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**REPORT OF THE SINGAPORE  
INTERNATIONAL  
COMMERCIAL COURT COMMITTEE**

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**November 2013**

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# REPORT OF THE SINGAPORE INTERNATIONAL COMMERCIAL COURT COMMITTEE

## I INTRODUCTION

### *Formation of the Singapore International Commercial Court Committee*

1 At the Opening of Legal Year 2013, Chief Justice Sundaresh Menon mooted the creation of a Singapore International Commercial Court (“SICC”) to grow the legal services sector and to expand the scope for the internationalisation and export of Singapore law. The Chief Justice announced that, after discussion with the Minister for Law, Mr K Shanmugam, he had asked Ms Indranee Rajah SC, Senior Minister of State for Law and Education, and Justice V K Rajah, Judge of Appeal, Supreme Court of Singapore to co-chair a Committee to study the viability of developing a framework for the establishment of the SICC (“the SICC Committee”).

2 On 13 May 2013, the Minister for Law appointed the following members to the SICC Committee<sup>1</sup>:

- (a) Mr Ang Cheng Hock SC, Partner (Allen & Gledhill LLP);
- (b) Dr Beh Swan Gin, Permanent Secretary (Ministry of Law);
- (c) Mr Cavinder Bull SC, Deputy Chairman of Singapore International Arbitration Centre (“SIAC”) Board of Directors, Vice-President of the SIAC Court of Arbitration, Director (Drew & Napier LLC);
- (d) Mr Chan Leng Sun SC, Principal (Dispute Resolution, Baker & McKenzie.Wong & Leow);
- (e) Mr Chong Yee Leong, Partner (Allen & Gledhill LLP);
- (f) Lord Peter Goldsmith QC PC, former Attorney General of England and Wales, Partner (Debevoise & Plimpton LLP);

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<sup>1</sup> The members are named in alphabetical order based on their last names. The Secretariat to the SICC Committee comprises Ms Valerie Thean (Deputy Secretary, Ministry of Law), Ms Joan Janssen (2 Director General, Ministry of Law), Ms Teh Hwee Hwee (Deputy Registrar, Supreme Court), Mr Louis Ng (Assistant Registrar, Supreme Court), Mr Seow Zhixiang (State Counsel, Attorney-General’s Chambers), Mr Shaun Leong Li Shiong (Assistant Registrar, Supreme Court), Mr Justin Yeo (Assistant Registrar, Supreme Court), Mr Lim Sing Yong (Assistant Director, Ministry of Law), Mr Jonathan Yap (Justices’ Law Clerk, Supreme Court), and Mr Nicholas Poon (Justices’ Law Clerk, Supreme Court).

- (g) Professor Jan Paulsson, President (International Council for Commercial Arbitration);
- (h) The Honourable Justice Judith Prakash, Judge (Supreme Court of Singapore);
- (i) Ms Juthika Ramanathan, Chief Executive (Supreme Court of Singapore);
- (j) Mr Harish Salve, former Solicitor General of India, Senior Advocate (Supreme Court of India);
- (k) Mr Joe Smouha QC, Barrister (Essex Court Chambers);
- (l) The Honourable James Jacob Spigelman, AC QC, former Chief Justice of the Supreme Court of New South Wales;
- (m) Professor Tan Lee Meng, former Judge of the Supreme Court of Singapore, Professor (National University of Singapore);
- (n) Mr Thio Shen Yi SC, Joint Managing Director (TSMP Law Corporation);
- (o) Mr Robert Weber, Senior Vice President, Legal and Regulatory Affairs, and General Counsel (IBM);
- (p) Ms Ariel Ye, Head of Cross-Border Dispute Resolution (King & Wood Mallesons (PRC)); and
- (q) Mr Andre Yeap SC, Senior Partner (Rajah & Tann LLP).

3 The terms of reference of the SICC Committee are to study and make recommendations in relation to:

- (a) the establishment of a SICC specialising in international commercial cases;
- (b) the constitution, jurisdiction, powers, procedure and other features of the SICC; and
- (c) the appointment of specialist commercial Judges to the SICC.

## **Summary of key recommendations**

4 The key recommendations of the Committee are as follows:

### **Premise**

(a) A Singapore International Commercial Court will enable Singapore to enhance its status as a leading forum for legal services and commercial dispute resolution.

### **Organisation**

(b) The SICC will be a division of the Singapore High Court and part of the Supreme Court of Singapore.

(c) A panel of SICC Judges will be constituted, and will comprise existing Supreme Court Judges, as well as Associate Judges appointed for a fixed period and assigned to cases on an *ad hoc* basis.

(d) Where an SICC case goes to the Court of Appeal, the appellate judges will be drawn from the SICC panel.

### **Caseload**

(e) The SICC will deal with three categories of cases, where: (i) parties have consented to use the SICC post-dispute; (ii) disputants are parties to a contract giving the SICC jurisdiction over any disputes arising out of that contract; and (iii) cases within the Singapore High Court's jurisdiction which are transferred to the SICC by the Chief Justice.

(f) Within these three categories of cases, the SICC, as a High Court, may join parties (without their consent).

### **Rules and processes**

(g) A set of rules ("the SICC Rules") and practice directions will be formulated to govern proceedings in the SICC. These provisions should follow international best practices for commercial dispute resolution.

(h) Judges of the SICC and the Court of Appeal Judges hearing appeals in the SICC list will be supported by the SICC Registry.

## **Representation**

(i) Representation in the SICC and any Court of Appeal hearings arising from SICC cases will generally be governed by the Legal Profession Act (“LPA”). Ad hoc admission of Queen’s Counsel will continue to apply in suitable cases.

(j) It is intended that special rules apply for cases which have no substantial connection to Singapore. What constitutes the absence of substantial connection will be further refined in consultation with stakeholders, but will include cases where (i) Singapore law is not the governing law; or (ii) the choice of Singapore law is the sole connection to Singapore; foreign counsel may appear in such cases if they are registered with the SICC. Registration requirements include an undertaking to abide by a code of ethics.

## II THE SICC: RATIONALE

### *Singapore as a dispute resolution venue*

5 Singapore has sought, in the last decade, to position itself as a neutral third party venue for resolving disputes between parties from different jurisdictions. In building upon her trusted hub status, Singapore has benefitted from the following advantages:

- (a) a well-developed and business-friendly legal system based on the common law;
- (b) lawyers who are commercially experienced;
- (c) sound judges; and
- (d) an increasingly sophisticated commercial jurisprudence.

Furthermore, Singapore's connectivity and geographical location are added conveniences which encourage parties to choose Singapore as a venue for dispute resolution.

6 Thus far, Singapore has concentrated her efforts on the arbitration sector as part of a broader effort to grow the legal industry, and these efforts have borne fruit. Singapore is now widely recognised as the leading arbitration hub in Asia and the preferred base for international law firms as well as the corporate counsel of MNCs within Southeast Asia and South Asia. Singapore has emerged as a regional leader in Asia as the third most preferred seat of arbitration in the world, behind London and Geneva, and on par with Tokyo and Paris. The SIAC is the fourth most preferred arbitral institution (after the International Chamber of Commerce ("ICC"), the London Court of International Arbitration ("LCIA") and the International Centre for Dispute Resolution ("ICDR")), with a predominantly international caseload<sup>2</sup>.

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<sup>2</sup> Source: The White and Case 2010 International Arbitration Survey: Choices of International Arbitration:  
<[http://www.whitecase.com/files/upload/fileRepository/2010International\\_Arbitration\\_Survey\\_Choices\\_in\\_International\\_Arbitration.pdf](http://www.whitecase.com/files/upload/fileRepository/2010International_Arbitration_Survey_Choices_in_International_Arbitration.pdf)>.

## ***Opportunity for an Asian Dispute Resolution Hub***

7. Over the last 20 years, global trade has grown at an average of about 5.4% per annum<sup>3</sup>. Asia has outperformed the global economy, attracting a disproportionately high percentage of international capital and trade. Since 2009, Foreign Direct Investment (FDI) inflows into Asia have grown by 29.2% from US\$315 billion to US\$407 billion accounting for 30.1% of global FDI flows in 2012<sup>4</sup>. In ASEAN alone, trade volumes have quadrupled and FDI has grown by slightly more than 5 times since 1998<sup>5</sup>. In 2011, ASEAN trade was worth US\$2.389 trillion<sup>6</sup> while FDI in ASEAN was estimated to be worth approximately US\$114 billion<sup>7</sup> (See Figure 1).

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<sup>3</sup> Source: WTO Press Release, 19 September 2013

[<http://www.wto.org/english/news\\_e/pres12\\_e/pr658\\_e.pdf>.](http://www.wto.org/english/news_e/pres12_e/pr658_e.pdf)

<sup>4</sup> Source: United Nations Conference on Trade and Development (UNCTAD) World Investment Report 2012 (Table II – FDI flows by region, 2009 - 2011, Pg 38) and 2013 (Table 1 – FDI flows by region, 2010 – 2012, Pg xiii).

<sup>5</sup> In 1998, ASEAN Trade was US\$576 billion and FDI inflow was US\$22.4063 billion. Source: ASEAN Community in Figures 2008 (Table 9 Pg 9 and Table 19 Pg 27):

[<http://www.asean.org/images/archive/documents/ASEAN-Community-in-Figures-2008.pdf>.](http://www.asean.org/images/archive/documents/ASEAN-Community-in-Figures-2008.pdf)

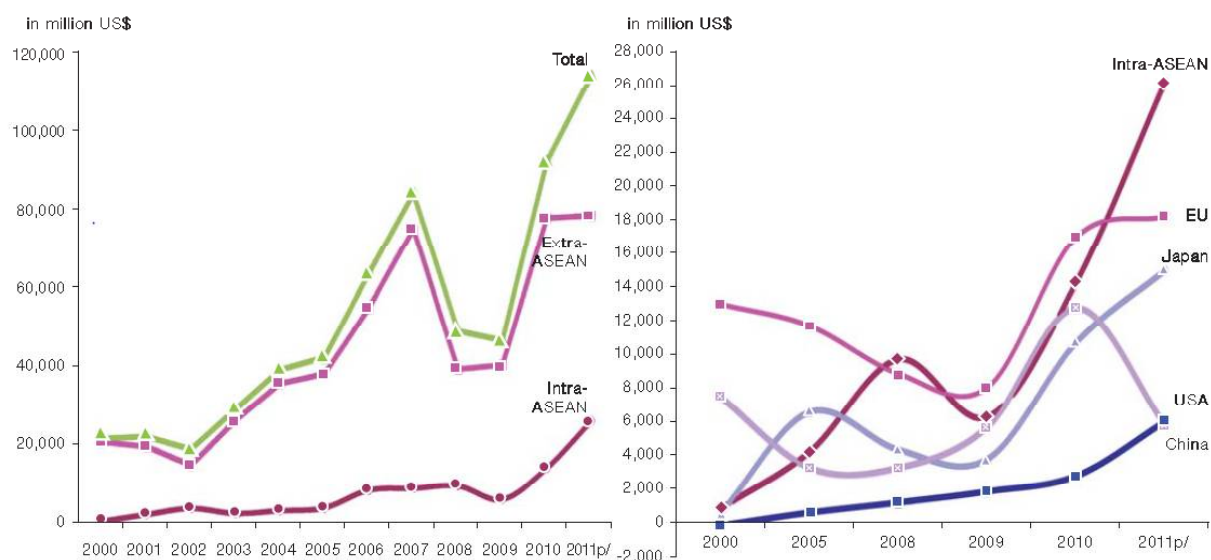
<sup>6</sup> Source: ASEAN Trade Database, External Trade Statistics:

[<http://www.asean.org/images/2013/resources/statistics/external\\_trade/table17.pdf>.](http://www.asean.org/images/2013/resources/statistics/external_trade/table17.pdf)

<sup>7</sup> Source: ASEAN Trade Database Source, Foreign Direct Investment net flow, intra and extra-ASEAN:  [<http://www.asean.org/images/2013/resources/statistics/Foreign%20Direct%20Investment%20Statistics /Table%2025.pdf>.](http://www.asean.org/images/2013/resources/statistics/Foreign%20Direct%20Investment%20Statistics/Table%2025.pdf)



**Figure 1: Inflows of Foreign Direct Investment into ASEAN<sup>8</sup>**



8. Cross border investment and trade into Asia and between Asian economies is expected to continue to grow, fuelling the need for a neutral and well-regarded dispute resolution hub in the region. From 2010 to 2020 while global GDP is expected to increase by approximately 73%, from US\$63 trillion to US\$109 trillion, the Asian economy<sup>9</sup> will more than triple during the same time period, from US\$10.71 trillion to US\$34.88 trillion (See [Figure 2](#)). Correspondingly, over the next 10 years, Asia-Pacific will experience the fastest growth in exports, bolstered by the greater intra-Asian trade and expanding trade routes<sup>10</sup>. As a result, not only will the legal services sector in Asia-Pacific grow significantly<sup>11</sup>, the number and complexity of cross border disputes will also be expected to increase.

<sup>8</sup> Note: 2011 data in Figure 1 are preliminary figures and exclude Myanmar's data and Singapore's data on inter-company loan for 2011 with intra-/extra ASEAN breakdown show are estimated by ASEAN Secretariat. Source: ASEAN Economic Community Chartbook 2012 (Chart 6.1 – FDI net inflow to ASEAN by source country)

<[http://www.asean.org/images/2013/resources/statistics/AEC\\_Chartbook\\_2012r.pdf](http://www.asean.org/images/2013/resources/statistics/AEC_Chartbook_2012r.pdf)>.

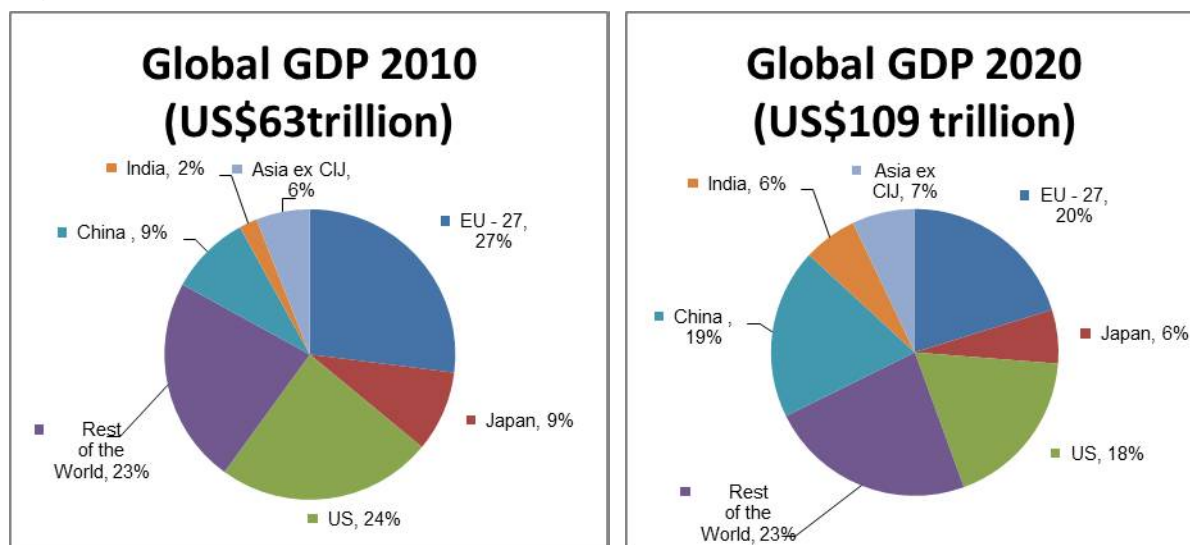
<sup>9</sup> Source: UOB Economic-Treasury Research Report - "The Rise of Intra-Regional Trade in Asia". November 2012. The Report also points out that the Asian economy will account for 32% of global GDP in 2020, up from 17% in 2010.

<sup>10</sup> Source: Ernst & Young Publication, Beyond Asia: New Patterns of Trade in Asia-Pacific.

<[http://www.ey.com/Publication/vwLUAssets/Beyond\\_Asia:\\_new\\_patterns\\_of\\_trade\\_in\\_Asia-Pacific/\\$FILE/Beyond%20Asia%20-%20new%20patterns%20of%20trade.pdf](http://www.ey.com/Publication/vwLUAssets/Beyond_Asia:_new_patterns_of_trade_in_Asia-Pacific/$FILE/Beyond%20Asia%20-%20new%20patterns%20of%20trade.pdf)>.

<sup>11</sup> Source: MarketLine Industry Profile – "Legal Services in Asia-Pacific", October 2012. From 2012 to 2016, the legal services sector in Asia-Pacific is projected to increase by 33.8%, from USD\$90.6 billion to USD\$121.2 billion.

Figure 2: Projected Growth of the Asian Economy<sup>12</sup>



9 In tandem with this growth has been a proliferation of cross-border investment treaties that has led to an exponential growth in investment arbitration<sup>13</sup>. In addition, up to 90% of the cases seen at the London commercial courts involve an international party<sup>14</sup> while the Dubai International Financial Centre (DIFC) Courts, started in 2006 to handle international commercial disputes witnessed a 40% rise in caseload in 2012, with the value of its cases rising by 400% to US\$169 million<sup>15</sup>. A window of opportunity currently exists for an Asian dispute resolution hub catering to international disputes with an Asian connection.

10 Given the growing prominence of Asia as a choice destination for foreign trade and investment, Singapore, with its well developed and respected legal system and legal infrastructure, is well placed to become the Asian dispute resolution hub to

<sup>12</sup> Source: UOB Economic-Treasury Research Report - *"The Rise of Intra-Regional Trade in Asia"*. November 2012.

<sup>13</sup> ICSID's caseload grew from 86 new cases being registered between 1993 and 2002, to 305 new cases between 2003 and 2012. Source: *The ICSID Caseload – Statistics* (Issue 2013-1) <<https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal=CaseLoadStatistics>>.

<sup>14</sup> Source: Press Release from MOJ, 7 December 2011 <<https://www.gov.uk/government/news/a-royal-opening-for-the-rolls-building>>.

<sup>15</sup> Source: DIFC Courts.

<[http://difccourts.complinet.com/en/display/display\\_main.html?rbid=2725&element\\_id=9266](http://difccourts.complinet.com/en/display/display_main.html?rbid=2725&element_id=9266)>.

cater to the expected growth in cross-border, multi-jurisdictional disputes in Asia. The object of these recommendations is to draw upon Singapore's traditional strengths to establish new dispute resolution offerings within the SICC. Singapore's existing institutional advantages and reputation as a centre for international arbitration allows the SICC to position herself as the premium forum<sup>16</sup> for court-based commercial dispute resolution both within and beyond Asia.

*Opportunities created by the global impetus for harmonisation*

11 As cross-border trade and investment in Asia grows at an exponential rate, legal practices and judiciaries have to evolve to keep up with the increasingly trans-national nature of legal work. The need for greater harmonisation is increasingly evident as the rapid developments of the commercial world bring significant challenges to legal frameworks which have yet to be rationalised from an international perspective at the same pace.

12 In the context of investment arbitration, inconsistent arbitral decisions undermine the legitimacy of the investment arbitration regime, while in the broader commercial context, the existence of different legal systems within Asia itself leads to uncertainties and increases transaction costs. This may impact the growth of trade and investment in the region.

13 The need for a freestanding body of international commercial law in tandem with Asia's continued growth as a trade and investment hub serve as compelling impetus for Singapore to improve upon our existing legal infrastructure to leverage upon these opportunities.

14 There is therefore scope for the SICC to provide an internationally accepted dispute resolution procedural framework for the resolution of international

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<sup>16</sup> For example, in 2011, the UK's legal services sector generated £20.9 billion, contributing to 1.6% of the UK's GDP and constituted £3.3 billion in exports, up to three times from a decade earlier. Source: The CityUK Legal Services 2013 Report. <<http://www.thecityuk.com/assets/Uploads/Legal-Services-2013-F.pdf>> Research revealed that 40% of the 710 respondents chose English law to govern their contracts most frequently, followed by 17% choosing New York law. Source: The White and Case 2010 International Arbitration Survey: Choices of International Arbitration. UK barristers appear in judicial and arbitral proceedings all over the world. The success of the UK legal sector is founded on the global dominance of English law for contracts, the prestige and standing of its judicial system, in particular the Commercial Court, and the acknowledged quality of its commercial judges and barristers.

commercial disputes in accordance with substantive principles of international commercial law.

### **III THE SICC: SCOPE AND SERVICES**

#### ***Premise for a new international Court***

15 Singapore is reputed for its efficient, competent and honest judiciary. A new international court would allow Singapore to further emphasise its value as a neutral third party<sup>17</sup> venue with respected judges and sophisticated commercial jurisprudence.

16 Arbitration has thus far been the primary means of international commercial dispute resolution within the region, but its increasing currency has highlighted weaknesses that litigation in an international court is better placed to address – the coercive jurisdiction of a court may be necessary in a multiple party dispute; the subject matter of the dispute may not be amenable to arbitration (such as special torts arising from contract, international intellectual property or trust disputes); and the New York Convention, while wide in its reach, may not be fully effective for enforcement in some countries.

#### ***Specific features of the SICC:***

#### ***Constitution and jurisdiction of the SICC; tenure of SICC Judges***

17 The SICC must be a superior court of law in order to maximise the international enforceability of its decisions under existing arrangements.<sup>18</sup> This

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<sup>17</sup> For example, 80% of cases in the UK Commercial Court involve a foreign party; while 50% involve no UK parties at all. Source: Report and Recommendations of the Commercial Court Long Working Party (December 2007), Judiciary of England and Wales.

[http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/rep\\_comm\\_wrkg\\_party\\_long\\_trials.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Reports/rep_comm_wrkg_party_long_trials.pdf) London has a substantial number of disputes of Eastern European origin. Russian oligarchs prefer London as their forum for dispute resolution, even for lawsuits against each other.

<sup>18</sup> Some foreign jurisdictions would not recognise and enforce a judgment given by a foreign subordinate court. A notable example is England itself—Singapore judgments are enforceable by registration in England via the Administration of Justice Act 1920 (“the 1920 Act”), but this only applies to judgments rendered by “superior courts” (section 9). The other statutory instrument of reciprocal enforcement in England, the Foreign Judgments (Reciprocal Enforcement) Act 1933 (“the 1933 Act”), was amended by the Civil Jurisdiction and Judgments Act 1982 to include inferior courts as recognised courts. However, unlike the 1920 Act, the 1933 Act does not apply to the enforcement of Singapore judgments in England.

means that the SICC needs to be part of the Supreme Court of Singapore, as any other court would be considered a subordinate court by virtue of Article 93 of the Constitution of the Republic of Singapore (“the Constitution”).<sup>19</sup> In this regard, the SICC could be constituted as a statutory division of the High Court under the Supreme Court of Judicature Act (“SCJA”).<sup>20</sup> The SICC’s jurisdictional limits would be the same as that of the Singapore High Court.

18 It is envisaged that judges hearing SICC matters will be drawn from a specific panel of SICC adjudicators (“SICC Panel”). The SICC Panel will comprise existing Supreme Court Judges as well as Associate Judges.

19 Associate Judges are to be appointed to the SICC Panel for a fixed period, and then assigned cases on an *ad hoc* basis. They would not enjoy security of tenure and their remuneration would be determined by reference to an agreed rate based on the number of days required for the specific case. In this regard, Article 94(4) of the Constitution would have to be amended to provide for the appointment of persons whom the Chief Justice considers has appropriate experience and qualifications to be Associate Judges of the Supreme Court. The Chief Justice will assign Associate Judges from the SICC Panel as relevant for each SICC case.

20 The honorific of “Associate Justice” is suitably prestigious yet preserves the relative seniority of ordinary Judges of the Supreme Court.<sup>21</sup> A foreign Associate Justice could be accorded the honorific of “Associate (International) Justice”.

### ***The SICC’s docket***

21 The SICC will deal with three categories of cases:

- (a) First, where parties have consented to use the SICC after their dispute has arisen.

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<sup>19</sup> Article 93 of the Constitution provides that: “The judicial power of Singapore shall be vested in a Supreme Court and in such subordinate courts as may be provided by any written law for the time being in force.”

<sup>20</sup> The other approach would be to constitute the SICC as a third component of the Supreme Court under Article 94(1), in addition to the Court of Appeal and the High Court. But it is preferred to leave the constitutional scheme simple and leave functional matters to statute.

<sup>21</sup> The present Report will continue to utilise the more generic term “Associate Judge” until such time as the formal titles for SICC Associate Judges are confirmed.

(b) Second, where disputants are parties to a contract giving the SICC jurisdiction over any disputes arising out of that contract. Parties to international commercial transactions may agree in writing in their contracts to have disputes resolved in the SICC. The definitions of “international”,<sup>22</sup> “commercial”<sup>23</sup> and “agreement in writing” would follow the same definitions applicable in international arbitration, with suitable modifications.<sup>24</sup> This basis of jurisdiction would therefore be familiar to arbitration practitioners. It may be noted that both the Qatar International Court and Dispute Resolution Centre (“QICDRC”)<sup>25</sup> and the Dubai International Financial Centre Courts (“DIFCC”)<sup>26</sup> have recently adopted their own versions of an “opt-in” jurisdiction.

(c) Third, cases within the Singapore High Court’s jurisdiction which are transferred to the SICC by the Chief Justice. The Chief Justice will have the power to transfer cases commenced in the Singapore High Court to the SICC. This may be done without the consent of the parties. Guidelines on the grounds for such transfer of cases will be provided in the Rules of Court or

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<sup>22</sup> For the definition of “international”, see section 5 of the International Arbitration Act and Article 1(3) of the Model Law. An arbitration is international if: (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or (b) one of the following places is situated outside the State in which the parties have their places of business: (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement; (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.”

<sup>23</sup> For the definition of “commercial”, see footnote 3 to Article 1(1) of the Model Law: “The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business co-operation; carriage of goods or passengers by air, sea, rail or road.

<sup>24</sup> For the definition of “agreement in writing”, see section 2A of the International Arbitration Act, which provides inter alia that an arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or by other means; also, the requirement that an arbitration agreement shall be in writing is satisfied by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

<sup>25</sup> See Article 9 of the Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules.

<sup>26</sup> See Article 5 of Dubai International Financial Centre Law No 12 of 2004, as amended by Law No 16 of 2011.

SICC Rules. The pricing in transferred cases should generally follow Singapore High Court fees, save where the connection with Singapore is not strong. The SICC should have the discretion to charge the full SICC rate where the connection to Singapore is tenuous.

22 **Joinder of parties.** Within these three categories of cases, the SICC, as a High Court may join third parties to the proceedings with or without the third parties' consent. Joinder may be prompted by an application from one or more of the disputants.

23 Where the disputants and the third party consent upon the presentation of an application, there will be no difficulty with permitting joinder.

24 For other cases, the SICC Rules will provide that the court shall have the power to allow any third party to be joined in the proceedings, irrespective of whether that third party is a party to the SICC agreement.

25 As for the mechanism of bringing the intended third parties into the jurisdiction of the SICC, as provided for by s 16 of the SCJA, third parties who do not consent to the joinder but are present in Singapore can be served the writ if the SICC so directs. Third parties who are not present may still be joined if they can be served out of jurisdiction under one of the grounds found in Order 11 Rule 1 of the Rules of Court that are applicable to Singapore High Court proceedings.<sup>27</sup>

### ***Forum non conveniens***

26 The Committee discussed what the approach ought to be for cases where a party applies to court to stay the Singapore action on the ground of *forum non conveniens*. *Forum non conveniens* would not be an issue for consensual cases founded on an exclusive jurisdiction agreement, as the Singapore court would not allow the contesting party to breach its agreement. In such cases, the SICC would ordinarily dismiss the application for a stay unless strong cause can be shown.

27 Consideration should be given to amending the law to deal with cases that are not founded on exclusive jurisdiction agreements. For consensual jurisdiction cases, it is of note that the current position at Singapore common law differs from that used

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<sup>27</sup> See Order 11 rule 1 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed).

in the Hague Convention on Choice of Court Agreements (“the COC Convention”); or even that applied to arbitration under Singapore law. Regarding non-consensual jurisdiction, there is a question of whether the traditional *Spiliada* test which is applicable under Singapore law<sup>28</sup> remains modern and relevant to the SICC.

### ***Cases inappropriate for the SICC***

28 If there is a question over whether the dispute can be heard by the SICC, the SICC shall have the jurisdiction to hear and determine this question. In cases where there are no objections either to the jurisdiction of the SICC or that the dispute can be heard by the SICC, the SICC may nevertheless decline to admit such cases if they are clearly inappropriate (for example, where the dispute is not of a commercial nature, such as matrimonial disputes). In both situations, the SICC can require parties to furnish such information as may be required to ascertain the nature of the dispute. Where the case is not admitted to the SICC but falls within the ordinary jurisdiction of the Singapore High Court, the SICC may transfer the case back to the High Court. The SICC Rules should provide for the above.

### ***Procedure in the SICC***

29 **Generally.** The SICC Rules and practice directions will govern proceedings before the SICC. It is envisaged that these provisions would follow international best practices for commercial dispute resolution. In particular, reference will be taken from the procedure of institutions such as the English Commercial Court. The provisions adopted must be sensitive to the unique needs of commercial users and the commercial Bar. In addition, a model similar to the English Commercial Court Guide<sup>29</sup> which, through consultation with a Users’ Committee, may be considered to allow for a flexible and efficient mode of amending the SICC Rules.

30 **Interlocutory proceedings.** Interlocutory proceedings would be heard by Judges in a docket system.

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<sup>28</sup> See *Orchard Capital I Ltd v Ravindra Kumar Jhunjunwala* [2012] 2 SLR 519; *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391.

<sup>29</sup> See *The Admiralty and Commercial Court Guide* 9<sup>th</sup> edition 2011 updated March 2013 at <<http://www.justice.gov.uk/downloads/courts/admiraltycomm/admiralty-commercial-courts-guide.pdf>>.



31 **Composition.** In line with the position for Singapore High Court proceedings,<sup>30</sup> SICC proceedings will be disposed of by a single Judge, who may be a Supreme Court Judge or an Associate Judge. In addition, the Chief Justice may, on the application of a party, designate three Judges to hear a case. The Chief Justice would have regard to the subject-matter of the dispute, amongst other things, in designating the Judge or Judges to hear the case.

32 **Confidentiality.** SICC proceedings would as a general rule take place in open court. Transparency is attractive to some parties and is important for the branding of the SICC. The Committee agreed that confidentiality militates against the development of a body of jurisprudence, which will be necessary to enable prospective users of SICC dispute resolution to model their future commercial relations.

33 Nevertheless, it is intended that special rules apply for cases which have no substantial connection to Singapore. What constitutes the absence of substantial connection will be further refined in consultation with stakeholders, but will include cases where parties confirm that either (i) Singapore law is not the governing law; or (ii) the choice of Singapore law is the sole connection to Singapore, and agree that it is desirable to maintain confidentiality, the hearing will be conducted *in camera*, with other appropriate measures, such as the redaction of judgments. Confidentiality will immediately attach on filing unless the position is shown to be misstated later. On the other hand, if one party wishes to have confidentiality but the other does not, the SICC Rules will allow the party requesting for confidentiality to apply to the court, which will consider all the circumstances of the case, including the private interest of the contesting parties and any public interest considerations. In such cases, confidentiality will be extended until the court has disposed of the application.

34 **Questions of foreign law.** In line with the international character of the SICC, foreign law need not be pleaded and proved as fact in proceedings before the SICC, as the Judges can take judicial notice of foreign law with the assistance of oral and written legal submissions, supported by relevant authorities. The SICC would then apply foreign law<sup>31</sup> to determine the issues in dispute. This would facilitate buy-in

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<sup>30</sup> See section 10 of the SCJA.

<sup>31</sup> This can extend to civil law, and the relevant rules can allow for the appointment of judges from civil law jurisdictions.

from foreign counsel to bring their disputes to the SICC and, at the same time, aligns SICC procedure with the practice in international arbitration. Notwithstanding the position on the applicable conflict of laws rules, consideration should be given to the extent to which Singapore's public policy would be applicable in each case, and if so, the relevant implications it might have on the resolution of SICC disputes.<sup>32</sup>

35 **Appeal.** Decisions of the SICC would be appealable to a Court of Appeal whose coram will comprise international jurists from the SICC Panel and/or Judges from the Singapore Court of Appeal<sup>33</sup>. The right to appeal will be subject to any prior agreement between the parties to limit or vary the scope of appeal. Apart from a wholesale exclusion of the right to appeal, parties may agree to a limited scope of appeal or review on specific grounds modelled after the international arbitration regime, such as breaches of natural justice,<sup>34</sup> or defects in the validity and scope of the agreement to submit to the SICC.<sup>35</sup>

### ***Representation before the SICC and Court of Appeal cases arising out of the SICC***

36 As a division of the Singapore High Court, proceedings before the SICC will be governed by the LPA. Presently, parties can only be represented by members of the Singapore Bar, subject to the discretion of the court to admit Queen's Counsel or foreign lawyers of equivalent distinction on an *ad hoc* basis in certain cases. This position will also apply to cases transferred from the Singapore High Court to the SICC.

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<sup>32</sup> An example raised in the SICC Committee meeting would be the consideration of the SICC's position towards disputes based on gaming contracts, or otherwise claims which are presupposed upon contracts which may ordinarily be considered illegal in many jurisdictions.

<sup>33</sup> The Court of Appeal is not bound by previous decisions of its own or of the Privy Council, which were previously binding (under the old *stare decisis* rules), if adherence to such decisions would cause injustice in a particular case or constrain the development of the law in conformity with the circumstances of Singapore. However, the power to depart will only be exercised sparingly: see *Practice Statement (Judicial Precedent)* [1994] 2 SLR 689. On matters of Singapore law, decisions of the Court of Appeal (SICC List) will be binding on subsequent High Court decisions, regardless of whether these are on the SICC List.

<sup>34</sup> The relevant provisions may be modelled after the relevant parts of section 24 of the International Arbitration Act.

<sup>35</sup> The relevant provisions may be modelled after the relevant parts of Article 34 of the Model Law.

37 It is intended that special rules apply for cases which have no substantial connection to Singapore. What constitutes the absence of substantial connection will be further refined in consultation with stakeholders, but will include cases in which either (i) Singapore law is not the governing law; or (ii) the choice of Singapore law is the sole connection to Singapore; foreign counsel may appear before the SICC in such cases if they are registered with the SICC. Provision should be made under the SICC Rules to allow any party to apply to the court to disallow foreign counsel if they can show sufficient cause that (i) or (ii) does not apply in the case at hand.

38 Registration will be administered through a SICC Register of Foreign Lawyers. To be registered, foreign counsel must (a) provide an address representing their place of business, which may include an address of a Singaporean solicitor with whom the foreign counsel is working with on the case, and (b) undertake to abide by a set of ethical rules applicable to SICC proceedings. To ensure minimum standards of conduct by counsel, registered foreign counsel must undertake to abide by a code of ethics.

39 Representation in procedural issues will remain governed by the general position (see [36] above) although parties may, subject to the court's discretion, have registered foreign counsel address the court where points of foreign law arise. Any doubts or disputes on the propriety of foreign representation, i.e., on the question of whether Singapore law is the governing law or whether the choice of Singapore law is the sole connection to the dispute, may be heard as a preliminary issue.

40 Similarly, for Court of Appeal hearings that arise out of the SICC, the general position will apply where Singapore law is the governing law or the choice of Singapore law is not the only connecting factor to Singapore, and in procedural matters.

41 Disciplinary issues for registered foreign counsel will be dealt with in accordance with applicable procedures. Breaches of the SICC ethical code and other misconduct would result in, for example, (a) revocation of registration and blacklisting against future registration; and (b) a report of the breach to the foreign counsel's home jurisdiction.

## ***International Enforceability of SICC judgments***

42 As with the judgments of the Supreme Court of Singapore, judgments of the SICC may be enforced in other jurisdictions through reciprocal enforcement provisions, such as the Reciprocal Enforcement of Commonwealth Judgments Act<sup>36</sup> and the Reciprocal Enforcement of Foreign Judgments Act,<sup>37</sup> or through a common law action on the judgment debt. In this regard, the advantage of the enforceability of SICC judgments in some regional jurisdictions, such as India<sup>38</sup>, is a key factor to be emphasised in marketing and promotion.

43 The existing position may be complemented by the provision of model SICC dispute resolution clauses. A party who has submitted or who has agreed to submit to the SICC's jurisdiction may be deemed to have waived its right to defend against an action based on a SICC judgment in all jurisdictions. This may be expressly agreed upon or incorporated by reference to the SICC Rules in the SICC model dispute resolution clauses. The written consent of parties should be required so as to create issue estoppels which will bind parties to the decision of the referred jurisdiction.

44 On a policy level, enhancing the enforceability of SICC judgments can take place at three levels: (a) multilateral government agreements (including ASEAN-level arrangements); (b) bilateral government agreements; and (c) court-to-court arrangements.

45 **Multilateral government agreements.** The Singapore government may wish to consider how to leverage on multi-lateral agreements (including multi-lateral free trade agreements), especially within the ASEAN community.

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<sup>36</sup> In addition to the UK, the RECJA covers several major jurisdictions in the region: Australia (New South Wales, Queensland, Victoria, *etc*), New Zealand, Malaysia, Brunei and India (except the states of Jammu and Kashmir).

<sup>37</sup> This covers Hong Kong SAR.

<sup>38</sup> In particular, the domestic legislation of India recognizes Singapore as a "reciprocating territory" and provides a regime which facilitates the enforcement of a judgment given by a Singapore court. See sections 13, 37 and 44A of the Code of Civil Procedure 1908. To maximize the enforceability of a Singapore Judgment in India, sufficient regard may have to be accorded to the public policy of India where applicable, and the laws of India would have to be applied where it is expressed to be the governing law of a contract; see Rishi Agrawala, *Executability and Enforceability of Foreign Judgments and Decrees in India: Judicial Trends* (Agarwal Law Associates, New Delhi).

46 The government may also wish to consider signing up to the COC Convention. At present, only Mexico is a party to the COC Convention. The United States and the European Union have signed the COC Convention but have not ratified it. Should either the United States or the European Union ratify the COC Convention (the latter is expected to do so soon), Singapore's accession to the COC Convention would greatly boost the enforceability of SICC judgments. Singapore could make a greater effort to lobby other countries in the region to accede to the COC Convention.

47 **Bilateral government agreements.** Attention could be given to the SICC in the context of bilateral relations, including Free Trade Agreements.

48 **Court to court arrangements.** A unique method to market the internationality of SICC judgments would be to have a tie-up with a friendly foreign international court, to refer appropriate proceedings to each other's jurisdiction. For example, Order 101 of the Rules of Court reflects the procedure of the Memorandum of Understanding signed between Singapore and New South Wales. The order prescribes that if, in any proceeding before the Singapore High Court or Court of Appeal, a question of foreign law relating to the New South Wales jurisdiction arises, our courts have the power to, on its own motion or upon a party's application, order that an action be commenced in New South Wales for that question of foreign law to be determined.

49 The SICC could have similar arrangements with a friendly and prominent jurisdiction, for example, the English Commercial Court, such that:

(a) Where parties have commenced proceedings in the SICC, and a party to the dispute brings an independent but related set of proceedings in the English Commercial Court to determine a question of English law, the English Commercial Court could refuse the continuation of the proceedings and refer the matter back to the SICC. This would be an express recognition of the SICC's competence to deal with questions involving foreign law, in view of the SICC Panel's international makeup.

(b) If a party to an agreement to resolve commercial disputes in the SICC commences proceedings in the English Commercial Court, the latter would refer parties to bring their dispute to the SICC as a matter of course. A low threshold is needed: so long as there is the *prima facie* existence of a written SICC dispute resolution agreement, the referral will be made – any dispute on

whether the commercial dispute falls within the agreement, or on the validity of the agreement, would essentially be a dispute over the SICC's jurisdiction, which can and should be decided by the SICC itself. This obviates the existing position in the English common law, which permits the party to continue with the proceedings in the English Commercial Court notwithstanding an *exclusive* SICC dispute resolution clause if it can show strong cause to do so.

50 Singapore would likely need to offer to reciprocate on both (a) and (b).

51 A Memorandum of Guidance with jurisdictions which do not have any reciprocal enforcement treaty with Singapore may also enhance the international enforceability of SICC judgments. The Memorandum would set out the understanding of the court procedures required for the enforcement of each jurisdiction's judgments in the other court, and will promote a positive perception of SICC judgments. A recent example would be the Memorandum of Guidance signed between the English Commercial Court and the DIFCC in January 2013.

#### **IV THE SICC REGISTRY**

##### ***Role of the SICC Registry***

52 The SICC Registry will administer cases filed in the SICC and appeals in the Court of Appeal SICC list. Its functions will include the following:

- (a) Assisting the SICC Judges and the Court of Appeal Judges hearing appeals in the SICC list in the provision of quality and timely adjudication services for the efficient management of the docket.
- (b) Assisting in administering the directions of the SICC Judges and the Court of Appeal Judges hearing appeals in the SICC list for the preparation of cases for hearing and appeal, including pre-trial and preliminary applications as well as pre-hearing conferences.
- (c) Maintaining and managing the filing, production and certification of, and access to, court/hearing records and documents.
- (d) Convening court sittings and providing hearing support by, for example, conducting conflict checks, scheduling hearings, arranging for translation services, and facilitating the use of court technology like the giving of evidence through video-conferencing.

- (e) Assisting in administering the directions of the SICC Judges and the Court of Appeal Judges hearing appeals in the SICC list in post-trial matters, such as taxation proceedings and enforcement.
- (f) Editing and disseminating of court judgments and other publications.
- (g) Updating the SICC Rules and practice directions.
- (h) Establishing and maintaining the Register of Foreign Lawyers appearing before the SICC.
- (i) Being the liaison for all SICC business and affairs, managing all correspondence and other forms of contact, including inquiries and complaints.
- (j) Collecting fees and other charges.

53 The Committee agreed that it would not be appropriate to engage the SICC Panel on mediation work as it requires specialised skill sets. As such, the SICC Registry may work with providers of mediation services to refer disputes where parties have requested for mediation or which would benefit from mediation. Such co-operation would address consumers' needs in cases where disputants decide to mediate despite having commenced litigation. Where settlement is reached it could then be recorded in a court order. This would facilitate enforcement of the mediated agreement. .

### ***Structure of the SICC Registry***

54 The SICC Registry will be headed by the Registrar and supported by judicial officers. The jurisdiction, powers and duties of the Registrar and the judicial officers of the SICC will be the same as that for the Registrar and judicial officers of the High Court.

## **V CONCLUSION**

55 In conclusion, the SICC Committee is of the view that a Singapore International Commercial Court will enable Singapore to enhance its status as a leading forum for legal services and commercial dispute resolution. It will create a platform to catalyse the further growth of the legal services sector and the internationalisation of Singapore law.

56 The SICC Committee is pleased to submit the Report for consideration.

Dated this 29 day of November 2013.

Ms Indranee Rajah SC  
Senior Minister of State for Law and Education  
(Co-Chairman of the Committee)

A handwritten signature in black ink, appearing to be 'I. Rajah', written over a horizontal line.

The Honourable Justice V K Rajah  
Judge of Appeal, Supreme Court of Singapore  
(Co-Chairman of the Committee)

A handwritten signature in black ink, appearing to be 'V K Rajah', written over a horizontal line.



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