

SICC NEWS

Issue no. 08 / October 2017

www.sicc.gov.sg

Establishing Footprints in the Land of the Morning Calm

The Art of Dispute Resolution in an Interconnected World

Justice Quentin Loh
Seoul IDRC 29th Lecture Series
31 August 2017



South Korea is one of the fastest-growing economies not just in Asia but the world today. And the recent years have seen the country's conglomerates heavily investing in various sectors, notably infrastructure development and construction projects worldwide. In 2013, Myanmar picked a consortium led by the Incheon International Airport Group (and includes four Seoul construction firms) to construct the Hanthawaddy International Airport, which is expected to cost S\$1.1 billion. With many more of such large-scale business partnerships forged between South Korean investors and external parties, any disputes that arise will have grave consequences on multiple parties.

Justice Quentin Loh, Judge-in-charge of the Singapore International Commercial Court (SICC), visited South Korea from 29 August to 1 September 2017 for a series of meetings and speaking engagements. One of the key highlights was delivering the 29th lecture of the Seoul International Dispute Resolution Center (IDRC) Lecture Series, where Justice Loh spoke on the relevance of the SICC in an increasingly connected and collaborative world we live in today.

His lecture titled "The Art of Dispute Resolution in an Interconnected World" focused on the SICC as an alternative to international arbitration, with its flexible procedures. He further emphasised Singapore's progressiveness in driving interconnectivity within the legal fraternity by mooted the idea of the Judicial Insolvency Network (JIN) to promote cooperation and communication among leading insolvency judges around the world. Singapore's participation in the the Standing International Forum of Commercial Courts (SIFOCC) was also in line with CJ Menon's desire to have international commercial

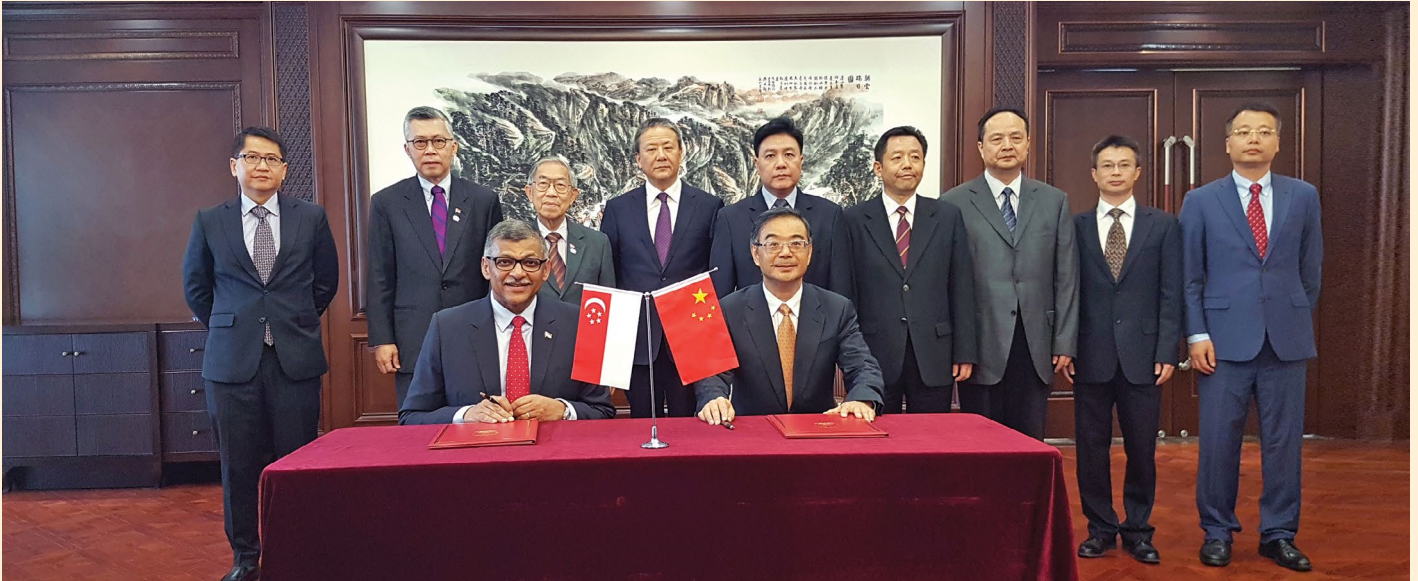
courts around the world collaborate, which he communicated at a conference back in 2013.

One of the top law firms in the country, Shin & Kim, organised a seminar for its clients for the SICC to share its unique traits and benefits to its clients. Justice Loh presented on "Resolving Transnational Commercial Disputes: An Asian Innovation" to its participants. Woong-Soon Song, Senior Partner of Shin & Kim, said: "It was an enlightening and insightful session for our clients as they learnt about how the SICC is able to address the corporations' needs for an appropriate alternative to arbitration; a forum that is flexible yet offers an avenue for appeal."

Throughout the four-day trip, the SICC met with in-house counsel from many of South Korea's leading construction corporations, as well as the committee of In-House Counsel Forum. Justice Loh also sought to refresh ties with the country's judiciary with private calls on various members of the South Korean judiciary.

"This trip to South Korea was fruitful as we were able to highlight to many experienced in-house counsel and legal practitioners about the SICC as a trusted neutral forum for their dispute resolution needs, especially in complex cases involving multiple parties. We had engaging discussions which we believe showcased their enthusiasm and willingness to learn more about how they can reap the many benefits of the SICC--including the availability of judges of international renown from diverse common and civil law jurisdictions, the ability to retain non-Singapore counsel to represent them in international offshore commercial cases, and the right of appeal," said Justice Loh.

Singapore Strengthens Judicial Relations with China



CJ Menon and CJ Zhou Qiang (both seated) signed the MOU on legal and judicial cooperation, with Singapore and Chinese senior judicial officials in attendance

In developments that augur well for the Singapore Judiciary including the SICC, the Supreme Court of Singapore and the Supreme People's Court (SPC) of the People's Republic of China signed a Memorandum of Understanding (MOU) on legal and judicial cooperation in Beijing, China, on 21 August 2017. This was followed by the inaugural Singapore-China Legal and Judicial Roundtable, a first-ever roundtable between China and an Asian country. It was jointly opened by Chief Justice (CJ) Sundaresh Menon and the President of the SPC, CJ Zhou Qiang.

Themed "Judicial Justice in the New Century", the three focus areas of the Roundtable were the recognition and enforcement of civil and commercial judgments between Singapore and China, judges' training, and the future plan for legal and judicial cooperation between the two countries to support the "Belt and Road" Initiative. The latter area is significant as it comes in light of an increasingly globalised

and interconnected world with more complex commercial transactions. The Roundtable, in CJ Menon's words, "signifies an important milestone in the growing relationship between the two judiciaries".

New Signatory to the Hague Choice of Court Convention

China signed the Hague Convention of 30 June 2005 on Choice of Court Agreements (Convention) on 12 September 2017. It joins the United States and Ukraine as signatories. Singapore, the European Union (except Denmark) and Mexico have already ratified the Convention.

The Convention is designed to "promote international trade and investment through enhanced judicial cooperation" by having "uniform rules on jurisdiction and on recognition and enforcement of foreign judgments in civil or commercial matters".¹ It came into force for Singapore on 1 October 2016 and has enhanced the international enforceability of SICC's judgments.

¹ Taken from <https://www.hcch.net/en/instruments/conventions/full-text/?cid=98>

Enhancing judicial links with Qatar with signing of memoranda

In further strengthening the network of commercial courts, an MOG as to Enforcement of Money Judgments was signed between the Supreme Court of Singapore and Qatar International Court and Dispute Resolution Centre (QICDRC) on 17 October 2017. QICDRC comprises a Civil and Commercial Court, and facilitates the resolution of disputes with arbitration and mediation services. The MOG, although not legally-binding, provides the courts with a guiding framework for the enforcement of money judgments, which is beneficial for the SICC as an international commercial court.

The MOG, plus an MOU for Judicial Cooperation, were signed during the Emir of Qatar's state visit to Singapore. Representing the QICDRC, President of the Supreme Judiciary Council (SJC), State of Qatar, Masoud Mohammed Al-Ameri, and CJ Menon signed both agreements. As a sign of strong judicial relations, they also signed a renewal of an MOU for Judicial Cooperation between the SJC and the Supreme Court of Singapore, which was first signed in 2009.



Papering over the cracks: the challenges of disputes between multiple parties under multiple contracts

By Nicholas Lingard, Robert Kirkness, Samantha Tan,
Freshfields Bruckhaus Deringer

Many international commercial transactions involve multiple contracts between multiple parties. If a dispute arises, each of those contracts may be relevant to a different aspect of the overall relationship among the parties, and the different contracts may contain different choice of law and dispute resolution clauses. If the contracts provide for arbitration, consolidation is likely to be desirable, but difficult to achieve without the consent of all parties.

Those difficulties are not new. In *Abu Dhabi Gas Liquefaction Co Ltd v Eastern Bechtel Corporation*, the Abu Dhabi Gas Liquefaction Co Ltd (the **Owner**) entered into contracts with joint contractors, Eastern Bechtel Corporation (**Eastern Bechtel**) and Chiyoda Chemical Engineering & Construction Co Ltd (together, the **Contractors**), for the construction and installation of large tanks to be used for liquefying gas. Eastern Bechtel entered into two sub-contracts with a Japanese company, Ishikawajima Harima Heavy Industries Co Ltd (the **Sub contractor**). The tanks were built and installed, but, after some time, cracks appeared in one of the tanks. The cost of repairs was significant.

The Owner claimed the cost of the repairs from the Contractors who in turn claimed against the Sub-contractor. The same issue arose under both the main contract and the sub-contracts: what was the cause of the cracks? Most of the contracts were governed by English law and provided for arbitration in London; however, one of the sub-contracts was governed by Japanese law and provided for arbitration in Japan.

The question before the English courts was whether there should be separate arbitrations with different arbitrators for the two sets of contracts or whether there should be one arbitrator for both proceedings. In the High Court, Mr Justice Bingham held that there should be separate arbitrations with different arbitrators. The Court of Appeal (Lord Denning MR, Watson and Fox JJ) disagreed.

The Court of Appeal considered that it would be desirable for the two arbitrations to be consolidated into a

single proceeding to avoid the risk of inconsistent findings, but was powerless to consolidate the disputes without the consent of all parties. The Court's "solution" was to: (a) rule that the same arbitrator should be appointed in both arbitrations; and (b) suggest that the arbitrator should hold a procedural conference with all the parties to separate out the issues that could be decided in the first arbitration without affecting the second.

Arbitral institutions have taken steps to address these types of issues by updating their arbitration rules to include provisions for joinder and consolidation. Those provisions have evolved from requiring agreement of all parties for consolidation to requiring only that arbitration agreements are compatible and disputes arise out of the same transaction(s). The *Eastern Bechtel* case may have played out differently if it was heard today and the parties had adopted the 2016 SIAC Rules.

The challenge for the SICC is to offer commercial parties a better alternative. As a division of Singapore's High Court, the SICC has the potential to do so. One example is the ability to join third parties, including non parties who may not have consented to SICC jurisdiction, to SICC proceedings, even if not all parties consent to the joinder.

Some challenges remain to be confronted. For instance, where the party to be joined is party to an arbitration agreement with one of the parties to the SICC action, the third party may apply to stay the SICC proceedings in favour of arbitration. If the arbitration is international, the SICC will need to consider the impact of section 6 of Singapore's International Arbitration Act, which mandates that the court proceedings be stayed in favour of arbitration. It will be interesting to see how the SICC takes up the challenge of using its case management powers to resolve these types of challenges.

Of course, commercial parties can address these issues themselves. Whether commercial parties choose arbitration, or submit to the jurisdiction of the SICC or domestic courts, the simplest way to ensure efficient dispute resolution proceedings is through careful drafting, including by considering the potential for multiple disputes under different contracts relating to the same overall transaction.

** Nicholas Lingard and Robert Kirkness are registered foreign lawyers with the SICC*

Memoranda of Guidance and Understanding Signed with Supreme Court of Bermuda



The Supreme Court of Singapore and the Supreme Court of Bermuda signed an MOU on References of Questions of Law and a Memorandum of Guidance (MOG) as to Enforcement of Money Judgments on 6 September 2017. As the SICC is a division of the High Court of Singapore, the terms of the MOU and MOG have equal application to the SICC.

The MOU establishes an understanding between the Supreme Courts of Singapore and Bermuda for referring questions of law to each other's courts. Under the MOU, the Bermuda courts may consider directing parties in Bermudan proceedings to seek determination of issues of Singapore law in the Singapore courts, and vice versa.

The MOG sets out the procedures for the

enforcement of money judgments (ie judgments requiring a person to pay a sum of money to another person) in the Singapore and Bermuda courts.

These memoranda serve to enhance and demonstrate cooperation between the Supreme Courts of Singapore and Bermuda, and also promote a mutual understanding of laws and judicial processes.

CJ Menon and CJ Ian Kawaley of the Supreme Court of Bermuda were signatories for both agreements. "I am delighted that the Supreme Court of Bermuda has signed two memoranda with the Supreme Court of Singapore. I look forward to future cooperation between our respective courts," said CJ Kawaley. CJ Menon also expressed that "these initiatives will greatly strengthen the relationship" between both jurisdictions.

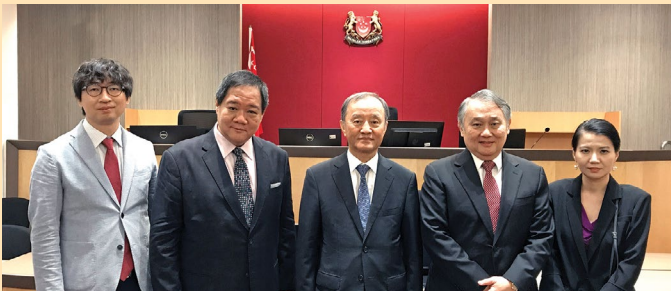
Equipping Leaders in Court Governance



About 30 senior judges from various parts of the world were in Singapore for a five-day course in August 2017 on “Leadership in Court Governance”. Organised by the Singapore Judicial College, the programme covered various topics such as court innovation, dispute resolution, implementing judicial reforms and more. They also visited all the courts in Singapore, including the SICC. They were intrigued about the SICC, its *raison d’être*, and its unique and flexible court procedures.

Justice Madiyar Balken, Judge of the Supreme Court of Kazakhstan, shared: “Astana has plans to set up a new commercial court, and it was a valuable time of learning from the SICC, which epitomises a successful dispute resolution model in Asia. The ability for foreign lawyers to represent parties is one out of many benefits the SICC offers.”

South Korean judiciary visit the SICC



Less than a week after SICC’s visit to South Korea, representatives from the Judicial Policy Research Institute (JPRI), South Korea, visited Singapore and the SICC. Led by Professor Ho Moon-Hyuck (pictured in the middle), President of JPRI, the three-member delegation was keen to find out more about the SICC and its differentiating factors from other dispute resolution options. Justice Loh also engaged in a lively dialogue with the South Koreans on the merits of an international commercial court with unique flexible procedures that rival those of arbitration’s, and still offering the right of appeal and the ease of joining related parties.

Inaugural RT ASEAN Convention



The SICC presented at the inaugural RT ASEAN Convention held on 26 July 2017. Entitled “One Face Across ASEAN”, the day-long programme saw business leaders, C-level executives, and in-house counsel attending, as a value-loaded option for dispute resolution. For example, parties that prefer the added assurance of a right to appeal a first-instance judgment should opt for the SICC. Indeed, the SICC enhances the suite of high-quality dispute resolution services, i.e. litigation, arbitration and mediation, offered in Singapore.

Latest Judgments

[21 September 2017] Judgment for **Tozzi Srl (formerly known as Tozzi Industries SpA) v Bumi Armada Offshore Holdings Ltd and Anor**: [www.sicc.gov.sg/documents/judgments/2017_SGHC\(I\)_08.pdf](http://www.sicc.gov.sg/documents/judgments/2017_SGHC(I)_08.pdf)

Registered Foreign Lawyers

As at 31 October 2017, the SICC has 75 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

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: www.sicc.gov.sg/documents/docs/SICC_Model_Clauses.pdf