



## Singapore Opens International Commercial Court

The Singapore International Commercial Court (“SICC”) started hearing its first case this month: a US\$809 million dispute between Australian and Indonesian companies over a joint venture agreement for the production and sale of upgraded coal from East Kalimantan in Indonesia.<sup>1</sup> The opening of the SICC in January 2015 marks a milestone in Singapore’s push to become an international dispute resolution hub.

The SICC is specifically designed to deal with transnational commercial disputes. While the new court has a global mandate, it promises to be a particularly reliable and efficient forum for resolving cross-border disputes in Asia. This *Commentary* sets out a brief overview of the SICC’s key features, including its jurisdiction, composition, and procedures.

### Jurisdiction

The Supreme Court of Singapore comprises the High Court and the Court of Appeal. The SICC sits within this structure as a division of the High Court. This means that SICC judgments are enforceable as judgments of the High Court and, in certain cases, are appealable to the Court of Appeal. However, the SICC differs from a typical municipal court in that it has no

inherent jurisdiction to hear disputes, except contempt proceedings in respect of its own judgments and orders.<sup>2</sup> Generally, the SICC has jurisdiction to hear an action if:<sup>3</sup>

The claim in the action is of an “international” and “commercial” nature;

- The parties to the action have submitted to the SICC’s jurisdiction under a written agreement (for example, under a choice of jurisdiction clause); and
- The parties to the action do not seek any relief in the form of, or connected with, a prerogative order (such as a mandatory order, a prohibiting order, a quashing order or an order for review of detention).

In general terms, a claim will be considered “international” if one of the following criteria is satisfied:<sup>4</sup>

- The parties have their place of business in different states;
- None of the parties has its place of business in Singapore;
- The commercial relationship between the parties involves obligations which are to be substantially performed outside any state in which any of the parties has its place of business;

- The place most closely connected to the subject matter of the dispute is outside any state in which any of the parties has its place of business; or
- The parties have agreed expressly that the subject matter of the dispute relates to more than one state.

A claim will be considered “commercial” if it arises from any relationship that is commercial in nature, such as trade transactions, distribution agreements, construction works, consulting, engineering or licensing transactions and joint ventures.<sup>5</sup>

There is an exception to the requirement for the parties to consent to the jurisdiction of the SICC if a case is transferred to the SICC by the High Court.<sup>6</sup> The High Court may transfer a case, either on a party’s application or on its own motion, if it considers that:<sup>7</sup>

- The claim in the action is of an “international” and “commercial” nature;
- The parties to the action do not seek any relief in the form of, or connected with, a prerogative order;
- The SICC will assume jurisdiction in the case; and
- It is more appropriate for the case to be heard in the SICC.

For example, it is expected that proceedings before the High Court which relate to international arbitrations seated in Singapore may be transferred to the SICC.

## SICC Panel of Judges

Disputes referred to the SICC will be dealt with by one or three judges. The precise number of judges will be determined by the SICC at its discretion. Claims of relatively high value or those involving complex factual or legal issues are more likely to be heard by three judges.

The SICC panel consists of a mixture of local Singaporean judges (who currently sit on the High Court and the Court of Appeal) and international judges. There are currently 12 international judges on the SICC panel, from both civil and common law jurisdictions. These are: Ms Carolyn Berger (United States of America); The Hon. Justice Patricia Bergin (Australia); Mr Roger Giles (Australia); Dr Irmgard Griss (Austria); Justice Dominique T. Hascher (France); Mr Dyson Heydon AC QC (Australia); Sir

Vivian Ramsey (United Kingdom); Mr Anselmo Reyes (Hong Kong); The Rt. Hon. Sir Bernard Rix (United Kingdom); Prof. Yasuhei Taniguchi (Japan); Mr Simon Thorley QC (United Kingdom); and Sir Henry Bernard Eder (United Kingdom).

## Foreign Counsel

For those involved in cross-border commerce, one of the advantages of the SICC is greater freedom of representation. In view of the international nature of SICC proceedings, parties are entitled to be represented by foreign lawyers (that is, lawyers who are not qualified in Singapore) in certain circumstances.<sup>8</sup> In particular, a party may be represented by a foreign lawyer in “offshore cases” which have no substantial connection with Singapore.<sup>9</sup>

Every foreign lawyer representing a party in proceedings before the SICC must be registered under section 36P of the Legal Profession Act (Cap 161).

## Procedures

Proceedings in the SICC are not governed by domestic procedural rules. The SICC has developed its own comprehensive set of rules and practice directions which follow international best practice, with particular reference to the English Commercial Court Guide. The SICC rules differ from those used in proceedings before the Singapore domestic courts in three key aspects:

- (I) The SICC is not bound by the Singapore rules of evidence unless the SICC decides to apply such rules in accordance with the Rules of Court;<sup>10</sup>
- (II) Even where Singapore’s rules of evidence are applicable, the SICC may allow any questions of foreign law to be determined on the basis of submissions instead of formal proof by experts;<sup>11</sup> and
- (III) There are separate procedures and practices for the production of documents, interrogatories and the joinder of parties to a proceeding.<sup>12</sup>

Unlike a traditional court, the parties can agree to waive, limit or vary their rights of appeal from decisions of the SICC, provided such agreement is made in writing.<sup>13</sup>

## Enforcement of SICC Judgments and Orders

Singapore has a number of reciprocal enforcement agreements which allow for easier recognition and enforcement of Singapore court judgments in many countries, particularly Commonwealth countries such as the United Kingdom, India and Australia.<sup>14</sup> However, there are several key jurisdictions (such as the United States and many ASEAN countries) where, currently, Singapore court judgments can be enforced only to the extent permitted by the common law or other applicable domestic laws. It is generally easier to enforce arbitral awards than court judgments, particularly in the 155 contracting states to the New York Convention.

Singapore recently took steps to address this issue by signing the Hague Convention on Choice of Court Agreements (the “Convention”).<sup>15</sup> Where parties have expressly chosen a court of a member state to resolve their disputes, the Convention provides that judgments by that court must be recognised and enforced by the courts of other member states.<sup>16</sup> The European Union and the United States have also signed but not yet ratified the Convention. Once the Convention comes into force and is ratified by Singapore, the number of jurisdictions in which SICC judgments can be enforced will increase. For further information on Singapore’s signing of the Convention and its implications, please refer to our earlier [Commentary](#).

In addition, the Supreme Court is working with the Singapore government and other court systems to streamline the enforcement of judgments under traditional common law rules. In January 2015, the Supreme Court entered into a nonbinding “memorandum of guidance” with the Dubai International Financial Centre Courts concerning the reciprocal enforcement of money judgments.<sup>17</sup> In the absence of a formal treaty between the two jurisdictions, the memorandum of guidance is expected to simplify the enforcement process for judgments of the respective courts.

## Conclusion

The SICC is another credible option in Singapore’s toolkit of dispute resolution forums, which also includes the Singapore International Arbitration Centre and the Singapore International Mediation Centre. The SICC will not replace those institutions, but it will be an attractive choice for businesses that feel more comfortable having their cross-border disputes resolved in a reliable court system in a neutral venue. The SICC has many advantages over domestic court systems in Asia-Pacific, including a flexible process tailored to international disputes, a commercial approach, a strong panel of judges with international expertise and the freedom to use international counsel in “offshore cases” involving foreign legal systems.

## Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at [www.jonesday.com](http://www.jonesday.com).

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## Endnotes

- 1 *BCBC Singapore Pte Ltd v PT Bayan Resources TBK* (SIC/S 1/2015). The SICC held a case management conference with the parties in respect to this case on 11 May 2015. For further details of this session, please refer to the [SICC Law Notice for the week of Monday 11 May to Friday 15 May 2015](#).
- 2 Singapore Rules of Court, Order 110, Rule 7(2).
- 3 Singapore Rules of Court, Order 110, Rule 7.
- 4 Singapore Rules of Court, Order 110, Rule 1(2)(a).
- 5 Singapore Rules of Court, Order 110, Rule 1(2)(b). Notably, the list of examples of commercial relationships provided under the Rules of Court is identical to that found in the definition of “commercial” under Article 1(1) of the UNCITRAL Model Law 1985, which is given force of law in Singapore under section 3 of the Singapore International Arbitration Act (Cap 143).
- 6 Singapore Rules of Court, Order 110, Rule 1(2)(a).
- 7 Singapore Rules of Court, Order 110, Rule 12(4)(a).
- 8 SICC Practice Directions, Practice Direction No. 26.
- 9 Singapore Rules of Court, Order 110, Rules 1(2)(f)(i) and 34 and SICC Practice Directions, Practice Direction No. 29.
- 10 Singapore Rules of Court, Order 110, Rule 23.
- 11 Singapore Rules of Court, Order 110, Rule 25.
- 12 For example, see Singapore Rules of Court, Order 110, Rules 9 and 14-22.
- 13 SICC Practice Directions, Practice Direction No. 139.
- 14 The Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264) provides for the registration and enforcement of judgments obtained from the superior courts in the United Kingdom and a number Commonwealth jurisdictions, including New Zealand, Sri Lanka, Malaysia, Windward, India (except the states of Jammu and Kashmir) and Australia. The Reciprocal Enforcement of Foreign Judgments Act (Cap 265) allows for the enforcement in Singapore of judgments and awards in foreign countries that afford reciprocal treatment to judgments given in Singapore. At present, the Act extends to only the Hong Kong Special Administrative Region of the People’s Republic of China (only Part 1 of the Act is applicable).
- 15 For the [full text of the Convention](#), please refer to the Hague Conference on Private International Law’s website.
- 16 The Convention, Article 8.
- 17 For the [full text of the Memorandum of Guidance on the Enforcement between DIFC Courts and the Supreme Court of Singapore](#) signed on 19 January 2015, please refer to the DIFC Courts’ website.