

SICC NEWS

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Enforcement of Judgments Is Not Just A Numbers Game

An edited extract of International Judge Anselmo Reyes' speech at the 60th Anniversary of the New York Convention on 12 June 2018, organised by Herbert Smith Freehills. This was part of the session titled "Looking Ahead: The Future of Enforcement (Arbitration, Litigation, Mediation)".



Against the backdrop of celebrating the 60th anniversary of the New York Convention, it might seem odd that I should speak on enforcement within the litigation sphere. But together with arbitration and mediation, litigation completes the spectrum of dispute resolution offerings. Hence, it bears emphasis, especially given the misconceptions surrounding the enforcement of court judgments, in particular those of the Singapore International Commercial Court (SICC).

There has been reference throughout this evening to the 2005 Hague Choice of Court Agreements Convention. Denmark has most recently acceded to the Convention and it will come into effect on 1 September. That brings the number of parties to the Convention to 30 states and one REIO (Regional Economic Integrated Organisation) (viz., the European Union). Then, if you add the 10 or so jurisdictions with which Singapore has a treaty for the enforcement of judgments, Singapore judgments (including those of the SICC) would be enforceable in some 40 jurisdictions as a result of treaty instruments. That might be thought to pale in comparison with the 159 states that are parties to the NYC, so from an enforcement point of view, it might be suggested that arbitration is preferable to litigation. But it is not just a numbers game.

An award is effectively just a piece of paper. The question confronting the drafters of the 1927 Geneva and 1958 New York Conventions was how to make this piece of paper enforceable in different sovereign states. However, judgments are not the same. They are official documents of a state.

The codes of procedure of civil law jurisdictions and the procedural laws of common law jurisdictions have provision for the enforcement of foreign judgments,

regardless of the existence of treaty arrangements. This is precisely because judgments are not ordinary pieces of paper. Considerations of international comity mean that, subject to the judgment of a rendering state meeting certain conditions, it should be recognised and enforced in another state.

In common law jurisdictions, foreign judgments can be enforced through the summary judgment procedure, as typically there is no defence to a judgment debt. The substantive merits underlying the judgment are not re-visited, given the principle of *res judicata*.

In many civil law jurisdictions, codes of civil procedure have been modernised to allow for enforcement of foreign judgments provided that indirect jurisdiction, reciprocity and public policy conditions are met.

For the SICC, jurisdiction will normally arise because of a choice of court agreement, namely, an agreement by the parties to submit disputes arising out of an international commercial contract to resolution by the SICC. That will meet the requirement of indirect jurisdiction in the codes of many civil law countries. As for reciprocity, many countries have liberalised that requirement. It will be enough if it can be shown by the party seeking enforcement that a judgment of the enforcing court is likely to be recognised and enforced by the rendering state (see, for instance, the approach outlined in the Nanning Declaration issued by ASEAN and Chinese judges in June 2017). Finally, on public policy, it is difficult to see how enforcing SICC judgments (which deal with purely commercial disputes) can be contrary to a state's public policy.

Therefore, it would be wrong to look at enforceability as just counting up the number of parties

to a treaty or convention on the enforcement of foreign judgments. There is more to it than that when one is dealing with a judgment, as opposed to an arbitral award.

Moreover, one should not lose sight of the amendment to Singapore legislation at the start of this year, enabling the SICC to determine matters arising out of arbitrations (including the setting aside and the enforcement of awards). This will assist to bring a degree of uniformity to international approaches to arbitration, including the application of the New York Convention.

It is one thing to have arbitral tribunals rule on matters of arbitration law. That does not create precedent. Judgments, on the other hand, are typically public fully-reasoned official documents. Consequently, although there may not be a system of binding international precedent, the pronouncements of an international commercial court such as the SICC on matters of arbitration law should be regarded as highly persuasive authority on the New York Convention and on the meaning of due process.



Anselmo Reyes IJ was joined by Mr Alastair Henderson (Managing Partner, Singapore, Herbert Smith Freehills) and Professor Nadja Alexander (Singapore International Dispute Resolution Academy) for this session to provide a complete overview of dispute resolution. He also gave the opening address for the event.

SICC Out & About

International Judge Robert French Speaks on Dispute Resolution in International Trade and Commerce



French IJ (left) with The Right Honourable Sir Kenneth Keith and The Honourable Dame Susan Glazebrook of the Supreme Court of New Zealand, who chaired the lecture

On 6 July, in Wellington, New Zealand, Robert French IJ gave the Sir Kenneth Keith Lecture on “Public and Private Spaces: Dispute Resolution in International Trade and Commerce”. He said that Commercial Courts around the world can contribute to the development of the law through public decision making processes that confidential commercial arbitration cannot match. He then offered the SICC as “an attractive alternative to arbitration by offering a combination of expertise, efficiency and procedural flexibility”. He believes that the rise of international commercial courts like the SICC is able to further judicial contribution to a more harmonised transnational commercial law. French IJ, having retired as the Chief Justice of Australia in 2017, is one of 15 judges that hail from outside Singapore, providing the SICC bench with rich experience.



Latest Judgments

The SICC has issued 24 written judgments to date. A full list of these judgments may be accessed at <http://www.sicc.gov.sg/hearings-judgments/judgments>.

- [20 June 2018] Court of Appeal Judgment on Yuanta Asset Management International Limited & Anor v Telemedia Pacific Group & Anor and another appeal [2018] SGCA(I) 03: <https://goo.gl/3PJwP>
- [3 July 2018] Judgment on DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd & Ors and another suit [2018] SGHC(I) 06: <https://goo.gl/JNwSS9>
- [11 July 2018] Court of Appeal Judgment on Qilin World Capital Limited v CPIT Investments Limited and another appeal [2018] SGCA(I) 04: <https://goo.gl/PcCaU4>
- [18 July 2018] Judgment on B2C2 Limited v Quoine Pte Ltd [2018] SGHC(I) 08: <https://goo.gl/6JUPEo>
- [6 August 2018] Court of Appeal Judgment on Bumi Armada Offshore Holdings Ltd and Anor v Tozzi Srl (formerly known as Tozzi Industries SpA) [2018] SGCA(I) 05: <https://goo.gl/XsFWzx>

Advantages of Exclusive Jurisdiction Clause In Favour of SICC in the Indian Context



By Gaurav Pachnanda SA (a Registered Foreign Lawyer of the SICC)

The amendment to the Supreme Court Judicature Act, 1969¹ in Singapore established the SICC, as a division of the Singapore High Court². This legal framework allows business concerns to confer exclusive jurisdiction on the SICC to decide “international and commercial disputes”³ by an agreement to submit to its jurisdiction⁴, even if the commercial relationship has ceased to exist⁵.

Generally, a contractual provision conferring exclusive jurisdiction on a foreign court, as a neutral court or a court of choice, would be respected by Indian courts, except in certain limited situations⁶. However, those issues are not analysed or discussed in this article.

The objective of this article is to analyse the clearly discernible advantages of choosing exclusive jurisdiction of the SICC as opposed to other foreign courts, for Indian litigants and parties, in situations where they are able and intend to confer jurisdiction on a foreign court.

Enforceability

Under Section 44-A of the [Indian] Civil Procedure Code, 1908, a judgment rendered by a superior court of a reciprocating territory can be executed as if it were a decision of an Indian Court provided certain conditions have been fulfilled, such as, the decision is rendered by a court of competent jurisdiction and the decision entails an adjudication of the merits of the case⁷.

Since Singapore is a reciprocating territory⁸ and the Singapore High Court is recognised as a superior court in India⁹, a decision rendered by the SICC is enforceable by a District Court in India as if it were a decision of the District Court.

Timely adjudication of disputes

As of 8 August 2018, 22 cases have been transferred from the Singapore High Court to the SICC. The Singapore High Court generally takes less than two years in deciding cases brought before it. And with the SICC as a division of the Singapore High Court, and being administered under the same infrastructure, it boasts a significant advantage over domestic and other international commercial courts.

Foreign law can be determined based upon submissions of Counsel

Unlike several other foreign courts, the SICC provides a unique procedural advantage to the parties to make an application to the SICC, by agreement, requesting it to apply the law of evidence of their choice¹⁰. Further, the SICC allows a foreign counsel to directly submit on foreign law, without the need for the content of foreign law to be proven¹¹ through expert evidence. This is a significant advantage for saving of time and costs, specifically, in large high-value disputes.

Indian lawyers may appear before SICC as Registered Foreign Lawyers

There is an equally unique additional advantage for Indian parties choosing exclusive jurisdiction of the SICC, as opposed to other foreign courts. It is relatively uncomplicated for Indian lawyers with a minimum of five years' experience in advocacy, to register themselves as a foreign lawyer before the SICC¹². As a result, Indian clients have the option of engaging Indian lawyers of their choice, with whom they might share long-term relationships, for representing them before the SICC, a foreign court.

Conclusion

In my view, from an Indian perspective, the SICC is a very attractive choice as a foreign court, which Indian parties could choose to confer exclusive jurisdiction upon, for an expeditious and cost-efficient resolution of commercial disputes. Its close proximity to India, its common law background and the exceptionally high quality of its Judges (including Judges from other jurisdictions) are features that add to this attraction.

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1 Act 24 of 1969 amended by Act 42 of 2014, with effect from 01 January 2015

2 Section 18A of the Supreme Court of Judicature Act, 1969, as amended (the “Supreme Court of Judicature Act”)

3 Section 18D of the Supreme Court of Judicature Act, read with Order 110, Rule 1(2)(a) and Rule 1(2)(b) of the Rules of Court

4 Section 18F of the Supreme Court of Judicature Act

5 Order 110, Rule 1(3A) of the Rules of Court

6 See paragraphs 11, 24, 25, 26, 27 of *Modi Entertainment Network and another v W.S.G Cricket Pte Ltd.*, reported at (2003) 4 SCC 341; read with *Bharat Heavy Electricals Limited v Electricity Generation Incorporation and others*, reported at (2018) 246 DLT 249 (DB) and Section 13 of [Indian] Civil Procedure Code, 1908

7 Section 13 of the [Indian] Civil Procedure Code, 1908

8 Recognition and Enforcement of Foreign Awards Act 1921, read with the Schedule to Reciprocal Enforcement of Commonwealth Judgements (Extension) (Consolidation) Notification, issued under Section 5 of the said Act.

9 Notification G.S.R. No. 1225 issued on June 17, 1968, as reproduced in *Vellachi Achi v Ramanathan Chettiar*, reported 85 LW 626.

10 Section 18K of the Supreme Court of Judicature Act, read with Order 110, Rule 23 of the Rules of Court

11 Section 18L of the Supreme Court of Judicature Act read with Order 110, Rule 25 of the Rules of Court

12 Section 18M of the Supreme Court of Judicature Act, read with Order 110, Rule 32 of the Rules of Court; Also, see paragraph 214 of *IM Skaugen SE and another v MAN Diesel & Turbo SE and another* reported at [2018] SGHC 123

SICC Engages the Local Legal Fraternity

The SICC places significant value in engaging legal professionals, be it locally or globally. It is vital for Singapore and Singapore-based lawyers and in-house counsel to be familiar with a dispute resolution option that was borne out of the Singapore High Court. Judge-in-Charge of the SICC, Justice Quentin Loh (also a Singapore High Court judge), led the following two events that sought to raise awareness of the crucial role the SICC plays in the establishment of Singapore as a world-class dispute resolution hub.



Transactional lawyers from major local law firms learn about the SICC

On 23 May, close to 80 transactional lawyers from five of the larger law practices in Singapore—Allen & Gledhill, Drew & Napier, Rajah & Tann, Dentons Rodyk and WongPartnership—gathered at the Supreme Court of Singapore to learn about the SICC.

Justice Loh highlighted the key features and procedures of the SICC which provide an internationally-accepted framework for the resolution of international commercial disputes, based on substantive principles of international commercial law and international best practices – which can also be described as “*arbitration in litigation*”. For example, proof of foreign law may, on application of a party, be dispensed with and any question of foreign law decided on the basis of submissions. The Court does not practice general discovery, which is similar in international arbitration. Above all, the availability of appeal is a strong incentive for parties to consider the SICC.

Moreover, with the Hague Convention on Choice of Court Agreements, bilateral agreements and various court-to-court agreements, just to name a few, SICC judgments are widely enforceable.

Mr Sushil Nair, Deputy CEO of Drew & Napier, said: “It was a pleasure attending the informative and thought-provoking presentation by Justice Loh. It gave our transactional lawyers a better understanding of the SICC and we will certainly keep the SICC in mind when drafting dispute resolution clauses.”

Resolving disputes with either SICC or international arbitration

At a seminar organised by The Law Society of Singapore titled “An International Court and an International Arbitral Tribunal? Perspectives on Resolving International Disputes in Singapore” on 13 July, Justice Loh delivered the keynote address and conveyed the merits of the SICC to legal professionals. He compared it with arbitration, while emphasising that litigation is meant to complement arbitration.

A distinguishing feature of the SICC is the ability to join third and/or related parties, even if claims in relation to such other parties are not of an international and commercial nature, or if such parties have not submitted to the SICC’s jurisdiction. He gave two apt examples of where such multi-party/multi-contract situations normally occur – construction projects and complex insurance covers. And while SICC proceedings are conducted in open court or chambers, parties may still apply for differing levels of confidentiality. Justice Loh also shared about the Standing International Forum of Commercial Courts (SIFOCC) which has 29 courts from 21 countries in agreement to collaborate further – which augurs well for the development of a *lex mercatoria*.

Justice Loh then joined two other distinguished guests—Alastair Henderson (Managing Partner – SEA, Herbert Smith Freehills) and Chelva Rajah SC (Partner, Tan Rajah & Cheah) for a panel discussion. It was a lively session moderated by Prakash Pillai, Partner of Clyde & Co Clasis Singapore. The panellists espoused the virtues of arbitration and the SICC, which provided a clearer picture of when one dispute resolution option might be preferable to the other.



Registered Foreign Lawyers

As at 31 July 2018, the SICC has 77 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 <http://www.sicc.gov.sg/registration-of-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: http://www.sicc.gov.sg/documents/docs/SICC_Model_Clauses.pdf