Singapore)

Downloadable at: <https://scl.org.sg/public-resources/protocols.html>

## **Attribution**

Most of the work involved in drafting the SCL(S) Protocol for the Use of Experts' Joint Statements in Arbitration ("Protocol") was carried out by the following members of the Working Group of the Committee on Thought Leadership ("Committee") of the Society of Construction Law (Singapore) ("SCL(S)"):

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Members of SCL(S), including council members, who have commented on the Protocol

The following organisations were also invited to contribute to the Protocol:

1. National University of Singapore (NUS)
2. Asia Pacific Institute of Experts (APIEx)
3. Tunneling and Underground Construction Society (Singapore) (TUCSS)
4. Association of Women in Construction (Singapore) (AWiCS)
5. Chartered Institute of Arbitrators (Singapore) Ltd (CIArb)
6. Chartered Institute of Building (CIOB)
7. Lighthouse Club (Singapore) (Lighthouse)
8. Royal Institution of Chartered Surveyors (RICS)
9. Singapore Contractors Association Ltd (SCAL)
10. Singapore Institute of Arbitrators (SIArb)
11. Singapore Institute of Architects (SIA)
12. Singapore Institute of Building Ltd (SIBL)
13. Singapore Institute of Surveyors and Valuers (SISV)
14. Society of Project Managers (SPM)

The contributors' comments were duly studied by the Working Group and, where considered appropriate, have influenced the text, although responsibility for the final version of the text and for any inadherence rests solely with the Working Group. The Working Group of the Committee wish to record their appreciation of the time and effort devoted by all those who commented.

We would also like to thank the SCL(S) and its Secretariat for its support and all individuals and organisations who have contributed to this Protocol, without whom this Protocol would not have been published.

We hope that the Protocol will prove valuable as a source of best practice for arbitration particularly in the construction, infrastructure, and energy spheres.

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## Introduction

In January 2019, the SCL(S) published in its newsletter the article *Experts' joint statements and discussions: What role should the lawyers play?*<sup>1</sup> which was relatively well-received and which provoked some discussion on this topic.

Thereafter, the SCL(S) had initiated a survey to ascertain the demand in the construction industry and arbitration community for a protocol on the use of experts' joint statements. The response was overwhelmingly in favour of such a protocol being drafted and made available. 95% of participants (comprising of experts, consultants, arbitrators and lawyers who are regularly involved in arbitrations in the construction sphere) indicated that they supported the use of such a protocol.

It is noted that other institutions such as the Chartered Institute of Arbitrators and the Academy of Experts have since engaged with these issues. They have issued various forms of guidance relating to best practice internationally in commercial arbitration, on the appointment and use of party-appointed and tribunal-appointed experts, and on the form and content of experts' joint statements.

We consider that there is value in capturing and collating such guidance within a coherent set of principles and guidelines applicable to the use of experts' joint statements, in the context of Singapore domestic arbitration and Singapore-seated international arbitrations. This is so as to encourage experts to identify and comment jointly on key issues on which they agree; and also to identify any key differences so as to best assist the tribunal in determining those disputed issues. Correspondingly, the process should also promote clarity, facilitate the use of agreed opinions, and ease the resolution of any key issues that remain in contention. This Protocol therefore seeks to provide practical and principled guidance on how the various stakeholders in an arbitration may best achieve these objectives.

In 2024, at the SCL(S) Construction Law Conference 2024, an eminent panel consisting of Dato' Mary Lim Thiam Suan, Mr David Thomas KC, Mr Ho Chien Mien and Mr Derek Nelson moderated by Mr Kelvin Teo, discussed "Making Expert Evidence Great" and commented on this draft Protocol.

In 2025, the Working Group invited additional contributors to review the draft Protocol, and their input was carefully considered and incorporated where appropriate.

These efforts have culminated in the first edition of the Protocol which is being launched in January 2026.

The Protocol is structured by way of the following sections:

1. Core Principles
2. Guidance and Commentary on the Core Principles
3. Form of Experts' Joint Statement / Expert's Supplementary Joint Statement

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<sup>1</sup> This is accessible at [https://www.scl.org.sg/index.php?option=com\\_content&view=article&id=640](https://www.scl.org.sg/index.php?option=com_content&view=article&id=640).

It is intended that arbitral tribunals and parties may adopt the Protocol and its Forms, in whole or in part, at the commencement of the arbitration or at any reasonable point of time thereafter.

The Protocol has been drafted in English. Copies of the Protocol may be obtained from the following weblink:

<https://scl.org.sg/public-resources/protocol.html>

Should you be referring to or reproducing any part of this Protocol in an article, book or treatise, or cite it in a submission to a court or tribunal, we would be grateful if you would please let the Committee know, as a matter of courtesy.

Feedback on the Protocol is welcomed (including for the purposes of updating it in future). Please would you send your feedback to the Committee at [consultation@scl.org.sg](mailto:consultation@scl.org.sg).

## **Preamble**

This protocol (the "**Protocol**") may be used by the arbitral tribunal (the "**Tribunal**") incorporating within procedural directions, with the parties' consent or otherwise, the Model Order for Incorporation of Protocol, which states: "Except as otherwise directed, the SCL(S) Protocol for the Use of Experts' Joint Statements in Arbitration shall apply [as guidance on arbitral best practice, which the Tribunal and the Parties shall not be bound to follow]".

The Protocol may be adopted in whole or in part or as a guideline for the preparation and giving of joint expert evidence. The Protocol is not intended to affect the flexibility inherent in arbitration and parties to the arbitration (the "**Parties**", each a "**Party**") and the Tribunal is free to adapt it to the particular circumstances of their arbitration.

In the event of a conflict between any provision of the Protocol and any mandatory provision of law agreed by the Parties or so determined by the Tribunal bound to be applicable in the arbitration, the mandatory provision of law shall prevail.

It should be reiterated that the basic function of expert evidence is to assist the Tribunal or Court in making a decision on the key issues in dispute.

It can be challenging for a Tribunal to understand and decide complex technical issues, which often turn on complicated and alternative factual scenarios and diametrically-opposed expert opinions. The difficulty is compounded if the expert opinions are extensive and lengthy, with no attempt to distil the key issues and differences, and where the amount of time at the hearing at explore these technical issues is often very limited. There can sometimes be complications involving partisan expert evidence and unclear or different instructions from rival Parties. expert evidence can also sometimes pass without engaging on the key issues, like ships in the night.

The overarching objective of this Protocol is therefore to ensure that during the arbitration, the experts engage each other reasonably in a facilitative and cordial manner, to distil key issues and differences, so as to help the Tribunal decide disputed issues, within the limited time allocated for the experts to give their evidence.

## Core Principles and Guidance

### *1. Experts' declaration of competence and independence*

#### **Principle:**

Experts (an "Expert" or "Experts") providing a joint report (an "**Experts' Joint Statement**") should each include a declaration to the effect that: (i) all matters they have stated are within their area of expertise; (ii) the statements are their true and professional opinion which has not been influenced<sup>2</sup> by any Party to the arbitration; (iii) there is no arrangement where the payment of the Expert's fees are contingent on the outcome of the case; (iv) they are not aware of any issues of bias or conflict of interest other than those already disclosed in their respective reports; and (v) they have not been instructed to avoid or otherwise defer from reaching agreement on any matter within their competence.

#### **Guidance:**

The suggested declaration of competence and independence has been set out in the form of Experts' Joint Statement / Experts' Supplementary Joint Statement annexed to this Protocol. Arbitrators, Parties and their respective counsel and Experts should feel free to propose amendments to the specific content of the declaration to take into account all relevant circumstances including but not limited to the prevailing laws, soft-laws and guidance, and the needs of the case.

The declaration is made by all of the Experts giving the Experts' Joint Statement. If the Tribunal is satisfied that the opinion or testimony of an Expert is not in accordance with the terms of the declaration, the Tribunal may disregard the Expert's opinion and testimony either in whole or in part, or determine the weight to be placed on such opinion and testimony, as it considers appropriate in all the circumstances.

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<sup>2</sup> On the meaning of "influenced", refer to Core Principle 3 and its Guidance.

## *2. Communication between Experts for the preparation of the Experts' Joint Statement*

### **Principle:**

Experts should be able to communicate freely to comprehensively discuss the issues and their areas of agreement and / or disagreement (and not be limited to answering questions posed by counsel) for the purposes of preparation of the Experts' Joint Statement.

### **Guidance:**

Unless ordered by the Tribunal, or agreed by all Parties, neither the Parties nor their counsel should attend Experts' discussions. If the counsel do attend, they should as a norm not intervene in the discussion, except to answer questions put to them by Experts or to advise on matters of law. Experts may also, if they wish, hold part of their discussions in the absence of counsel.

Experts should also not be limited to answering only those questions which have been posed by counsel. Experts should be free to pose to each other and answer questions in their Expert discipline which counsel may not be able to ask or understand in order to flush out and address the core Expert issues.

Experts may wish to consider discussing issues such as the identification of common assumptions, common datasets, and agreed methodologies where possible.

Communications (including emails, and text messages), drafts, working papers or any other documentation created by an Expert for the purposes of preparing the Experts' Joint Statement, including those exchanged between Experts, are provided on a "without prejudice" basis and must not be used in the proceedings unless the Parties otherwise agree.

### *3. Communication between Parties, their counsel and their Experts*

#### **Principle:**

Parties and their counsel should not seek to influence their respective Experts regarding the contents of the Experts' Joint Statement (including the negotiation and drafting of the same).

#### **Guidance:**

Whilst the Parties' counsel may assist the Experts in identifying issues which the Experts' Joint Statement should address, parties and their counsel must avoid influencing their respective Experts regarding its contents. In particular, the Parties' counsel must not be involved in the process of negotiating or drafting the Experts' Joint Statement.

On the other hand, the Parties' counsel should provide the Experts with such instructions (including on fact or legal assumptions) as may be requested, all documents (including those referred to by the Parties in their pleadings or memorials, as well as documents produced in disclosure), and any factual witness statements, that may be relevant and material to the Experts' Joint Statement.

The Parties' counsel may only invite Experts to consider amending any draft Experts' Joint Statement in exceptional circumstances where there are serious concerns that the Tribunal may misunderstand or be misled by the terms of that joint statement. Any such concerns should be raised with all Experts giving the joint statement.

#### *4. Communication between the Tribunal and the Experts*

##### **Principle:**

There should not be any unilateral communications between an Expert and the Tribunal, and all communications should generally be sent to all Experts.

The Tribunal shall be at liberty to intervene appropriately in order to facilitate the production of the Experts' Joint Statement, subsequent Experts' Joint Statements, and Experts' reports on any issues that remain to be determined.

##### **Guidance:**

The Tribunal should, following consultation with the Parties, provide directions for any communications between the Tribunal and the Experts in relation to their evidence and in particular, in relation to the Experts' Joint Statements.

Matters to consider covering in the directions may include:

- (1) whether the Tribunal is to have any conference(s) with the Experts outside of the evidentiary hearing;
- (2) the stage at which such conference(s) is/are to take place (e.g. whether prior to Experts' discussions taking place, prior to production of the Experts' Joint Statement, after production of the Experts' Joint Statements but prior to production of further Experts' Joint Statements, prior to the hearing, and so on);
- (3) the basis on which any such conference(s) is to take place, including whether such discussion is "on the record" or "off the record";
- (4) the matters to be discussed at the conference(s);
- (5) whether the Parties and/or the Parties' counsel are to attend the conference(s);
- (6) the logistics in relation to the holding of such conference(s) (e.g. how many conferences are to be held, venue(s), who is to arrange for the venue or conference facilities); and
- (7) the use of electronic means of communication for such conference(s).

If a conference is held, matters to discuss at the conference(s), may include:

- (1) the Tribunal's expectations of the Experts and of the Experts' Joint Statement, including as to assistance to the Tribunal, cooperation with each other to produce the Experts' Joint Statement, timelines of reports, form and structure of the report, etc.;
- (2) the Experts' preliminary views as to what relevant information or documents are needed from the Parties;
- (3) that the Tribunal may require the Parties to give the Experts any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for their review and consideration;

- (4) the need for the Experts to use an agreed methodology or to give evidence based on alternative methodologies if the methodology is not agreed;
- (5) the need for the Experts to review an agreed set of documents, and logistics to do so; and
- (6) the Tribunal's expectations/preferences in relation to the Experts' evidence at the evidentiary stage.

The Tribunal may wish to remind the Experts, and the Parties' counsel, of the function of the Experts' evidence and their roles in facilitating this function.

## 5. *Consultation between the Experts / Methodology of the Experts*

### **Principle:**

The traditional approach is for the Tribunal to require the Experts to file their reports and then to proceed to a conference of Experts to produce the Experts' Joint Statement. However, what sequence is adopted depends very much on the nature of the case and the kind of Expert evidence required.

### **Guidance:**

The desirability of holding "without prejudice" meetings between Experts at various stages of the pre-hearing preparation may be considered. The purpose of such meetings may include:

- (1) to provide to the Expert, written questions<sup>3</sup> from the Parties, for the Expert to answer in writing;
- (2) to precisely articulate or clarify a Party's technical case and to inform opposing Parties of the details of that case;
- (3) to clear up confusion and to remedy any lack of information or understanding of a Party's technical case in the minds of opposing Experts;
- (4) to identify the issues about which any Expert is to give evidence;
- (5) to narrow differences and to reach agreement on as many 'Expert' issues as possible; and
- (6) to assist in providing an agenda for the hearing and for cross examination of the Experts.

Tribunals may wish to consider the implication of the use of the pleadings or memorials procedure. The pleadings procedure may allow earlier engagement between the Experts and a first Expert's Joint Statement prior to the Experts' reports. The memorials procedure may offer less opportunity for early meetings, although such meetings still provide value, particularly in promoting alignment on methodology, and for the identification of common datasets to be provided to the Experts.

It is generally considered sensible, for the Experts to meet at least once before they exchange their reports, which provides an early opportunity for their agreements to be recorded by way of an Experts' Joint Statement. However, in less complex cases, the traditional sequence of the submission of the Experts' reports before the conference of Experts may be more useful, as it allows a more focused discussion between Experts before they issue the Experts' Joint Statement.

Other than the contents of any agreement in writing, the contents of discussions at a "without prejudice" meeting between Experts must not be used in the proceedings unless the Parties otherwise agree.

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<sup>3</sup> Where the appropriateness of providing alternative questions based on each party's case may need to be considered beforehand.

## *6. Content of the Experts' Joint Statement*

### **Principle:**

The Experts' Joint Statement should focus on the issues within the Experts' remit and, in particular, narrowing the issues in dispute where possible to do so. Where the Experts are unable to reach an agreement on particular issues, each Expert should provide full reasons (and references, if applicable) as to why he / she disagrees with the other on that issue and, where possible, the effect of that disagreement on the outcome of the case or issue.

### **Guidance:**

Experts should endeavour to narrow the issues in dispute where possible. Where further relevant and material issues to the dispute arise over the course of their discussions, the Experts may choose to include and address such further issues in the Experts' Joint Statement.

In the event that the Experts are unable to reach an agreement on particular issues, each Expert should indicate in the Experts' Joint Statement, the full reasons (and references, if applicable) as to why he / she disagrees with the other Expert on that issue.

Where quantifiable, the Experts should also provide an indication of the effect of that disagreement on the outcome of the case or issue e.g., whether it results in an increase or decrease in the value of claims brought, etc.

If there is disagreement on methodology, the Tribunal may wish to consider whether to direct each Expert to state in the alternative the conclusions if the other Expert's methodology is adopted.

The use of more than one Experts' Joint Statement may be considered, where a final Experts' Joint Statement may seek summarise the positions with key decision points and rival propositions, with references to key statements and documents, to assist the Tribunal. A Tribunal may consider using this to set the agenda for the Experts' evidence to be given at the hearing.

## *7. Post-hearing issues*

### **Principle:**

Post-hearing, the Tribunal should be free to consider approaching the Experts to ask that the Experts confer further to reach an agreed outcome (where possible) on particular issues which are yet to be determined by the Tribunal.

### **Guidance:**

Post-hearing, the Tribunal may pose further queries to the Experts relating to the Experts' Joint Statement(s) and their evidence at the hearing. The Tribunal may direct the Experts to confer further and provide a supplementary statement to the Tribunal either jointly or separately. If so, the Tribunal should provide clear written instructions to the Experts as to the precise issues which it would like the Experts to consider. Such instructions can be set out in an annexure to the Experts' Supplementary Joint Statement.

The Tribunal may wish to consider, after consulting the Parties, giving express directions in respect of matters such as:

- (1) how the Tribunal's queries and the Experts' answers are to be communicated, e.g. in writing, orally and/or in-person;
- (2) whether the Parties are to be present during and/or given access to the communications between the Tribunal and Experts;
- (3) if the communications are solely in writing, when and how the Tribunal's queries and the Experts' answers in response, are to be provided to the Parties;
- (4) what the Experts should do if there is any disagreement; and
- (5) limits to the scope of communications between the Tribunal and the Experts, such as, limiting answers to quantifying an issue or outcome based on the Tribunal's findings.

**Form of Orders within Procedural Order relating to Experts' Joint Statement**

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES  
OF THE \_\_\_\_\_**

\_\_\_\_\_ **NO. \_\_\_\_\_**

**BETWEEN**

**Party A: \_\_\_\_\_**

**(Claimant(s))**

**- AND -**

**Party B: \_\_\_\_\_**

**(Respondent(s))**

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**PROCEDURAL ORDER NO. [to insert]**

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## **Model Order for Incorporation of Protocol**

Except as otherwise directed, the SCL(S) Protocol for the Use of Experts' Joint Statements in Arbitration shall apply [as guidance on arbitral best practice, which the Tribunal and the Parties shall not be bound to follow].

## **Model Order for preparation and submission of Experts' Joint Statement**

By the date stipulated in [xx], experts of the same discipline shall meet (in person or by video conference), [in the absence of the Parties and their counsel], and shall prepare and submit to the Tribunal and the Parties a joint statement setting out:

- (a) those matters upon which they agree and the agreed opinions they have reached on those issues; and
- (b) those matters upon which they disagree, with a summary of their reasons for their disagreement.

[Meetings between the Parties' experts shall be without prejudice to the Parties' respective positions in the arbitration and privileged from disclosure to the Tribunal.]

**Form of Experts' Joint Statement / Experts' Supplementary Joint Statement**

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES  
OF THE \_\_\_\_\_**

\_\_\_\_\_ **NO. \_\_\_\_\_**

**BETWEEN**

**Party A: \_\_\_\_\_**

**(Claimant(s))**

**- AND -**

**Party B: \_\_\_\_\_**

**(Respondent(s))**

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**EXPERTS' JOINT STATEMENT NO. [to insert]**

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**This [EXPERTS' JOINT STATEMENT / EXPERTS' SUPPLEMENTARY JOINT STATEMENT]** records matters of an expert nature that have been agreed between:

1. [Expert 1] [to insert Expert 1's abbreviation], the [state expert Matter] Expert on behalf of the Claimant; and
2. [Expert 2] [to insert Expert 2's abbreviation], the [state expert Matter] Expert on behalf of the Respondent

(together, the "**Experts**"). [expert list to be expanded (if applicable)]

The Experts convened a physical meeting / teleconference on \_\_\_\_\_, during which they discussed areas of agreement and disagreement on the following topics:

- [to state topics]

This statement records the agreed outcomes of that meeting.

The Experts have each signed this statement. In doing so, each of the Experts expressly acknowledges their duties to the Tribunal, which override any obligation(s) to the Party who has engaged him / her and the person liable to pay him / her.

The Experts confirm that the opinions expressed herein are their true, independent and professional opinion of the relevant matters which has not been influenced by any Party to the arbitration.

The Experts confirm that the matters they are opining upon are within their area of expertise, and which, to each Expert's knowledge, are not impacted by issues of bias or conflict of interest. Where such issues have arisen, the Experts confirm that these have already been disclosed to both the Tribunal and the Parties; and that if any new issues arise in the course of the arbitration, these will be disclosed as soon as practicable.

Further, the Experts confirm that they have not entered into any arrangement where the payment or amount of fees is contingent on the outcome of the case.

[The joint statement is organised in a Schedule Form with columns and rows, like a Scott Schedule. Where appropriate, the Experts may deviate from the format of a Scott Schedule]. The Schedule contains the following columns (numbered (a) to (e) below), starting from the left:

- (a) The first column contains a Serial Number tracking the issue or sub-issues within the List of Issues;
- (b) The second column summarises the issue that was discussed between the Experts;
- (c) The third column sets out whether the Experts agree or disagree on the particular issue or sub-issue;
- (d) The fourth column sets out the joint statement or comment that has been agreed between the Experts.

(e) The fifth and final column sets out a series of columns in which the Experts may clarify the disagreement between them in respect of that particular issue (as the case may be) and, as appropriate, add any further individual comments by way of additional clarification. Where quantifiable, the Experts should provide an indication of the effect of that disagreement on the outcome of the case or issue.

The joint statement also includes an Annexure where the Experts' material instructions in respect of the joint statement have been set out [To the extent that the Experts' material instructions have already been included in the Experts' own reports, the Annexure may be dispensed with].

The Experts further confirm that they have neither jointly nor individually been instructed to, nor has it been suggested that they should, avoid or otherwise defer from reaching agreement on any matter within their competence.

[Expert 1]	[Expert 2]
[Location]	[Location]
[Date]	[Date]

## SCHEDULE

No.	Description	Agree / Disagree	Agreement Reached	Respective Positions in case of disagreement			
				[Expert 1's Position]	[Expert 2's Position]		
A	[insert Issue 1]						
A1	[insert sub-issue 1]						
A1.1	[insert description]	[insert Y or N]	[Insert comment on agreed areas]	[Insert comments on any areas of disagreement and reasons why]  [Insert reference in Expert's own report or elsewhere in the record (if applicable)]	[Insert comments on any areas of disagreement and reasons why]  [Insert reference in Expert's own report or elsewhere in the record (if applicable)]		
A2	[insert sub-issue 2]						
A2.1	[insert description]	[insert Y or N]	[Insert comment on agreed areas]	[Insert comments on any areas of disagreement and reasons why]  [Insert reference in Expert's own report or elsewhere in the record (if applicable)]	[Insert comments on any areas of disagreement and reasons why]  [Insert reference in Expert's own report or elsewhere in the record (if applicable)]		
B	[insert Issue 2]						
B1	[insert sub-issue 1]						

B1.1	[insert description]	[insert Y or N]	[Insert comment on agreed areas]	[Insert comments on any areas of disagreement and reasons why]	[Insert comments on any areas of disagreement and reasons why]
				[Insert reference in Expert's own report or elsewhere in the record (if applicable)]	[Insert reference in Expert's own report or elsewhere in the record (if applicable)]

[table to be expanded for issues and sub-issues (if applicable)]

## **ANNEXURE**

### **Instructions to Experts**

In this Annexure, the Experts set out all instructions received from the Tribunal and each appointing Party.

#### **1. Instructions from the Tribunal (where applicable)**

<b>Name of Arbitrator(s)</b>	[Insert name of arbitrator(s)]
<b>Instructions</b>	[Insert instructions]

#### **2. Instructions from Party A to Expert 1**

<b>Name of Party A</b>	[Insert name of Party A]
<b>Name of Party A's Counsel</b>	[Insert name of Counsel]
<b>Instructions</b>	[Insert instructions]

#### **3. Instructions from Party B to Expert 2**

<b>Name of Party B</b>	[Insert name of Party B]
<b>Name of Party B's Counsel</b>	[Insert name of Counsel]
<b>Instructions</b>	[Insert instructions]