

A horizontal collage of images related to law and justice, including a scale of justice, a computer keyboard, and a gavel.

JONES DAY
COMMENTARY

SINGAPORE'S INTERNATIONAL COMMERCIAL COURT— THE CONCEPT TAKES SHAPE

In a statement issued on December 3, 2013, the Singapore Ministry of Law announced the release of a report by the Singapore International Commercial Court ("SICC") Committee on the viability of developing a framework for a dedicated commercial court operating in concert with the existing Singapore High Court.

The report from the SICC Committee follows the announcement by Chief Justice Sundaresh Menon at the beginning of 2013 that the feasibility of such a court was one of his main priorities.

In May 2013, 19 international and local members were appointed to the SICC Committee and tasked with preparing and submitting a report to the Singapore Ministry of Law, which it did on November 29, 2013.

The Committee provided the basis for its recommendations in the report on Singapore's success in establishing itself as a neutral and trusted arbitration hub and on economic statistics and forecasts, which suggest that there is a window of opportunity

for Singapore to broaden its appeal as a centre for regional dispute resolution.

The report suggests that the SICC, envisaged as a superior court in Singapore, be constituted as a statutory division of the High Court with the same jurisdictional limits and subject to the Supreme Court of Judicature Act.

The Committee recommended that the SICC deal with cases upon parties' consent, where a contract in dispute gives SICC jurisdiction and where the Chief Justice of the Singapore High Court transfers a case under High Court jurisdiction, with grounds for such transfer to be established in the relevant SICC Rules of Court.

The SICC Rules of Court will be drafted according to international best practice in commercial litigation and will also allow for joinder without consent of third parties on the application of one of the parties to the dispute.

The report makes a number of interesting recommendations regarding foreign law and lawyers, which reflects the court's international objectives. Firstly, foreign law will not need to be pleaded and proved as fact, meaning that SICC judges will be able to take notice of foreign law in submissions and then apply the foreign law to determine the dispute.

Secondly, where a particular case has no "substantial connection" with Singapore, a party may be represented by a lawyer who is not a member of the Singapore bar, subject to the foreign qualified lawyer being registered with the SICC. While acknowledging that further analysis is required of what constitutes a substantial connection, the report recommends that an absence of a substantial connection would be established in cases where the governing law is not Singapore law, or where choice of law is the sole connection to Singapore.

The other aspect of the SICC concept that will become of particular relevance as the process continues is that of enforcement and how to ensure that SICC judgments do not lose relevance for lack of enforceability. As the experience of international arbitration has suggested, enforceability is of fundamental practical relevance to parties seeking to resolve a dispute. The position in arbitration is made somewhat more certain with the existence of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 330 UNTS 38; however, the report suggests that the international enforceability of SICC judgments may require significant regional and international engagement. The report states that enforceability can be enhanced through multilateral government agreements, bilateral government agreements, court-to-court arrangements, and Memoranda of Guidance to set out the understanding of the court procedures required for the enforcement of judgments in another court. It is likely that enforcement of SICC judgments will continue to be a key challenge for the Committee and the Singapore Government, should it choose to adopt the recommendations contained in the SICC Committee's report.

Interested parties are invited to provide their views and feedback on the SICC Committee's report. The consultation period is from December 3, 2013 to January 31, 2014.

LAWYER CONTACTS

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