

SICC hands down first judgment

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Singapore's Supreme Court building, home to the Singapore International Commercial Court

The Singapore International Commercial Court has handed down its first judgment in a dispute arising from Indonesian coal production – with the jury still out on whether the court will challenge the dominant position of international arbitration in Singapore.

In a decision dated 12 May, the court held that Indonesia's PT Bayan Resources and Singapore's Bayan International did not breach a joint venture agreement for the use of technology to remove moisture and pollutants from low grade Indonesian coal. The court held that the companies had provided adequate technical assistance and were not obliged to provide funding under the agreement's provisions.

The panel of judges included former English High Court judge **Sir Vivian Ramsey**, former judge of the Court of First Instance in Hong Kong **Anselmo Reyes** and Justice **Quentin Loh** from the Singapore High Court. The unsuccessful claimant was Australia's White Energy Company, which took counsel from Rajah & Tann. The Bayan respondents were represented by Drew & Napier.

It is the first decision the SICC has handed down since it was launched by the Minister of Law **K Shanmugan** and Chief Justice **Sundaresh Menon** in January last year. The case was moved to the SICC from the Singapore High Court in early March 2015 on the basis that it satisfied the criteria for a SICC case.

Rashda Rana SC, a dual qualified English-Australian barrister and arbitrator who practises from 39 Essex Chambers in London, says the 114-page judgment of the court is a "masterclass" in how to deal with rules of interpretation, public policy and the implication of terms.

"The court deciding this matter was made up of international legal heavyweights, so the quality of the judgment should come as no surprise". She says the decision will "give comfort" to parties considering including the SICC in their contracts.

“Whether it will also challenge the currently dominant position of international arbitration and the English Commercial court is something that rests in the hands of parties and their advisers. Time will tell which way the business community goes,” she says.

Alastair Henderson of Herbert Smith Freehills says: “This first decision is a milestone in establishing the SICC as a serious player on the international legal scene. It’s not an especially important decision in itself but it is a concrete demonstration of Singapore’s ambition to be a global force in modern legal thought and commercial influence. It sits well beside the rigorous judgments that have become a hallmark of Singapore’s Court of Appeal under Chief Justice Menon.”

Nish Shetty, head of South East Asia international at Clifford Chance and associates **Andrew Foo**, **Sarah Hew** and **Olga Boltenko** highlight the rapidity with which the decision was issued, 14 months after the referral of the case to the SICC and four months after the close of the court hearing. “With this efficiency, the SICC will outpace, or least match, the typical international arbitration tribunal,” they say.

They also highlight one legally noteworthy aspect of the decision: it recasts the *forum non conveniens* jurisprudence in Singapore, making it more difficult for future proceedings to be stayed on these grounds.

Like the others cited, they say the decision is a “significant development in the arbitration community and beyond” and paves the way for the SICC to become “a prime destination for international dispute resolution.”

There are three other pending cases at the SICC that have been transferred from the Singapore High Court. The closest to being concluded is a dispute over alleged breaches of investment agreements, being heard by **Justice Patricia Bergin**. Closing submissions were heard last month, and a decision is expected shortly.

Friend or foe?

Alongside the Singapore International Arbitration Centre and the Singapore International Mediation Centre, the SICC is part of a triumvirate of institutions that Singapore hopes will firmly entrench its position as a leading centre of dispute resolution in Asia. SIAC was formed in 1991 but the other two are newcomers, with SIMC launched in 2014 and the SICC arriving a year later.

SIAC recently unveiled its 2015 annual report, which revealed that the centre had its highest ever number of new cases (271) and its highest ever total amount in dispute – with the total sum of all cases reaching US\$4.4 billion.

The SICC can hear cases of an international and commercial nature if the parties have submitted to the court’s jurisdiction under a written agreement. Judgments have the same status as those from the Singapore High Court, and as such their enforcement is dependent on the provisions on the recognition of foreign judgments in the relevant enforcement jurisdiction.

While the intention is that the SICC will complement the other dispute service providers in Singapore, some have raised the fear that it could “cannibalise” the workload of SIAC and other arbitral institutions. In a *GAR Live Singapore* debate last year **Christopher Tabhaz** of Debevoise & Plimpton and **Sapna Jhangiani** of Clyde & Co set out the reasons that might happen, while stressing that their arguments did not necessarily reflect their true views.

“The SICC will be successful and it will compete for the same consumers who are currently opting for SIAC,” Tabhaz said. “We all think arbitration is a cure for all that ails us, but in our darkest moments of honesty, we know there is a substantial body of sophisticated corporate users – who aren’t always buying it. We all know of users who have experiences with arbitration that have left them less than satisfied.”

Jhangiani, meanwhile, noted the Singapore courts' record of quick disposal of cases – 89 per cent of cases at the Singapore High Court between 2008 and 2012 were disposed of in eight months or less – along with the greater ease of consolidating claims and the reassurance for parties of being able to appeal a bad decision.

On the other side of the *GAR* Live debate, **Raja Bose** of K&L Gates argued that the court could take at least two decades to gain traction, as SIAC arbitration clauses have done. While SICC judgments are deemed to be judgments of the Singapore High Court, enforceable across the Commonwealth and in the US based on existing reciprocity and judicial comity arrangements, he thought parties would have concern about the enforceability of the international court's judgments.

This concern could be mitigated if a large number of states sign up to the Hague Convention on Choice of Court Agreements, a New York Convention for court judgments to which Singapore, the US and the EU are already signatories.

Singapore recently implemented the convention into domestic law, creating a blueprint for how enforceability could work within a network of international commercial courts across the world if the convention is widely adopted. Such a network is the ultimate vision of Chief Justice Menon, as well as of the Lord Chief Justice of England and Wales, Lord Thomas, who said in a recent speech that courts could work together to uphold the law in international markets “in the same way as Central Bankers set about their duties to maintain international financial stability and growth”.

In the meantime, the view generally expressed by Singapore practitioners is that the SICC, SIAC and SIMC will complement one another and bring more disputes work to the city state. As Henderson and other Herbert Smith Freehills lawyers put it in a commentary for *GAR* a year ago, the court should be viewed as a “friend and “valuable ally” to international arbitration rather than as a “foe”.

*The role of the SICC is likely to again be a talking point at this year's GAR Live Singapore, which will take place this Thursday at Maxwell Chambers. Chaired by Allen & Overy partner **Judith Gill QC** and **Alvin Yeo SC** of WongPartnership, sessions will include a discussion of India's new arbitration act, a round table on the evolution of investor-state arbitration in Asia and a debate of the motion “this house believes that Singapore is ready to take the next step up to becoming a global arbitration hub”.*