



Webinar Exploring the SICC as an Alternative Forum for Dispute Resolution Attracts Worldwide Audience

An Alternative Forum for Dispute Resolution: SICC Five Years On

The COVID-19 pandemic has brought many challenges to the international dispute resolution landscape across the globe. The restriction on travel and large gatherings have accelerated the use of technology. Against this background, and in keeping up with this “new-normal”, the Singapore International Commercial Court (SICC) and the Singapore Academy of Law (SAL) organised a webinar on 21 September 2020. Titled “An Alternative Forum for Dispute Resolution: SICC Five Years On”, the webinar explored SICC’s achievements since its launch five years ago and how the unique features of the Court and judgments handed down have shaped transnational dispute resolution in general, and international litigation in particular. This event started life as an initiative between the SICC and the Foreign Lawyers Chapter (FLC) of the SAL Professional Affairs Committee (PAC) for a conference catering to foreign lawyers working from Singapore, but grew in scope with the easy accessibility of a virtual platform.

The webinar was attended by close to 200 participants, about half from Asia (with strong participation from India and China) and the rest from Europe, North America, Oceania and even Nigeria.

The webinar opened with Senior Director Laurence Wong sharing the *raison d’être* of the SICC and how the SICC could provide a neutral venue in Asia as an alternative option for dispute resolution. He touched on the enforcement of SICC judgments and quoted real-life case studies of enforcement in several civil law jurisdictions including China, Japan and Vietnam.

Phang Hsiao Chung, Divisional Registrar – SICC, covered the key features of the SICC including the option of representation by foreign counsel registered with the Court in certain cases, procedural flexibility based on international best practices and party-autonomy, and adjudication by a coram of one or three judges from a diverse panel of eminent international and local judges.

The key highlight of the webinar was a panel session which boasted a stellar line-up of eminent thought leaders giving their insights on the SICC experience to-date and discussing the future of the SICC. Moderated by Simon Dunbar, Partner, King & Spalding LLP, the panel comprised Justice Kannan Ramesh, Sir Bernard Eder, International Judge, Toby Landau QC, Barrister, Essex Court Chambers and Daniel Waldek, Of Counsel, Herbert Smith Freehills LLP. They discussed many pertinent issues peculiar to the SICC as a dispute resolution forum including the right of appeal to the Singapore Court of Appeal (as well as the right to exclude appeal), and the concerns and considerations of clients when adopting SICC jurisdiction clauses.

Justice Kannan Ramesh also revealed an interesting proposed amendment to the SICC rules, where at the first Case Management Conference of a matter before the Court, the judge has the discretion to direct that the case proceeds along one of three tracks: either through pleadings, statements or memorials. This initiative, when implemented, would accommodate foreign parties and foreign counsel who may not be too familiar with the pleadings system usually practiced in common law courts; and alignment with international best practice in dispute resolution.

Questions posed to the panel came fast and furious, and many of them probed the procedural flexibility offered and the enforcement of money judgments in foreign courts. As to the latter, Sir Bernard Eder gave an insightful view on the recognition and enforcement of money judgments in both common law and civil law courts in the absence of treaties and conventions.

Here’s what some of the attendees had to say about the webinar as well as the SICC as a whole:

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"In my personal experience, the SICC provides a seriously fast and robust process of dispute resolution. My firm, Providence Law Asia LLC, has completed three cases in the SICC now and had a good experience in all three cases. The international judges run a tight-ship on timelines; so you don't get the delays nowadays associated with international arbitration as a result of the emphasis on party autonomy.

You trust that there will be robust decision-making process because of the intellectual and investigative rigour of the highly-qualified and experienced judges. The only thing missing now is to have a widely-ratified global convention for the cross-border enforcement of SICC judgments so that it stands toe-to-toe with the New York Convention.

The Hague Convention is a good first step, but there appears to be a lack of political will for its international adoption. Perhaps it is time to consider something ASEAN-wide first?"

- Danny Quah, Counsel, Providence Law Asia LLC

"The SICC, in my view, is a particularly important resource as an independent centre for the resolution of disputes whose attraction extends beyond the Asia-Pacific region.

I say independent as the court's reputation is of strict adherence to the rule of law and the proper adjudication of disputes by a deeply experienced bench. This is a vital outcome for business which must have confidence that disputes can be fairly disposed of and more easily accepted therefore, without rancour.

It was a wonderful opportunity for me to meet, albeit digitally, some of the leading members of the court and to hear about the work being done, which is impressive."

- Michael Brotchie RFL, Partner, McCarthy Denning

"The discussion on enforcement and appeals was particularly enlightening, in particular how Singapore court judgments are increasingly being enforced by foreign courts and the considerations that factor in the analysis when appeals are available.

A pragmatic blend of the benefits offered by international commercial arbitration and litigation. Drawing from how arbitration has dispensed with unduly burdensome processes such as general disclosure and proof of foreign law, while maintaining the procedural certainties and safeguards of litigation, the SICC has established a genuine alternative for commercial disputes regionally.

With an increasingly international character and significant costs advantages offered, the SICC is well-positioned to compete with arbitration as a forum for international dispute resolution."

- Bhavish Advani, Of Counsel, Watson Farley & Williams (Thailand) Ltd

A recording of the webinar may be accessed here <https://go.gov.sg/sicc-webinar-210920-recording>



PERSPECTIVES

An Interview with a Registered Foreign Law Expert



Mr Juwana Hikmahanto is a professor in Indonesian law. He is currently the Chancellor of General Achmad Yani University as well as a Professor of International Law, Faculty of Law of University of Indonesia. He is the first Registered Foreign Law Expert (RFLE) with the SICC and he has been registered since October 2020. A foreign law expert is someone who is knowledgeable in a

particular area of foreign law but is not a practicing lawyer. Mr Hikmahanto was first called address questions of Indonesian law for SICC's first case in 2015.

SICC News had a chance to chat with Mr Hikmahanto and find out more about his motivation to register as a foreign law expert with the SICC and his thoughts about the SICC as a whole.

1. What are your motivations for applying to be a RFLE of the SICC?

My motivation for applying to be registered as a Foreign Law Expert with the SICC was due to my involvement with a case which is currently being heard at the SICC. This was my second involvement as a Foreign Law Expert in the SICC.

2. What is the scope of work as a Foreign Law Expert and describe your experience as a RFLE in the SICC?

As a RFLE, I am expected make submissions on any question of foreign law on behalf of a party in accordance with the provisions under O 110 rr 25 to 29 of the Rules of Court. My first experience in the SICC was providing oral evidence as an expert witness for the Plaintiff on Indonesian law, specifically Indonesian mining law in BCBC Singapore Pte Ltd v PT Bayan Resources TBK. As I was an academic and not a member of the Indonesian Bar, I was not qualified to be a Registered Foreign Lawyer with the SICC in order to make oral submissions before the SICC, but I was allowed to provide oral evidence as an expert witness without being subject to cross-examination and appeared before three judges. My second experience was when I had to prepare a submission but was not asked to appear before the judges.

3. What are some of the features of the SICC which appeal to you?

SICC is a good forum for businesses involved in international trade, especially in the ASEAN economic communities. As we know, with the growth of trade and investments within ASEAN, there is definitely going to be disputes between businesses, and as such these businesses should take advantage of the flexibility of procedures in the SICC in dispute resolution and the close proximity of the forum to their respective countries.

Having a foreign lawyer who is registered as an RFL with the SICC means that they have the opportunity to fight a case in a different and neutral jurisdiction; and the good thing is that I can say my piece about Indonesian law - it is a good forum.

International Commercial Litigation and the Singapore International Dispute Resolution Academy (SIDRA) IDR Survey 2020 Final Report

The SIDRA International Dispute Resolution Survey Final Report 2020 (SIDRA Survey) is a report that examines the preferences, experiences, practices and perspectives of dispute resolution users across the world, specifically in examining why users choose international commercial arbitration, international commercial mediation, international commercial litigation, hybrid dispute resolution mechanisms, and investor-state dispute settlement mechanisms to resolve their disputes. The survey was distributed internationally in all six official UN languages with the assistance of PwC South East Asia Consulting, and the report is based on responses from 304 respondents across 46 jurisdictions.

The SIDRA Survey is unique because it is an entirely user-centric survey where all respondents are either client users (corporate executives and in-house counsel), or legal users (lawyers and legal advisers) who engage in cross-border commercial dispute resolution. Some key findings of the SIDRA Survey are:

- a. International commercial arbitration is the dispute resolution mechanism of choice amongst respondent users, although users expressed lower satisfaction with the speed and costs of arbitration;
- b. International commercial litigation is the second-most popular dispute resolution of choice amongst respondent users, with more than 80% of users considering factors such as enforceability, clarity in rules, and impartiality as important or absolutely crucial in their choice of litigation as a dispute resolution mechanism, and expressing satisfaction with these factors (see Exhibit 4.3.3 to the right);
- c. In their choice of international commercial courts, more than 80% of respondents indicated that efficiency is an important

or absolutely crucial factor, but only 45% of the respondents expressed satisfaction with their experiences in general;

- d. The most commonly used international commercial courts are the Commercial Court in London and the SICC.

The findings indicate that enhanced efficiency in international commercial courts will increase their attractiveness as a dispute resolution forum. In terms of technology, users welcomed tools for litigation such as e-discovery, platforms for the conduct of virtual and online hearings, and analytics tools for the appointment of judges and/or counsel.

In respect of the above, the SICC's advantage in procedural flexibility, such as allowing determination of foreign law to be based on submissions by counsel instead of proof by expert witnesses, not practicing general discovery, and allowing parties to adopt rules of evidence such as the IBA Rules on the Taking of Evidence in International Arbitration, is crucial to enhancing efficiency and the attractiveness of the SICC as a preferred forum for international commercial litigation.

Exhibit 4.3.3



SICC OUT & ABOUT

Signalling Willingness to Recognise and Enforce Foreign Judgments

By Catherine Shen ABLI

On 3 June, the Asian Business Law Institute (ABLI) hosted a webinar titled “A View from the International Bench – Current Topics in Cross-border Dispute Resolution” where Dr Michael Hwang SC, former Chief Justice of the Dubai International Financial Center Courts and Justice Anselmo Reyes, International Judge of the SICC, discussed latest topics in international dispute resolution, including the conclusion of the 2019 Hague Judgments Convention, the role of memoranda of guidance (MOG) as to enforcement of money judgments, and the power of courts to extend time limits under certain circumstances in international arbitration, citing three Singapore court judgments, two of which were heard before the SICC.

Reyes IJ pointed out that signing up to the Hague Judgments Convention (and by extension the Hague Choice of Court Convention) gives a signal to the international community that a contracting state is open to recognise and enforce money judgments from other jurisdictions and that such openness would be even more crucial in the Covid-19 (and post-Covid-19) world where competition for foreign direct investment is expected to be keener. The two Hague Conventions also give states a set of ready-made grounds for international jurisdiction. Reyes IJ emphasised that one should resist the temptation of engaging in a “numbers game” by simply comparing the number of signatories to the Hague Conventions and the New York Convention

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(for foreign arbitral awards) to determine the success of developments in judgments recognition and enforcement.

Turning to MOGs, Reyes IJ observed that an MOG was yet another signal that a state is open to international business by showing a willingness to recognise judgments from a foreign court in favour of a party to be enforced against its own nationals. An MOG, being a court-to-court instrument, could be concluded much more quickly as compared to the cumbersome process of joining a

convention, or signing a treaty. Responding to arguments that an MOG may amount to “false advertising”, Reyes IJ cautioned against reading far too much into an MOG because, as its name suggests, an MOG offered only guidance and was not a representation of any certainty for foreign money judgments to be recognised and enforced by a signatory.

Interested parties may contact ABLI for a recording of the webinar.

SICC OUT & ABOUT

SICC Continues to Attract the Interest of Judiciary, Academia, Legal Professional and Students, Not Just From Within Singapore but From Various Parts of the World As Well

17 September 2020

The Suzhou Industrial Park joint development is one of the important state-level cooperation projects between the People’s Republic of China and Singapore. In an effort to promote Singapore as a trusted neutral dispute resolution hub, the *IPOS-Suzhou* programme for China enterprises was convened under the umbrella of the Joint Council for Bilateral Cooperation (JCBC) between Singapore and China, and the SICC was invited to present to local Suzhou enterprises the various channels for intellectual property dispute resolution on an international level. Singapore International Arbitration Centre (SIAC) and Singapore International Mediation Centre (SIMC) were also present to complete the full range of dispute resolution options.



Latest Judgments



09 October 2020

CBX and another v CBZ and others

[2020] SGHC (I) 21

[Civil Procedure] – [Costs]

30 September 2020

Beyonics Asia Pacific Limited and others v Goh Chan Peng and another

[2020] SGHC (I) 20

[Civil Procedure] – [Appeals] – [Leave] – [Costs]

22 September 2020

Offshore Global (L) Ltd v POSH Semco Pte Ltd

[2020] SGCA (I) 4

[Credit and Security] – [Guarantees and Indemnities] – [Civil Procedure] – [Rules of Court] – [Non-compliance]

Registered Foreign Lawyers

As at 30 October 2020, the SICC has 86 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 <https://go.gov.sg/sicc-registration-foreign-lawyers>



SICC Model Clauses

The SICC has model clauses available, including clauses for submission of disputes to the jurisdiction of the SICC (both pre- and post-dispute) and in relation to the parties’ rights of appeal. You may view them here: https://www.sicc.gov.sg/docs/default-source/guide-to-the-sicc/sicc_model_clauses.pdf



Enforcement of SICC Judgments

SICC judgments are enforceable in many jurisdictions, both civil and common law. You may access a Note on enforcement of SICC judgments here: <https://go.gov.sg/enforcement-money-judgments>

