

Singapore – an international legal hub: update on the Singapore International Commercial Court (SICC)



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Singapore is a renowned international legal hub due to its strategic geographical position, reputation for impartiality and neutrality, specialist legal service providers (both local and international) and experienced judiciary. This has been recently enhanced by a new centre for court-based international commercial disputes: The Singapore International Commercial Court, a division of the Singapore High Court and part of the Supreme Court of Singapore.

The SICC supports Singapore's aim to be a leading forum for both legal services and dispute resolution for commercial matters. The vast economic growth projected in Asia-Pacific and south Asia, with its accompanying international capital and trade, presents a great opportunity for Singapore to offer legal services and a suite of dispute resolution products. The [Standard Bulletin](#) has previously provided an overview of the dispute resolution landscape of Singapore. This article provides an update on where the SICC presently is.

Singapore's existing dispute resolution institutions

The Singapore legal system is founded on English common law. To complement her status as the second busiest port in the world is the judiciary of the Singapore Supreme Court, which includes its admiralty court, renowned for its expertise. Singapore's judges are drawn from specialised areas of practice including insurance and maritime law. The court's legal decisions are considered to be serious, albeit non-binding, authority by courts in other commonwealth jurisdictions. In September 2008, the Political & Economic Risk Consultancy survey reported Singapore to have the best judicial system in Asia.

Of the several arbitration institutions in Singapore, the two relevant to our membership are the highly regarded and successful Singapore International Arbitration Center (SIAC) and the Singapore Chamber of Maritime Arbitration (SCMA).

SIAC

The SIAC was launched in 1991. 2015 saw 271 new cases filed, of which 84% were international in nature. More than 21% of its case profiles concern shipping and energy matters. According to the Queen Mary University of London International Arbitration Survey 2015, Singapore is the fourth most preferred seat and most improved seat in the world for arbitration, and the SIAC is the fourth most preferred arbitral institution in the world.²

SCMA

The SCMA was established in 2004. Its members come from all sectors of the maritime community and from around the world. In the last four years, there has been an average of 25 cases per year, with 2015 seeing a record 37 shipping cases. While it has a relatively recent history, the SCMA should not be underestimated, given the increasing reference to Singapore law and arbitration in accordance with SCMA rules being expressly written into contracts, particularly where one of the parties or the operations are in the Asia-Pacific region.

¹ <http://www.arbitration.qmul.ac.uk/docs/164761.pdf>; pp.12,15 and 17

SIMC

In addition to arbitration institutions, the Singapore International Mediation Center (SIMC) was launched in November 2015. Its board comprises international and Singaporean mediation experts. Since its inception (and at the time of writing), nine cases have been filed in respect of disputes between international companies, including one concerning shipping and sale/supply of goods and services. While mediation is a key service, it also provides other mediation products and services to support parties in any major deals to help avoid potential disputes.

These three institutions can accept all governing laws and are not just confined to Singapore law. Significantly, their awards are enforceable in the 156 countries that are party to the New York Convention.

The Singapore International Commercial Court (SICC)

The concept of an international court is not new. Dubai has the International Financial Centre and London its commercial court. The SICC is part of the Singapore Supreme Court and was created to take on complex high-value cross-border (international) commercial cases as defined in the Rules of Court. Save for admiralty in rem matters, which remain within the jurisdiction of the Singapore High Court, all other international commercial matters (which include other shipping and energy matters) can be submitted to the SICC jurisdiction or, alternatively, the Singapore High Court may transfer certain cases to the SICC that meet the 'international and commercial' criteria as set out in the Rules of Court. At the time of writing, four such cases have transferred, two of which have judgments rendered. SICC judgments are enforceable as judgments of the High Court.

Judges

Judges are drawn from Singapore's own Supreme Court and/or from an international panel of jurists. The

ultimate choice of judge is made by the Chief Justice and not by party nomination, as is the case in arbitration, and the disputes can be subject to any law. The present distinguished and diverse panel of jurists comprises all Honourable Justices of Singapore, including Justices Belinda Ang, Judith Prakash and Steven Chong, who were well-known Singaporean maritime and commercial legal practitioners before being elevated to the Singapore bench. The judges additionally comprise international jurists, including former English Supreme Court Judges, Sir Bernard Rix, Sir Vivian Ramsay and Sir Henry Bernard Eder, to name but a few. Every claim can be heard either by a single judge or by three judges.

Of the four aforementioned international commercial cases, two were transferred to be heard before a panel of three judges, one Singaporean judge and two international judges, and two by a sole international judge for each respective case. The choice of legal counsel is also not restricted to Singapore qualified lawyers. Foreign lawyers are free to act in cases where there is no substantial connection with Singapore. However, to appear before the SICC, foreign lawyers must have at least five years of experience in advocacy, be registered with the SICC and abide by the Code of Ethics of the Legal Profession Act.

Powers

The SICC has wide powers and flexible court procedures, making it commercially attractive. For example, it may join third parties to an action even if they are not parties to a written jurisdiction agreement. In contrast with conventional court proceedings, proceedings of the SICC may be conducted confidentially (if the case has no substantial connection with Singapore). Additionally, questions of foreign law may be determined by legal submissions without needing to tender witnesses to prove a point of foreign law. Rules of evidence are not confined

Singapore – an international legal hub: update on the Singapore International Commercial Court (SICC) continued

to Singapore law and parties may be allowed to choose alternative rules of evidence. Significantly, the decision of the SICC can be appealed provided the parties have not contractually agreed to limit or exclude their right of appeal.

Enforcement

While the intention of the SICC is to grow Singapore's legal services sector and promote the use of Singapore law, one main obstacle for the SICC presently is the enforceability of its judgments. Already in existence is the Reciprocal Enforcement of Commonwealth Judgments Act (RECJA), which has reciprocal arrangements with certain commonwealth countries such as the United Kingdom, the various states and territories of Australia, New Zealand, Sri Lanka, Malaysia, Windward Islands, Pakistan, Brunei Darussalam, Papua New Guinea and India (except the State of Jammu and Kashmir). The RECJA enables mutual recognition of superior court judgments in respect of monies payable under that judgment and it would extend to the SICC as a division of the Singapore High Court. A similar reciprocal arrangement is in place with Hong Kong. Singapore is presently exploring further solutions to the recognition and enforcement of SICC judgments in the court systems of other countries, possibly looking at bilateral and multilateral arrangements.

Of significance is the Hague Convention on Choice of Court Agreement (HCCCA), which comes into force in Singapore on 1 October 2016. Its purpose is to promote and provide legal certainty in cross-border commerce. The HCCCA has been ratified by 30 countries. These include all members of the EU (except Denmark), Mexico and Singapore. The USA and Ukraine have signed but not yet ratified the HCCCA. Much like the New York Convention, the HCCCA recognises the choice of court agreement between parties in certain civil/commercial law matters.

In essence, the courts of the HCCCA states will stay all proceedings and, more importantly, recognise the judgments in all states where the convention is applicable. Recognition and enforcement of such judgments in cross-border court-based disputes is of utmost importance if the SICC is to be a compelling international proposition. However, the HCCCA's scope is limited and it presently excludes matters in respect of the carriage of passengers and goods, marine pollution, and limitation of liability for maritime claims, general average, emergency towage and salvage, and personal injury claims brought by or for natural persons. In effect, from the P&I context, this excludes claims from the maritime world but arguably not in respect of certain types of claims from the offshore energy sector.

Conclusion

The SICC has the strong and supportive backing of both Singapore's Chief Justice and the Ministry of Law. This initiative is certainly a very interesting and unique solution to resolving international commercial disputes. It has distilled the best features of both worlds – court-based substantive principles of international commercial law and commercial arbitration. It will undoubtedly enhance Singapore as a dispute resolution centre and provider of international legal services. While presently in its nascent stage, it will be interesting to measure its progress ten years on from its launch.