

SICC NEWS

Issue no. 06 / June 2017

www.sicc.gov.sg

Perspectives

PRC Supreme People's Court Endorses Recognition of Singapore High Court Money Judgment



By Tan Chuan Thye SC, a partner in
Rajah & Tann Singapore LLP

On 15 May 2017, the Supreme People's Court of China (SPC), in the context of the People's Republic of China's (PRC's) "Belt and Road" initiative, issued a list of 10 reference cases.

The purpose of the list was to showcase decisions of the Chinese courts that serve to promote the initiative.

The cases referenced by the SPC included the decision of the Nanjing Intermediate People's Court of 9 December 2016 (the "Nanjing IPC Decision")¹ which recognised a Singapore High Court money judgment² in favour of the plaintiff when the defendant failed to enter an appearance in the Singapore action. The Nanjing IPC Decision was the first time a Chinese court had, absent a treaty obligation, recognised and enforced a foreign court judgment on the basis of the principle of reciprocity.

In its commentary on the Nanjing IPC Decision, the SPC noted that it was important to determine whether the judgments of a foreign country can be recognised and enforced in the Chinese courts because fewer than one-third of the "Belt and Road" countries have treaties with China for the mutual recognition and enforcement of

court judgments. It went on to endorse the Nanjing IPC Decision as a landmark case establishing that Singapore court money judgments can be enforced in the PRC. This authoritative endorsement by the highest court in the land means that it can be said with some confidence that money judgments of the Singapore High Court -- and those of the Singapore International Commercial Court (SICC), a division of the High Court -- can be enforced in the PRC, provided that they do not violate basic principles of Chinese law, state sovereignty, national security, or the public interest³.

Taken together with the recognition and enforcement of foreign arbitral awards by various Intermediate People's Courts in the PRC, subject to, broadly speaking, there being no grounds for refusal of enforcement as set out in the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards⁴, a step forward has been taken on Singapore's strategy of offering a complete suite of dispute resolution options. It is a timely step as the "Belt and Road" initiative gathers momentum and comes shortly after Singapore has signed and ratified the Hague Convention on Choice of Court Agreements⁵ which the countries in the European Union (except Denmark) have similarly ratified. Collectively, these developments highlight the increasing relevance of the jurisdiction and jurisprudence of the SICC.

1 Kolmar Group AG v Jiangsu Textile Industry (Group) Import & Export Co., Ltd (2016) Su01 Assisting Foreign Recognition No 3.

2 See SICC News Issue No. 5 (April 2017).

3 See Article 282 of the Civil Procedure Law of China (2013).

4 See Article 274 of the Civil Procedure Law of China (2013).

5 Choice of Court Agreements Act 2016 (No 14 of 2016).

Judgments

The SICC's First Appeal Case

As a division of the Singapore High Court, the SICC offers parties a right of appeal to the Singapore Court of Appeal, unless parties contract otherwise. And for the first time since the SICC was established, the Court of Appeal has decided an appeal against a first instance decision of the SICC. The appeal was brought against the 17 February 2017 decision of a three-judge SICC coram in *BNP Paribas*

(Cont'd on page 2)

Wealth Management v Jacob Agam and Anor. At first instance, the SICC granted the application for BNP Paribas SA to be substituted as the plaintiff, in place of BNP Paribas Wealth Management, due to a merger in France under the French Commercial Code.

Dissatisfied, the Agams sought leave to appeal. The first instance court granted leave to appeal on a specified question of law, and allowed the application for the appeal to be expedited. The appeal was thus heard on 12 May 2017, before Chief Justice Sundaresh Menon, Judge of Appeal Judith Prakash and International Judge Dyson Heydon. The Agams argued that the word “subrogated” in the merger agreement should be given its common law meaning, with the effect that BNP Paribas SA had no independent right to sue the Agams. The Court of Appeal disagreed, and held that the common law meaning would contradict the entire substance of the merger agreement.

The Agams also took issue with a number of terms found in Section 55B(2) of the *Banking Act*, which applies to the transfer of the whole or part of the business of a bank in Singapore. They further argued that BNP Paribas Wealth Management should have sought the Minister’s approval for the transfer under Section 14A of the *Banking Act*. The Court of Appeal disagreed with the Agams’ interpretation of those provisions, and dismissed the appeal with brief oral grounds. It released full written grounds on 18 May 2017.

- For the full judgment, read: [http://www.sicc.gov.sg/documents/judgments/2017_SGCA\(I\)_01.pdf](http://www.sicc.gov.sg/documents/judgments/2017_SGCA(I)_01.pdf)
- To access the full list of SICC judgments, visit: <http://www.sicc.gov.sg/hearingsjudgments.aspx?id=72>

Perspectives

In Awe of the Singapore International Commercial Court – Views from a Japanese Lawyer



*By Atsutoshi Maeda, Partner,
Representative of Singapore Office,
Anderson Mori & Tomotsune*

SICC’s corporate video on its website looks like the trailer for a Hollywood movie. When I watched it, I was envious that Singapore was capable of delivering such a dynamic video to “market” its world-class legal services to the world. As a Japanese lawyer working in Singapore, I am very grateful for this opportunity to witness first-hand the development of the SICC from its incubation phase to the take-off phase.

Having witnessed the successful first two years of the SICC, I praise Singapore and all those involved for their comprehensive and widespread efforts to create and implement the SICC. It is difficult to imagine the collaborative efforts of the legislative, administrative, and judicial divisions that worked to make this happen.

Frankly speaking, the concept of the SICC is striking, especially because it synergises the strong points of litigation and attractive points of arbitration. For example, while the evidence rules are always a key element of any court litigation system, the fact that the actual rules to be applied may be up to the parties’ choice is a marvel. I thought such an idea came up due to the deep experience in arbitration among the wider population of the judicial community in Singapore.

Decisions of the SICC are appealable to the Singapore Court of Appeal, unless parties contract otherwise. Notwithstanding that Japanese judgments are generally very reliable and convincing, the appeal system

is a fundamental essence of the court litigation framework and it would be unthinkable to have a non-appealable type of litigation in Japan. Above all, it is very bold to allow the coram to include a non-Singaporean judge to render a judgment in a Singapore court.

To be frank, I have rarely recommended the SICC model jurisdiction clause to our clients in cross-border transactions. However, given that appropriate cross-border cases in the High Court can be transferred to the SICC, I do consider exclusive jurisdiction clauses in favour of Singapore courts more frequently now than before the establishment of the SICC.

The more SICC cases involving Japanese companies, the lower the mental hurdle for Japanese companies to consider the SICC jurisdiction clause. It is good to note that Prof Yasuhei Taniguchi, an International Judge of the SICC, has been part of the coram for two of SICC’s cases. And finally, of my very personal interest, I look forward to one day when a judiciary panel at the SICC renders a landmark judgment on a Japanese legal issue!



The SICC regularly hosts and gives presentations to judicial officials from other countries and even locally-based legal professionals like in-house counsel. This not only gives the SICC more exposure but also provides the platform for enlightening exchanges of judicial knowledge and practices with the visitors.

Maldives Minister Visits the SICC

On 6 April, the Minister for Legal Affairs at the President's Office of Maldives, Aishath Azima Shakoor, paid a courtesy call to Chief Justice Sundaresh Menon of the Supreme Court of Singapore and visited the SICC as well.

Accompanied by Non-Resident Ambassador of Maldives to Singapore, Mr Hamdum Abdulla Hameed, and Deputy Legal Officer of President's Office of Maldives, Ms Maziya Abdul Sattar, Minister Azima was keen to learn more about the SICC and recent developments for the effective and efficient resolution of international commercial disputes. In February 2017, it was announced by the Maldives' President Abdulla Yameen Abdul Gayoom that his administration is ensuring that Maldives provides a welcoming climate for foreign investments, and is working on establishing a dispute resolution mechanism that is



crucial for developing its economy. One such plan was to build a commercial court to handle financial and business issues that might arise.

Oman Council of Administrative Affairs for the Judiciary



Officials from the Oman Council of Administrative Affairs for the Judiciary (CAAJ) visited the Supreme Court of Singapore on 10 April to better understand the workings of the Court and the role of the SICC as a trusted neutral forum to adjudicate disputes. To facilitate an exchange of knowledge with the Omani officials, the SICC shared that it adopts best practices in international commercial dispute resolution, as reflected in its procedural rules and case management.

The delegation was led by Dr Mohammed Abdullah Al Hashmi, Chairman of Judicial Administrative Inspection and Supreme Court Judge. The other officials were Appeal Court Judge, Al Fadhil Ghusen Al Hinai, and Head of Coordinating Section for CAAJ, Abdul Salam Ali Al Deghaishi.

Client Seminar for QED Law Corporation

On 4 May, a boutique law firm, QED Law Corporation, gathered its team of legal professionals as well as some of their clients for a session at the Supreme Court to introduce them to the SICC as an efficient adjudicator of international commercial disputes. The Singapore International Mediation Centre (SIMC) presented as well. The clients came from a myriad of industries such as finance, property development and information technology.

Ms Susan Kong, Founding Partner and Director of QED Law Corporation, said: "Most of the deals we encounter these days are inter-jurisdictional or involve some cross-border elements. The feedback from our clients is that they benefited from learning about the dispute resolution options introduced by the SICC and SIMC, and found them to be relevant and practical for their deals and the markets in which they operate."



The SICC has continued to build its presence in conferences organised both locally and internationally. These speaking opportunities are invaluable for reaching diverse audiences within an appropriate environment.

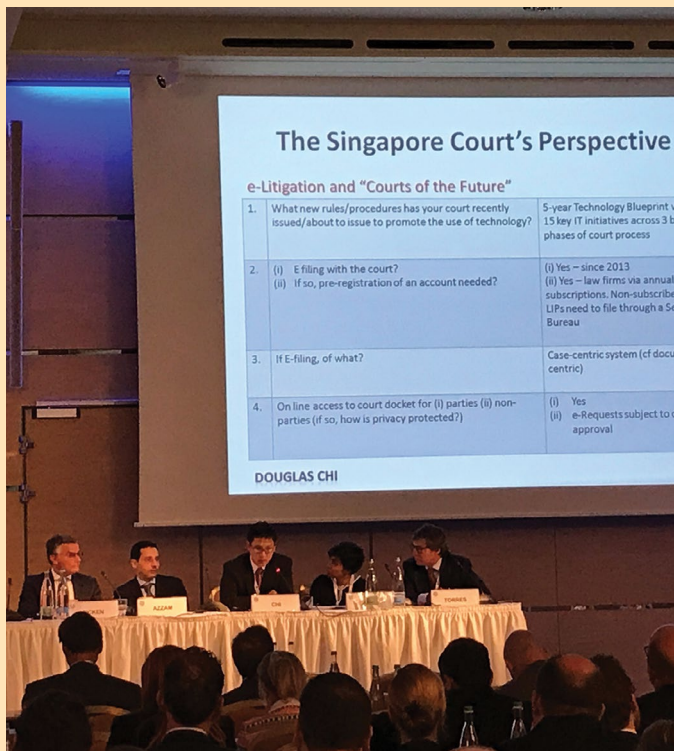
Litigation Conference 2017 - The Law Society of Singapore

The annual Litigation Conference 2017, held on 20 and 21 April, was an especially significant edition as it commemorated the 50th anniversary of The Law Society of Singapore. Minister for Home Affairs and Law, Mr K. Shanmugam delivered the keynote address. Over the two days, international, regional and local speakers and panellists focused on the changing landscape of litigation and what the future might hold for litigation lawyers.

The SICC participated in a session titled, “Changing Landscape of Litigation – Litigation vs Arbitration vs Mediation”. Moderated by Mr Lye Kah Cheong, Partner, Norton Rose Fulbright LLP, the session explored the developments of other dispute resolution options like arbitration and mediation, and how this has impacted litigation. The SICC’s representative emphasised the relevance of litigation as an effective and efficient dispute resolution method, and expounded on its flexible



procedures that make it an attractive option for parties. Other panellists were representatives from the SIMC and two law firms, as well as a corporate counsel.



IBA Annual Litigation Forum Conference 2017

Held in Zurich, Switzerland, this year’s International Bar Association Annual Litigation Forum Conference focused on “Innovation in Litigation – Prepared for 2027”. The Conference took place from 3 to 5 May and delved into a myriad of topics centred on the types of technology and innovation used and envisioned for litigation, an otherwise traditional process.

Due to the international nature of the commercial disputes heard in the SICC, technology has played an instrumental role in ensuring the efficiency of its proceedings. For example, having 24/7 online access to the case filing system is helpful for its foreign users. The SICC’s technology-enabled court rooms are also equipped with video- and tele-conferencing facilities that are useful for parties based in varied time zones, and other features like interactive display board and 3D-visualiser facilitate court proceedings. Hence, it was apt for the SICC to speak on “New Technologies in Court: Bold about change – how technology is being embraced by shrewd litigators and courts”. Representatives from Dubai, the United Kingdom, Malaysia and Spain also weighed in on their respective jurisdictions.

Registered Foreign Lawyers



As at 31 May 2017, 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 www.sicc.gov.sg/ForeignLawyer.aspx?id=101

Published bimonthly by Singapore International Commercial Court

1 Supreme Court Lane, Singapore 178879 Tel: +65 6336 0644 Email: SICC_Development@supcourt.gov.sg
To subscribe or unsubscribe to this newsletter, you may contact us at the same email address.