

MEMORANDUM OF UNDERSTANDING BETWEEN THE SUPREME COURT OF SINGAPORE AND THE SUPREME PEOPLE'S COURT OF THE PEOPLE'S REPUBLIC OF CHINA ON COOPERATION ON THE MANAGEMENT OF INTERNATIONAL COMMERCIAL DISPUTES IN THE CONTEXT OF THE BELT AND ROAD INITIATIVE THROUGH A LITIGATION-MEDIATION-LITIGATION FRAMEWORK

Factsheet

On 1 April 2023, the Supreme Court of Singapore ("SupCt") and the Supreme People's Court ("SPC") of the People's Republic of China ("PRC") signed a Memorandum of Understanding ("MOU") on Cooperation on the management of international commercial disputes in the context of the Belt and Road Initiative ("BRI") through a Litigation-Mediation-Litigation ("LML") framework.

Key significance and impact of the MOU in 2023

2 In view of the increasing complexity of disputes relating to international trade and commerce, particularly in the context of the BRI, the two Courts have signed the MOU to strengthen cooperation on the management of international commercial disputes in the context of the BRI ("BRI international commercial disputes") through a LML framework.

3 This is in recognition of the flexible, creative and efficient ways that mediation may offer to resolve such disputes, which not only save the parties time and costs, but also preserve their business relationships and provide them with greater control over the outcome of the dispute resolution process.

Features of the MOU

4 The Singapore International Commercial Court ("SICC") and the China International Commercial Court ("CICC") will, in accordance with the MOU, each develop and implement the LML framework for the management of BRI international commercial disputes.

5 The LML framework in each court may be developed and implemented in association with any domestic or foreign mediation expert and any domestic, foreign or international mediation institution in accordance with the respective procedural law of the seat of that court, and the court rules of that court.

6 Both courts agree to mutually share information on its LML framework and other dispute management practices, including information on the procedural rules, case management protocols and practices, and enforcement processes relating to the SICC and the CICC.

7 The LML framework developed and implemented by each court will have the following salient features:

- (i) Case management conferences may be convened for the court to determine the procedural steps (such as in the form of a court ruling, case management

- memorandum or notice, where applicable) and to give directions for the timely and cost-efficient management and resolution of the dispute;
- (ii) The court may grant a stay of court proceedings for a specified period for the parties to the dispute to reach a settlement through mediation, and any party to the dispute may, for good reason, apply for an extension of that period;
 - (iii) Every mediation is to be conducted on a “without prejudice” basis, and is private and confidential;
 - (iv) Where the parties to a dispute reach a settlement as a result of mediation, the court may give a judgment, or issue a statement having the effect of a judgment, to facilitate the recognition and enforcement of the mediated settlement;
 - (v) The parties to a dispute are entitled to have a mediation conducted in accordance with the mediation rules of a mediation institution chosen by those parties, or the rules agreed or submitted to by those parties in accordance with the applicable law.

8 Both courts agree to promote the LML framework by recommending, to the parties to disputes, the adoption of the following LML Model Clauses, as may be appropriate in the circumstances:

- (i) **Where the parties choose to resolve the dispute in the SICC** – Each party irrevocably submits to the exclusive jurisdiction of the SICC any dispute arising out of or in connection with this contract (including any question relating to its existence, validity or termination), and the parties agree that after the commencement of court proceedings, they will attempt in good faith to resolve any dispute through mediation in accordance with the LML Protocol of the SICC.
- (ii) **Where the parties choose to resolve the dispute in the CICC** – Each party, according to the procedural law of the seat of the court, irrevocably submits to the exclusive jurisdiction of the CICC any dispute arising out of or in connection with this contract (including any question relating to its existence, validity or termination), and the parties agree that after the commencement of court proceedings, they will attempt in good faith to resolve any dispute through mediation in accordance with the Procedural Rules of the CICC.

Previously signed MOUs and Memorandum of Guidance (“MOG”) between SupCt and SPC

9 The MOUs and MOG signed previously between the Singapore and China judiciaries are:

- (i) 2017 – **MOU on cooperation** to further deepen pragmatic cooperation on judicial issues in an increasingly globalised and interconnected world with growing numbers of transnational transactions.
- (ii) 2018 – **MOG on recognition and enforcement of money judgments in commercial cases** to help facilitate and promote mutual understanding of the laws and judicial processes between the two courts, with a view towards smoothing the processes as well as providing guidance for litigants on the applicable laws and regulations that govern the enforcement of foreign judgments in Singapore and China. This enhances business confidence by providing greater legal support for companies in both countries, and enhances the cooperation under the BRI.

- (iii) 2019 – **MOU on advancing continuing judicial education** between the Singapore Judicial College and the National Judges College of the PRC to engage in mutual institutional exchanges to promote friendly relations, cooperation and judicial education within the ambit of the respective judicial systems.
- (iv) 2021 – **MOU on cooperation on information on foreign law** to establish a mechanism between the two courts to determine questions of law of the other jurisdiction in international civil and commercial cases. It enables accurate and authoritative information on foreign laws to be obtained more easily, thus improving the efficiency of judicial adjudication processes.

FACTSHEET ON MEMORANDUM OF UNDERSTANDING BETWEEN THE SUPREME COURT OF SINGAPORE AND THE SUPREME PEOPLE’S COURT OF THE PEOPLE’S REPUBLIC OF CHINA ON COOPERATION ON THE MANAGEMENT OF INTERNATIONAL COMMERCIAL DISPUTES IN THE CONTEXT OF THE BELT AND ROAD INITIATIVE THROUGH A LITIGATION-MEDIATION-LITIGATION FRAMEWORK

1 A Memorandum of Understanding (MOU) between the Supreme Court of Singapore and the Supreme People’s Court of the People’s Republic of China on cooperation on the management of international commercial disputes in the context of the Belt and Road Initiative (BRI) through a Litigation-Mediation-Litigation (LML) framework will be signed on 1 April 2023.

2 Under this MOU, each court will develop and implement the LML framework to manage BRI disputes through their respective international commercial court, facilitated by a domestic or foreign mediation expert, and domestic, foreign or international mediation institution. Both courts recognise that mediation may offer flexible, creative and efficient ways to resolve such disputes and agreed to strengthen cooperation in this area in view of the increasing complexity of disputes relating to international trade and commerce.

3 The signing of the MOU reaffirms the close working relationship between both courts and demonstrates the strong commitment to enhance access to justice in our respective jurisdictions.

.

For media queries, please contact:

Ms Shirleen Lu
Assistant Director
Communications and Service Excellence Division
DID: 6332 5307
Shirleen_Lu@judiciary.gov.sg

About SG Courts

The Singapore Courts – comprising the Supreme Court, State Courts and Family Justice Courts – is one of the three constitutional pillars of government in Singapore. Known collectively as **SG Courts**, we are integrated and coordinated to serve as one judiciary. As an organ of state, the judiciary’s function is to independently administer justice. Headed by the Chief Justice, we are a forward-looking, innovative and trusted judiciary. Built on judicial professionalism and transparency, we maintain the highest standards of integrity in safeguarding our community. We pledge to ensure equal and continuous access to justice, and we are committed to deliver justice that is fair and impartial.

About Justice Belinda Ang

Justice Belinda Ang Saw Ean was appointed Justice of the Court of Appeal on 1 November 2022. She was appointed the President and Judge of the Appellate Division on 2 January 2021.

Her Honour was appointed Judicial Commissioner of the Supreme Court of Singapore on 1 February 2002 and was elevated to Judge of the High Court on 2 January 2003. Justice Ang’s areas of focus are in Shipping and Arbitration matters, Finance, Securities, Banking, and Complex Commercial cases. Since 30 July 2018, Justice Ang has been sitting regularly in the Court of Appeal.

Born in Malaysia, Justice Ang obtained her Bachelor of Laws from the University of Wales, Aberystwyth in 1976. Thereafter, she was admitted as a Barrister-at-Law of the Middle Temple and an advocate and solicitor in Singapore. In 1979, she received her Master of Laws (with distinction) from the University College, London. On 7 June 2016, Justice Ang was elected as an Overseas Bencher of the Middle Temple and on 21 September 2016, she was called to the Middle Temple Bench.

She joined M/s Godwin & Co in 1980 and was made junior partner in 1983. She also founded M/s Ang & Partners in 1985, her own boutique law firm. She was appointed Senior Counsel in 1998.

In November 2017, Justice Ang was appointed by Chief Justice Sundaresh Menon to serve as the Judge in charge of the High Court.

In addition, Justice Ang is the chairperson and director of the Board of the Singapore Mediation Centre.. Since 25 January 2018, Justice Ang has been appointed a member of the Panel of Referees of the Journal of the Malaysian Judiciary. In January 2019, she was appointed a member of the Lloyd’s Law Reports Editorial Board. In January 2021, she was also appointed the President and Judge of the Appellate Division on 2 January 2021.



MEMORANDUM OF UNDERSTANDING ON COOPERATION

BETWEEN

THE SUPREME COURT OF THE REPUBLIC OF SINGAPORE

AND

**THE SUPREME PEOPLE'S COURT
OF THE PEOPLE'S REPUBLIC OF CHINA**

ON

**THE MANAGEMENT OF INTERNATIONAL COMMERCIAL DISPUTES
IN THE CONTEXT OF THE BELT AND ROAD INITIATIVE THROUGH
A LITIGATION-MEDIATION-LITIGATION FRAMEWORK**

The Supreme Court of the Republic of Singapore and the Supreme People's Court of the People's Republic of China (hereinafter each referred to as a "Participant", and collectively referred to as the "Participants"):

- (a) Recognising the increasing complexity of disputes relating to international trade and commerce (including the carrying out of infrastructure development and construction works, the supply of goods and services in connection with such works, and the financing of such activities) in the context of the Belt and Road Initiative (hereinafter referred to as "BRI international commercial disputes");
- (b) Considering that cooperation in the management of such disputes will promote the ties of friendship between the Republic of Singapore and the People's Republic of China, and advance the Belt and Road Initiative; and
- (c) Recognising that mediation may offer flexible, creative and efficient ways to resolve such disputes, which not only save the parties to such disputes time and costs, but also preserve their business and working relationships and provide them with greater control over the outcome of the dispute resolution process,

Mutually agree to strengthen cooperation on the management of BRI international commercial disputes through a Litigation-Mediation-Litigation (hereinafter referred to as "LML") Framework, and have entered into the following Memorandum of Understanding (hereinafter referred to as "MOU"):

Article 1 – Development and Implementation of LML Framework

Each Participant will develop and implement, in accordance with this MOU, a LML Framework for the management of BRI international commercial disputes. The Participants agree that: (a) the Supreme Court of the Republic of Singapore may develop and implement the LML Framework through the Singapore International Commercial Court (hereinafter referred to as “SICC”); and (b) the Supreme People’s Court of the People’s Republic of China may develop and implement the LML Framework through the China International Commercial Court (hereinafter referred to as “CICC”).

Article 2 – Collaboration with Other Parties

Each Participant may develop and implement the LML Framework in association with any domestic or foreign mediation experts and any domestic, foreign or international mediation institutions in accordance with the procedural law of the seat of the Participant and the Participant’s court rules.

Article 3 – Sharing of Information

Each Participant agrees to share, with the other Participant, information on its LML Framework and other dispute management practices, including any procedural rules, case management protocols and practices, and enforcement processes. The Participants agree that for the purposes of this Article, it will be sufficient: (a) for the Supreme Court of the Republic of Singapore to share information relating to the SICC; and (b) for the Supreme People’s Court of the People’s Republic of China to share information relating to the CICC.

Article 4 – Features of LML Framework

The Participants agree that the LML Framework developed and implemented by each Participant will have the following features:

- i. Case management conferences (however described) may be convened for the court to determine the procedural steps (such as in the form of a court ruling, case management memorandum or notice, where applicable), and to give directions, for the timely and cost-efficient management and resolution of the dispute.
- ii. The court may grant a stay of court proceedings for the parties to the dispute to reach a settlement through mediation. Where the court grants a stay of court proceedings for a specified period, any party to the dispute may, for good reason, apply for an extension of that period.
- iii. Every mediation: (a) is to be conducted on a “without prejudice” basis; and (b) is private and confidential. Any privileged information or document produced at a mediation remains privileged from disclosure in court proceedings according to the law of the seat of mediation. *In this context, the parties to the dispute will not use or rely on any privileged information or document disclosed in the mediation in any court proceedings, if there is partial or no settlement reached as a result of the mediation.*
- iv. Where the parties to a dispute reach a settlement as a result of mediation, the court may give a judgment, or issue a statement having the effect of a judgment, to facilitate the recognition and enforcement of the mediated settlement.
- v. The parties to a dispute are entitled to have a mediation conducted in accordance with: (a) the mediation rules of a mediation institution chosen by those parties; or (b)

the rules agreed or submitted to by those parties in accordance with the applicable law.

Article 5 – LML Model Clauses

The Participants agree to promote the LML Framework by recommending, to the parties to disputes, the adoption of such of the following LML Model Clauses as may be appropriate in the circumstances:

- i Where the parties choose to resolve the dispute in the SICC:

"Each party irrevocably submits to the exclusive jurisdiction of Singapore International Commercial Court any dispute arising out of or in connection with this contract (including any question relating to its existence, validity or termination).

The parties agree that after the commencement of court proceedings, they will attempt in good faith to resolve any such dispute through mediation in accordance with the Litigation-Mediation-Litigation Protocol of the Singapore International Commercial Court."

- ii Where the parties choose to resolve the dispute in the CICC:

"Each party, according to the procedural law of the seat of the court, irrevocably submits to the exclusive jurisdiction of the China International Commercial Court any dispute arising out of or in connection with this contract (including any question relating to its existence, validity or termination).

The parties agree that after the commencement of court proceedings, they will attempt in good faith to resolve any such dispute through mediation in accordance with the Procedural Rules for the China International Commercial Court of the

Supreme People's Court.”

Article 6 – Other Matters

- i. This MOU will come into effect on the date of its signature. Either Participant may terminate this MOU by giving written notice for its termination to the other Participant.
- ii. This MOU may be amended at any time in writing by mutual consent of the Participants. Any amendment that has been agreed upon by the Participants will come into effect on such date as agreed by the Participants and will be considered an integral part of this MOU.
- iii. This MOU does not constitute any treaty or law, and does not create any legally binding rights or obligations between the Participants under domestic or international law.

This MOU is signed in 2 original copies, one being in English and the other in Chinese, both texts being equally valid, on 1 April 2023 in the People's Republic of China.



For and on behalf of the Supreme Court of the Republic of Singapore

For and on behalf of the Supreme People's Court of the People's Republic of China

Belinda Ang Saw Ean

TAO Kaiyuan

Justice of the Court of Appeal

Vice-president & Justice

Supreme Court of the Republic of Singapore

The Supreme People's Court of the People's Republic of China