

SICC NEWS

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Reflections from Chief Justice Sundaresh Menon



In the two years since the Singapore International Commercial Court (SICC) was launched, it has proven its mettle with its track record – eight cases heard, pending or dismissed; an encouraging volume for a young court.

International Judges were assigned to cases that reflect their respective areas of specialisation and legal tradition. Five judgments have been rendered, with several lauded by the legal fraternity for the swift and efficient manner they were issued. I expect this assignment of specialist judges and quick disposal rate to be the SICC's distinguishing features.

There has also been a tremendous level of interest in the SICC's unique features and court technologies. We have received many enquiries and visits from business leaders, practitioners and governmental delegations. I am also greatly encouraged by the number of calls made by our counterparts in foreign judiciaries, many of whom have expressed a keen desire to collaborate with us in knowledge-sharing and institution-building.

For 2017, my wish is for the SICC to continue to grow not just its caseload but also the quality of its case management. With increased awareness, I envision the SICC as the preferred choice for transnational commercial dispute resolution in Asia. Its open and transparent proceedings, availability of appeals and ability to join related parties, amongst other attributes, ensure that it remains a trusted and, more importantly, neutral venue for dispute resolution.

As 2016 draws to a close, I bid you Season's Greetings and Best Wishes for the New Year!

Perspectives

SICC Judgments Are More Widely Enforceable Today



*By International Judge Anselmo Reyes
(concurrently the Representative of the Asia Pacific Regional
Office of the Hague Conference)*

The 2005 Hague Convention on Choice of Court Agreements came into effect on 1 October 2015. There are currently 29 states who are parties to the Convention. These include the members of the European Union (with the exception of Denmark) and Mexico.

Singapore signed the Convention on 25 March 2015 and ratified it on 2 June 2016. The Convention was enacted into Singapore law through the Choice of Court Agreements Act 2016, which came into force on 1 October 2016.

The US signed the Convention on 19 January 2009, but has yet to ratify it. It is unclear if and when ratification will occur, as for a long time this has been delayed by an ongoing debate over whether the Convention should be implemented at the federal or state level.



**CONVENTION ON
CHOICE OF
COURT AGREEMENTS**

In Asia, a number of countries (especially members of ASEAN in connection with the ASEAN Economic Community) have expressed interest in becoming party to the Convention. It is hoped that in the near future, the number of state parties to the Convention will see a significant increase.

Currently, a Special Commission of the Hague Conference on Private International Law is working on the Preliminary Draft of a more ambitious Convention for the Recognition and Enforcement of Judgments in Civil and Commercial Matters. Work has been progressing well. It is anticipated that the Preliminary Draft may be ready in the first half of 2017.

Singapore's accession to the 2005 Convention means that there are now some 40 jurisdictions in which judgments of the SICC can be enforced by reason of bilateral or multi-lateral treaties (including the Convention). In practical terms, however, SICC judgments are enforceable in a much larger number of countries.

In common law jurisdictions (including the US), an SICC judgment should be readily enforceable by summary judgment. Essentially, one brings an action in a relevant common law jurisdiction based on the debt created by the SICC judgment. Because there can be no defence to the claim (the matter having already been adjudicated by the SICC), one can ask the court to give judgment on the debt without recourse to further trial.

The civil procedure of many civil law jurisdictions have been modernised to allow for the recognition of foreign judgments in commercial cases where two requirements are met. First, reciprocity must be shown. It will have to be established that the state from which the judgment originates has recognised, or is likely to recognise, the judgments of the enforcing state. This should not be difficult where Singapore is the originating state, as (even in the absence of a treaty) foreign judgments can be enforced in Singapore under the summary procedure process described above. Second, the court of the originating state must have exercised jurisdiction on a ground set out in the enforcing state's code of civil procedure. The SICC ordinarily exercises jurisdiction where the parties expressly designate it as the forum to resolve their disputes. Such basis of jurisdiction (a choice of court agreement) should satisfy the jurisdictional requirement imposed by many civil law countries.

International courts typically face the problem of ensuring that their judgments are readily enforceable in a sufficiently wide number of jurisdictions to justify parties choosing them as the forum to resolve their disputes. The SICC, the Dubai International Financial Centre Courts, and the London Commercial Court (especially following *Brexit*) are no exception to this concern. However, for the reasons given above, the public should have a degree of comfort that SICC judgments will be widely enforceable.

- To view Singapore's Choice of Court Agreements Act 2016, please visit: goo.gl/ZdFjnc
- The Hague Convention on Choice of Court Agreements can be accessed here: www.hcch.net/en/instruments/conventions/full-text/?cid=98

SICC Out & About

Southeast Asian Judiciaries Visit the SICC

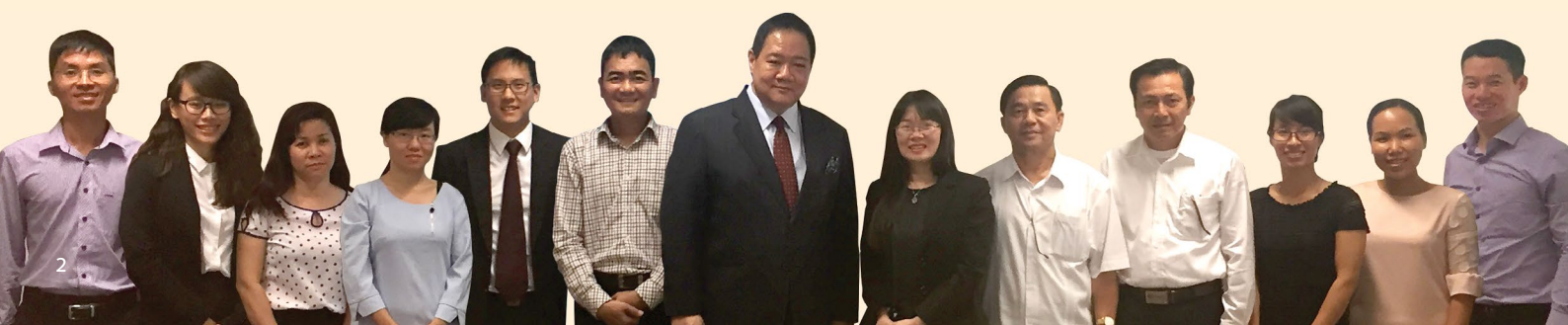
On 1 September, Union Chief Justice (UCJ) Htun Htun Oo (centre of right image), Supreme Court of the Union, Myanmar, called on CJ Sundaresh Menon with two other delegates, Justice U Soe Nyunt and Deputy Director General Tin Nwe Soe, being in Singapore for the 2nd Joint Committee Meeting under the Singapore-Myanmar Integrated Legal Exchange (SMILE) Memorandum of Understanding. They were then briefed on the SICC, and remarked on the court's flexible procedures and choice of representation by foreign counsel. With Myanmar's economy expanding rapidly due to a strong influx of foreign investments, this visit to the SICC was timely as the UCJ enquired about the SICC's effectiveness in adjudicating transnational commercial disputes within this region.

In a separate visit, an 11-member delegation from the Vietnamese Ministry of Justice (pictured below), led by Deputy Director General Ms Pham Ho Huong, visited the SICC on 6 October. She was accompanied by the Chief Judge of the High Court of Ho Chi Minh City, Mr Tran Van Chau.



The delegation understood how the increasing number and complexity of cross-border commercial disputes demanded an effective and neutral venue for resolving them – something the SICC could deliver adequately. They also had a better understanding of the Singapore legal system and the procedures in place to recognise and enforce foreign money judgments and awards.

Beyond outreach efforts by the SICC, exchange of ideas and best practices are integral to the development of the Court, especially amongst our Southeast Asian neighbours. After all, with the exponential economic growth experienced by the region in recent years, it is in everyone's interest and benefit to cooperate in establishing effective dispute resolution platforms to ensure further success and stability.



On a Mission to Japan



(Clockwise from top left) CJ Menon, together with IJ Reyes and IJ Taniguchi at the Supreme Court of Japan; CJ Menon presenting a Singapore memento to Chief Justice Itsuro Terada after their discussion; CJ Menon making a presentation at a client seminar

Communication and relationship-building with our Asian counterparts critically contributes to establishing a firm foundation for cross-learning and knowledge-exchange, and raise the legal standards within the region. Earlier this year, the Singapore judiciary had several opportunities to interact with Japan's judiciary and legal stakeholders.

In April 2016, Chief Justice (CJ) Sundaresh Menon led a delegation, which included SICC's International Judges (IJ) Yasuhei Taniguchi and Anselmo Reyes, to Tokyo. Aside from calling on Chief Justice Itsuro Terada of Japan where they discussed aspects of judicial cooperation between the two courts, he gave the keynote address at the Keio University Law School Symposium. CJ Menon shared about staying relevant in today's age of increasing convergence between law and judicial practice, and the growing interconnectedness between jurisdictions. He further met with senior partners from four leading Japanese law firms—

Anderson, Mori & Tomotsune, Mori Hamada & Matsumoto, Nagashima Ohno & Tsunematsu, and Nishimura & Asahi. The mission trip concluded with presentations by CJ Menon and IJ Taniguchi at a Jones Day client seminar.

Summarised IJ Taniguchi of the mission: "A major learning by the mission team was that many Japanese corporations welcome the availability of appeals in dispute resolution which only a court of law could provide, but had to resort to arbitration for their overseas ventures in the region for want of a trusted neutral platform. Now that they are aware of the SICC as an effective venue, both Japanese lawyers and business leaders would consider incorporating the SICC into the jurisdiction clause for international contracts where appropriate."

To read CJ Menon's speech at Keio University, please visit: goo.gl/7iNa4b

IP Week @ SG 2016

At the IP Week @ SG 2016, organised by the Intellectual Property Office of Singapore, the SICC participated in a workshop titled, "Optimal IP Dispute Resolution – Considerations and Practice". Held on 24 August, the workshop included two other dispute resolution institutions—Singapore International Arbitration Centre and Singapore International Mediation Centre—and provided attendees, which included global business leaders, with a better understanding of the spectrum of available dispute resolution offerings for their companies and businesses. During its presentation, the SICC shared that it was able to hear intellectual property (IP) cases where



legal requirements are met, noting in particular that claims relating to *in personam* IP disputes are expressly listed under Order 110 of the Rules of Court as "commercial in nature".

Asia Annual Survey of Letter of Credit Law & Practice Conferences

Organised by the Institute of International Banking Law & Practice (IIBLP), this year's Asia Annual Survey of Letter of Credit Law & Practice Conferences were held in July, in three major cities – Shanghai, Hong Kong and Singapore. This series of conferences is meant to provide a platform for letters of credit practitioners to exchange ideas and discuss the discipline's major trends. It drew many bankers, general counsels and lawyers at each city.

Together with Mr Chan Leng Sun, SC, Principal at Baker & McKenzie.Wong & Leow, the SICC presented in

all three cities. Judicial Commissioner Kannan Ramesh, at the Singapore edition, touched on how the SICC could effectively serve the needs of the banking industry as Letters of Credit, by their very nature, are transnational and commercial.

"I am glad that the SICC agreed to this collaborative effort with the IIBLP and my firm. I am proud to share the message across three markets as this reflects the high level of confidence the international legal community has in Singapore as a trusted venue to resolve disputes – whether through litigation or arbitration," commented Mr Chan, SC.

Judgments

A Stay Application to Avoid Risk of Conflicting Judgments Dismissed

In November 2015, BNP Paribas Wealth Management brought an action in the Singapore High Court against two Israeli nationals, Jacob Agam and Ruth Agam, due to their failure to repay their loans granted under two facility agreements and secured against personal guarantees on properties they owned. Both sets of documents contained clauses stating that the contracts were governed by Singapore law and both parties had agreed to submit to the jurisdiction of the Singapore courts.

The action was then transferred to the SICC before a three-judge coram comprising Justice Steven Chong, and International Judges Roger Giles and Dominique Hascher.

Six months later, the defendants brought a counter-action in the Paris Court on the basis that the facility agreements and personal guarantees were invalid under French law. This was followed by an application for a temporary stay of Singapore's proceedings pending the determination of this counter-action and foreclosure proceedings in respect of one of their French properties. It was supposedly to avoid the risk of conflicting judgments ensuing from the Singapore and French proceedings.

Justice Chong, in the judgment on the stay application, said: "The power of the court to grant such a limited stay is firmly grounded in case management



considerations and has to be exercised in order to achieve efficiency in the resolution and disposal of disputes."

In this case, the judges noted that the French counter-action, which was a mirror of the Singapore action, was brought after the defendants had taken steps in the Singapore proceedings, including the filing of a counterclaim.

Hence, the stay application should be dismissed as the multiplicity of proceedings was a result of the defendants' counter-action which "appears to have been commenced to deliberately stifle the expeditious resolution of the current action". Also, the Court rejected their argument that this action should be stayed as a matter of international comity. Among other reasons, the defendants had already conceded that Singapore was an appropriate forum for dispute resolution and the French court could recognise any Singapore judgment.

For the full judgment, please read: [www.sicc.gov.sg/documents/judgments/2016_SGHC\(I\)_05.pdf](http://www.sicc.gov.sg/documents/judgments/2016_SGHC(I)_05.pdf)



As at 30 November 2016, the SICC has 70 registered foreign lawyers (RFLs) on its register. Foreign lawyers are welcome to apply to be registered with the SICC. To view the full list of RFLs and find out more about registration, please visit www.sicc.gov.sg/ForeignLawyer.aspx?id=101