THE RULE OF LAW AND THE SICC

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Singapore International Chamber of Commerce Distinguished Speaker Series

The Honourable the Chief Justice Sundaresh Menon

Distinguished guests,

Ladies and Gentlemen:

I. Introduction

1. The rule of law is foundational to our notion of State and society. It traces its origins to the classical Greek philosophers, amongst whom both Plato[1] and Aristotle[2] spoke of the importance of the state and its rulers being subject to the law. In England, from which we inherited much of our legal framework, the concept was enshrined in the Magna Carta, or the Great Charter, of 1215 which provided that the King's power was not unlimited but subject to the established laws and customs of the land. But the historical origins of the principle should not lead us to think that the rule of law in Asia can be dismissed as a reflection of an essentially Western idea.

2. Internationally, with the burgeoning empirical data suggesting a correlation between the rule of law and economic growth,[3] the place of the principle has

[1] "[T]he state in which the law is above the rules, and the rulers are the inferior of the law, has salvation, and very blessing which the Gods can confer", Plato, *Laws*.
[2] "It is more proper that law should govern than any one of the citizens", Aristotle, *Politics*.
[3] See, for example, Roberto Rigobon and Dani Rodrik, "Rule of Law, Democracy, Openness, and Income: Estimating the Interrelationships", National Bureau of Economic Research Work Paper No 10750 (September 2004) (available at <http://www.nber.org/papers/w10750.pdf>) at p 5; Stephan Haggard and Lydia Tiede, "The Rule of Law and Economic Growth: Where are We?" (2011) 39 *World Development* 673 at p 674; Dani Rodrik *et al*

been cemented in the development agenda.[4] *The Economist* famously described the rule of law as the "motherhood and apple pie of development economics".[5] And closer to home, ASEAN has been moving towards a framework of legal obligations and norms, in the spirit of fostering the rule of law.[6]

3. In Singapore, we celebrated the 150th anniversary of the Attorney-General's Chambers last year. In his speech commemorating the event, the Prime Minister noted that one fundamental factor why Singapore has not only survived, but prospered since our independence "is that we have upheld the rule of law and built a fair, respected, and efficient legal system".[7] He observed that Singapore had successfully made it from Third World to First because we had consistently emphasised the rule of law.

4. What does this all mean for the business community? The rule of law is often associated with lofty ideals and highbrow discourse. But today I propose to focus on its nuts and bolts; on how the rule of law does in fact play a critical role in the growth and the development of business interests. I do this through an account of *our* development as a regional dispute resolution hub; and of how our emphasis on the importance of the rule of law has helped foster a robust

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"Institutions Rule: The Primacy of Institutions over Geography and Integration in Economic Development" (2004) 9 *Journal of Economic Growth* 131 at p 157; Lars Feld & Stefan Voigt, "Economic Growth and Judicial Independence: Cross-country Evidence Using a New Set of Indicators" (2003) 19(3) *European Journal of Political Economy* 497 at p 516.

[4] The United Nations General Assembly adopted Resolution No 66/102 on 13 January 2012 which stated that it was "*Convinced* that the advancement of the rule of law at the national and international levels is essential for the realization of sustained economic growth, sustainable development, the eradication of poverty and hunger and the protection of all human rights and fundamental freedoms …".

[5] "Economics and the Rule of Law", *The Economist*, 13 March 2008.

[6] See generally, Michael Ewing-Chow and Tan Hsien-Li "The Role of the Rule of Law in ASEAN Integration", *European University Institute, Robert Schuman Centre for Advanced Studies, Global Governance Programme* (EUI Working Paper RSCAS 2013/16). Rodolfo Severino, the then Secretary General of ASEAN, said that it was "about time that people looked upon ASEAN in terms of legal obligations and norms": Address at the International Law Conference on ASEAN Legal Systems and Regional Integration on 3 September 2001.

[7] Prime Minister Lee Hsien Loong's address at the 150th Anniversary of the Attorney-General's Chambers (31 March 2017) (available at <www.pmo.gov.sg/newsroom/pm-lee-hsieng-loon-150th-anniversary-attorney-generals-chambers>).

environment for the protection and enforcement of commercial rights. There are two parts to my presentation. In the first, I discuss the essential traits of our legal institutions which enable us to uphold and advance the rule of law in today's globalised commercial arena. In the second, I narrow the discussion to the Singapore International Commercial Court ("the SICC") and describe some of its key characteristics which make it a viable dispute-resolution option for Singapore businesses with transnational commercial operations, including the highlights of the SICC since its launch in 2015.

II. A strong judiciary and the rule of law in Singapore

5. At the heart of the rule of law lies the idea that all persons and all authorities are bound by, and entitled to, the benefit of laws that are publicly administered in the courts.[8] This central idea is multi-faceted. First, it necessitates that laws possess certain traits. They must be clear;[9] they must be published and made accessible;[10] they must take effect in the future and not retrospectively;[11] they must be embodied in defined rules and principles and not give rise to unrestrained discretion.[12] Second, the rule of law also requires that the law and legal institutions contain a minimum content. These include basic procedural safeguards such as applying the law fairly to every person.[13]

[8] Tom Bingham, *The Rule of Law* (Allen Lane, 2010) at p 8.
[9] Lon Fuller, *The Morality of Law* (Yale University Press, 1969) at pp 63–65.
[10] Tom Bingham, *The Rule of Law* (Allen Lane, 2010) at pp 37–47; Lon Fuller, *The Morality of Law* (Yale University Press, 1969) at pp 49–51.
[11] Lon Fuller, *The Morality of Law* (Yale University Press, 1969) at pp 51–62.
[12] Antonin Scalia, "The Rule of Law as a Law of Rules", 56 *The University of Chicago Law Review* 1175; Tom Bingham, *The Rule of Law* (Allen Lane, 2010) at pp 48–54.
[13] Brian Z Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press, 2004) at pp 91–94.

6. But I direct my attention instead to a *third* aspect of the rule of law: the environment within which legal rules operate. Laws are only as good as their enforcement. It is therefore essential to the rule of law that the gap between the "law in books" and the "law in action" is bridged.[14] As our Minister for Law observed in a speech in 2012, "[t]here is no use having beautiful laws, embodying the noblest ideals, only to do something else in practice".[15]

7. The enforcement gap is a particularly acute concern for business actors. It translates directly to the economic risk they undertake when investing or trading in a country.[16] Commercial people seek predictability in their dealings and to this end, they strive to ensure that their rights and obligations are clearly defined and expect that their contracts will be enforced fairly and effectively. In such circumstances, they are able properly to assess and price their exposure in the market and not be subject to unknown unknowns.

8. The bridging of the enforcement gap is a task that falls, to a substantial degree, on the courts.[17] The judiciary, as the institution that interprets and applies the law, must do so fairly, timeously, and in a manner that coheres with commercial sensibilities and business common sense. This is a crucial thread which ties the rule of law to economic development. I venture to suggest that Singapore, in its five decades since independence, has enjoyed considerable success in this

[14] A famous phrase coined by the famous American jurist Roscoe Pound in "Law in Books and Law in Action", 44 *American Law Review* 12.
[15] K Shanmugam, "The Rule of Law in Singapore" [2012] *Singapore Journal of Legal Studies* 357 at p 358.
[16] Lord Phillips of Worth Matravers "Judicial Perspectives on the Rule of Law and Development"; Chua Lee Ming, "Challenges Facing Business and Finance Institutions: The Rule of Law Seen Through the Eyes of Business" in *Rule of Law Symposium 2014: The Importance of the Rule of Law in Promoting Development* (Professor Sir Jeffrey Jowell QC *et al*, eds) (Academy Publishing, 2015) at pp 70–73 and 154.
[17] Lord Phillips of Worth Matravers "Judicial Perspectives on the Rule of Law and Development in *Rule of Law Symposium 2014: The Importance of the Rule of Law in Promoting Development* (Professor Sir Jeffrey Jowell QC *et al*, eds) (Academy Publishing, 2015) at p 154; Kenneth Dam, *The Law-Growth Nexus: The Rule of Law and Economic Development* (Brookings Institution Press, 2006) at p 93.

regard, and this can be credited to a significant degree to three related factors: (a) judicial independence; (b) judicial competence and efficiency; and (c) a national commitment to eradicate corruption. I address each of these in turn.

A. Judicial Independence

9. Judicial independence embodies the ideal that judges must be free from extraneous influences when deciding cases.[18] An integral part of this is found in the safeguards in the Constitution granting security of tenure to judges.[19] This protects judges from being displaced should they make inconvenient decisions. Judges are also immune from lawsuits when they act in their judicial capacity.[20] This prevents them from being put at the mercy of disgruntled litigants. It ensures that a judge can "do his duty with complete independence and free from fear".[21]

B. Judicial competence and efficiency

10. Equally important to the commercial litigant is the second factor, which is judicial competence and efficiency. A court user must have the sense that he is in the hands of a judge who is not only competent in the law, but also sufficiently sophisticated in business and industry practice and sensitive to the demands of commerce.

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[18] Sandra Day O'Connor, "Vindicating the Rule of Law: the Role of the Judiciary" 2 *Chinese Journal of International Law* 1 at pp 2–3; Tom Bingham, *The Business of Judging: Selected Essays and Speeches* (Oxford University Press, 2001) at p 56.
[19] Art 98 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint).
[20] S H Bailey *et al*, *Smith, Bailey & Gunn on the Modern English Legal System* (Sweet & Maxwell, 5th Ed, 2007) at para 4-039; Enid Campbell & H P Lee, *The Australian Judiciary* (Cambridge University Press, 2001) at pp 189–190.
[21] *Sirros v Moore and others* [1975] QB 118 at 132, *per* Lord Denning MR.

11. The composition of our High Court bench reflects a commitment to this goal. Our judges include men and women of diverse backgrounds, many of whom have behind them extensive experience as commercial practitioners. To ensure that the efforts and expertise of these judges are tapped and maximised, we have implemented a modified docketing system under which cases in specialised areas of law such as company, insolvency, trusts, shipping, construction, finance, securities, banking, and intellectual property are assigned to judges who have the relevant specialist knowledge and experience.

12. The competence of a judiciary is also reflected in its efficiency. This is often assessed by the time taken to enforce straightforward bargains. A World Bank study, for example, focused on the time taken to complete an action to evict a tenant for unpaid rent and a suit to recover sums due on an unpaid cheque as a benchmark for judicial efficiency.[22] Expedience is vital in such matters.

13. In the 1970s and 1980s, our courts groaned under the weight of a backlog of cases. But a series of deep structural reforms in the early 1990s, undertaken by then Chief Justice Yong Pung How, streamlined judicial processes and cleared the backlog.[23] His efforts led to a great improvement in efficiency and we have continued in that tradition. In 2016, the Supreme Court achieved a clearance rate of 97%. In other words, the number of existing matters disposed of was almost equivalent to the number of new matters filed.[24] On average, cases that do not involve heavy factual disputes are fixed for hearing within three to six weeks from

[22] The World Bank, *World Development Report 2002: Building Institutions for Markets* (Oxford University Press, 2003) at p 121.
[23] See the account in Chief Justice Chan Sek Keong, "Pursuing Efficiency and Achieving Court Excellence – The Singapore Experience", speech at the 14th Conference of Chief Justices of Asia and the Pacific delivered on 13 June 2011 at paras 2–5.
[24] Singapore Supreme Court, *Shaping the Future of Justice, Annual Report 2016* at p 47.

the date they are filed. Trials that engage contested facts are generally heard eight weeks from the date of setting down, which is when the case is ready for hearing.[25] Our key performance gauge is to dispose of at least 85% of all writs filed in the Supreme Court within 18 months of filing, and we have met this metric for as long as we started keeping track, about a decade ago. Perhaps in recognition of this, the World Economic Forum in its 2016 Global Competitiveness Index placed Singapore first out of 140 countries in terms of the "[e]fficiency of [its] legal framework in settling disputes".[26]

14. Beyond the existing institutional framework for efficiency, our judges are also attuned to commercial sensitivities. In 2015, the Court of Appeal heard expedited appeals in which two Cypriot companies controlled by a Russian billionaire obtained orders freezing a Swiss businessman's assets to the tune of US$1billion.[27] The Swiss businessman was seeking the discharge of the freezing orders and it was a matter of some urgency. We recognised that and, over two days, despite an already full hearing schedule, we heard arguments, sitting far beyond our usual sitting hours. We eventually discharged the freezing orders in a fully reasoned judgment that we delivered a few weeks later.

15. It is this combination of competent and independent judges, efficient processes and a commitment to meet the needs of our users, which fosters an environment where the rule of law can be upheld, and rights enforced in a consistent, reliable and fair manner.

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[25] Singapore Supreme Court, *Shaping the Future of Justice, Annual Report 2016* at p 44.
[26] The World Economic Forum, *The Global Competitiveness Report 2016–2017* (Professor Klaus Schwab ed) (2016) at p 319.
[27] *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558.

C. Eradication of corruption

16. I turn to the third area—stamping out corruption. The notion that justice may be bought is anathema to the rule of law. It widens the enforcement gap and undermines the mandate that all persons and authorities be equally subject to the law. Not only does it violate foundational principles of our legal system, economic research also shows it is inimical to private investment and economic growth. Empirical research in 2000 estimated that a 1% increase in the level of corruption in a country reduced its growth rate by 0.72%.[28] A more recent paper prepared by the OECD G20 Anti-corruption Working Group in 2013 concluded that there is a "strong negative correlation between perceived corruption and the level of output [which] provides *prima facie* evidence of the negative impact corruption has on value creation".[29]

17. Incorruptibility has been an abiding principle for Singapore, championed by our founding Prime Minister, the late Mr Lee Kuan Yew, since the birth of our nation.[30]

18. Multiple lines of attack have been pursued to further our nation's zero-tolerance approach to corruption. First, from an institutional perspective, public servants, Ministers and judges are remunerated fairly. Second, the Corrupt Practices Investigation Bureau ("the Bureau")—an independent investigatory body—is charged with policing corruption-related offences. There is an independent check

[28] Pak Hung Mo, "Corruption and Economic Growth", 29 *Journal of Comparative Economics* 66 at p 76.
[29] OECD G20 Anti-Corruption Working Group, "Issues Paper on Corruption and Economic Growth"
[30] Lee Kuan Yew, *From Third World to First, The Singapore Story: 1965–2000* (The Straits Times Press, 2000) at p 182.

in the form of the President's control over the appointment of the Director of the Bureau.[31] Third, corruption is dealt with robustly in our courts and by our enforcement agencies.

19. The last of these points is exemplified in a case I heard in 2015, which concerned the prosecution of a marine surveyor who was responsible for inspecting and certifying vessels to be free from serious defects before they were permitted to berth in Singapore.[32] The offender thought that he could feather his nest by extracting payments from vessel captains as a condition for clearing the vessels for docking. One captain reported this to the Bureau, and the offender was caught and arrested in a sting operation shortly thereafter.

20. He pleaded guilty to two charges of corruption, and the lower court sentenced him to two months' imprisonment. On the Prosecution's appeal, I increased the sentence to six months' imprisonment. The defence argued that this was a case of private sector corruption that did not warrant a deterrent sentence. I disagreed, noting that there is no presumptive difference between public and private sector corruption. Rather, the focus should be on the nature of the corrupt act. In this instance, the corrupt act was particularly egregious because the accused was interfering with the legitimate entitlements of the vessels in question to dock in Singapore. I observed that a form of corruption which impedes legitimate activity is "antithetical to everything that Singapore stands for" because it "destroys the notion that business in Singapore is clean and transparent".

[31] Section 3 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed).
[32] *Public Prosecutor v Syed Mostofa Romel* [2015] 3 SLR 1166.

21. The vigilant enforcement by the Bureau and the robust response of the courts have proven to be crucial tools in the battle against corruption. Perhaps unsurprisingly, Corruption International's 2016 Corruption Perceptions Index ranked Singapore the seventh least-corrupt country worldwide.[33] I dare say that it is inconceivable that a party to court proceedings would even consider bribing a judge in Singapore.

22. These three areas that I have spoken of—judicial independence, competence and efficiency, and the eradication of corruption—come together to foster a strong climate for the upholding of the rule of law in Singapore. And we have fared well on global indices benchmarking our adherence to the rule of law. The World Justice Project's Rule of Law Index 2016 ranks Singapore ninth worldwide in this respect;[34] and the World Bank's Worldwide Governance Indicators in 2016 placed Singapore in the 96th percentile worldwide in terms of rule of law.[35] These have also led the World Bank in 2017 to rank Singapore second worldwide in terms of ease of doing business. One of the key indicators related to the enforcement of contracts (measured by procedures, time and cost), in which Singapore also earned the second place worldwide.[36] Singapore's strong commitment to rule-of-law values has had a tangible impact on our economic growth and development. It has been observed that the level of foreign direct investment seen in Singapore, which was around S$1.2 trillion in 2015,[37] "… would not have come into Singapore unless people believed that their

[33] Transparency International, "Corruption Perception Index 2016" (available at <https://www.transparency.org/news/feature/corruption_perceptions_index_2016>).
[34] World Justice Project, *Rule of Law Index 2016* at p 20.
[35] The World Bank, *Worldwide Governance Indicators: Country Data Report for Singapore, 1996–2016*.
[36] The World Bank, *Doing Business 2017: Equal Opportunity for All* at p 216.
[37] Department of Statistics Singapore, "Foreign Direct Investment" (available at <http://www.singstat.gov.sg/statistics/visualising-data/charts/foreign-direct-investment>).

investments were safe".[38] The rule of law has thus played an instrumental role in our economic transformation and success.

III. The SICC and the amplification of the rule of law in the region

23. This brings me to the second part of my address, where I speak about our newest actor: the SICC. The SICC is an institution that seeks to harness the best aspects of court litigation for the resolution of *transnational* commercial disputes in the region.

24. Globalisation has driven up both the incidence and the value of cross-border trade and investment. The corollary is that cross-border disputes are also on the rise. Such disputes are constrained neither by the physical boundaries that geography imposes nor by the metaphysical lines drawn by national laws and legal systems. They raise a host of new and complex considerations. National courts, which were designed primarily to manage domestic disagreements, are perhaps less well equipped to deal with such transnational disputes.

25. Arbitration has been the international business community's preferred solution to these challenges thus far.[39] It has been able to deliver dispute resolution in a neutral setting; it enjoys the advantage of flexibility and confidentiality, and promises widespread enforceability through the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention"), which boasts 157 contracting states. The Singapore International

[38] K Shanmugam, "The Rule of Law in Singapore" [2012] *Singapore Journal of Legal Studies* 357 at p 358.
[39] "Corporate choices in International Arbitration: Industry perspectives", 2013 International Arbitration Survey conducted by the School of International Arbitration at Queen Mary, University of London (available at <http://www.pwc.com/gx/en/arbitration-dispute-resolution/assets/pwc-international-arbitration-study.pdf>) at p 6.

Arbitration Centre ("the SIAC"), founded in 1991, was at the forefront of our efforts to develop the vibrant arbitration scene that we have today. Singapore has emerged as an established player in international commercial arbitration circuits, and is the fourth most preferred seat of arbitration in the world, coming in ahead of other notable centres such as Geneva and Stockholm.[40]

26. But the shift that we have seen towards arbitration in the past two decades does not imply that there is no role for commercial courts to play in the resolution of transnational disputes. Quite the contrary. The experience of the London Court of International Arbitration and its Commercial Court suggests that a flourishing arbitration sector does not exist to the exclusion of traditional courts.[41] This is particularly so, because arbitration's meteoric rise and widespread proliferation has also brought with it a number of its own challenges, including growing concerns over what is sometimes referred to – in my view unfairly – as its "judicialisation", to signify the growing formality of arbitration as well as the protraction of proceedings and escalation of costs in some cases.[42]

27. The SICC provides a service that seeks to address many of these concerns. It adds to and augments Singapore's position as a dispute resolution hub alongside the SIAC by providing a niche international commercial court whose services can be tapped on by businesses. Let me touch on six features of the SICC that position it within this space.

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[40] The White and Case 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration (available at <http://www.arbitration.qmul.ac.uk/docs/164761.pdf>) at p 12.
[41] Sundaresh Menon, "Origins and Aspirations: Developing an International Construction Court" (2014) *The International Construction Law Review* 341 at p 349.
[42] Tyrone Holt, "Whither Arbitration? What Can be Done to Improve Arbitration and Keep Out Litigation's Ill Effects" 7 *DePaul Business and Commercial Law Journal* 455 at p 455, citing Jeffrey Stempel, "Forgetfulness, Fuzziness, Functionality, Fairness and Freedom in Dispute Resolution: Serving Dispute Resolution Through Adjudication" 3 *Nevada Law Journal* 305 at p 314.

(a) First, the categories of cases that the SICC is envisaged to hear. These include cases where parties have agreed to have their disputes resolved in the SICC. This can be an *ad hoc* agreement after a dispute has arisen, or where the contract itself contains a choice-of-court clause stating that the SICC will resolve all disputes arising out of that transaction.

(b) Second, the judges who sit in the SICC. They are drawn from a pool of both local and international judges. The former consist of the judges of the Singapore Supreme Court. The 15 international judges are jurists from Australia, Canada, France, Hong Kong, Japan, the United Kingdom and the United States. This selection cuts across east and west and also across common and civil law traditions. But there is a vital unifying characteristic: each judge has a background as a distinguished and eminent commercial jurist in the jurisdiction he or she hails from.

(c) Third, the representation of parties by lawyers of their choice. In common with almost all other jurisdictions, there are stringent admission criteria before foreign lawyers are permitted to represent parties before Singapore's domestic courts. In the SICC, there is much greater leeway for representation by foreign lawyers. This is of considerable benefit to multi-national businesses, which will be able to retain the services of their usual or preferred lawyers. It also means that where a case involves non-Singapore law, the need for the appointment of experts on foreign law may be obviated because foreign lawyers will be able to make legal submissions without the need for expert evidence. For practical purposes, the main prerequisite to registration to appear in the SICC, aside from modest requirements of practical experience, is an undertaking by the foreign

lawyer to abide by the code of conduct and ethics that applies to all lawyers here. As of early this year, there were 74 foreign lawyers registered with the SICC including 27 Queen's Counsel or their equivalents from leading jurisdictions such as the UK, Australia, Hong Kong and India.

(d) Fourth, the SICC uses simplified processes that enhance the efficiency of resolving transnational commercial disputes. The rules and procedures governing proceedings in the SICC are based on best practices in other commercial courts and in international commercial arbitration. The parties also have a measure of autonomy because they can, with the agreement of the court, design the processes that would be most suitable for their case.

(e) Fifth, the SICC, as a division of the Singapore High Court, is part of the Supreme Court. This means that SICC judgments will enjoy the benefit of existing enforcement arrangements which Singapore has with other jurisdictions, including Australia, Hong Kong, India, the UK, and almost all member states of the European Union.

(f) Sixth, and finally, the judge presiding over each case filed in the SICC will be appointed by the Chief Justice, and not by the parties to the dispute. Furthermore, none of the SICC judges currently practise as lawyers. These help to avoid difficulties that may sometimes be encountered in international arbitration, for instance, where the same person may be adjudicator one day, and counsel the next; or where the adjudicator has a direct pecuniary interest in being appointed.

28. It will be apparent, then, that the SICC aspires to introduce some of the best aspects of arbitration in a litigation setting. The SICC, as a fully-constituted court,

naturally also possesses some of the unique advantages of litigation, on which I will mention three..

(a) The first is the court's power to join third parties to a dispute, or to consolidate related disputes into a single set of proceedings. Arbitrators – who derive their jurisdiction entirely from the consent of the parties to the arbitration – may do so only if those third parties consent to being joined. Once a dispute has arisen, there may be no incentive to agree to being joined in this way. This is of particular importance, for instance, in the construction and shipbuilding industries, which are characterised by multi-tiered contracts and where it is fairly common that the relevant parties may not all be bound by a single arbitration clause. The refusal of some parties to participate in the arbitration proceedings can give rise to splinter legal proceedings across multiple fora, resulting in resource duplication and the risk of inconsistent findings.

(b) The second is the prospect of an appeal. The absence of an appeal was once considered a major advantage arbitration possessed over litigation because it encouraged finality. But this absence of appellate review is a factor that may incentivise parties to turn arbitrations into a no-holds-barred contests, where parties err on the side of over-inclusiveness in respect of document disclosure, the production of evidence and legal submissions.[43] If such an approach is adopted by the parties, the proceedings could become protracted, cumbersome and costly.[44] In the SICC, parties who are

[43] Sundaresh Menon, "The Transnational Protection of Private Rights: Issues, Challenges, and Possible Solutions" 2 *Asian Journal of International Law* 1 at p 10.
[44] Lord Mustill remarked in 1989 that commercial arbitration was developing into a process with " all the elephantine laboriousness of an action in court, without the saving grace of the exasperated judge's power to bang together

dissatisfied with a decision may appeal to the Court of Appeal on the substantive merits of the matter. The first such appeal was heard earlier last year on an expedited basis, and it took just 36 days from the date the notice of appeal was filed to the release of the Court of Appeal's written judgment.[45] Of course, if the parties prefer not to have the option of appeal, they may by agreement exclude or limit the right of appeal.

(c) The third is that a definitive court pronouncement on a term of a commonly used contract form, or on a common business practice or usage, can give rise to clarity and establish a standard around which parties – including those not involved at all in the litigation – may arrange the conduct of their affairs. This feeds into a broader point about an international commercial court being positioned to promote the development and convergence of business laws in the region. In contrast, arbitration is designed to be *ad hoc* and confidential, and is predominantly concerned with resolving the specific dispute between the particular parties.

29. Of course, arbitration retains advantages in several areas. One oft-mentioned area is in respect of the relative fungibility of an arbitration award. The pre-eminence of the New York Convention ensures that an arbitration award may be enforced in very many jurisdictions if it satisfies the stipulated pre-requisites for enforcement. The same cannot, as yet, be said for a court judgment. However, this may not cause intractable difficulties for the cross-border enforcement of SICC judgments, for several reasons.

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the heads of the recalcitrant parties": "Arbitration: History and Background" 6 *Journal of International Arbitration* 43 at p 56.

[45] *Jacob Agam v BNP Paribas SA* [2017] 2 SLR 1 discussed in Justin Yeo, "On Appeal from Singapore International Commercial Court" (2017) 29 SAcLJ 574.

(a) First, parties may comply voluntarily with the judgment of the SICC, as they generally do with other court judgments and arbitral awards.

(b) Second, a court judgment creates a debt (also known as a money judgment), which may be sued upon in any other common law jurisdiction, and which can then be enforced in a straightforward summary manner. This is also the position in many civil law jurisdictions, and in fact, courts in China[46] and Japan,[47] both civil law jurisdictions, have recognised and enforced money judgments of the Singapore courts. To provide clarity on the procedure for mutual enforcement of money judgments of one court in another foreign court, the Supreme Court of Singapore has signed Memoranda of Guidance[48] as to Enforcement of Money Judgments with several courts, and is currently in conversation with other courts for similar memoranda.

(c) Third, Singapore has a number of reciprocal enforcement agreements with other countries, a point which I have already alluded to earlier. In these jurisdictions too, enforcement should be straightforward.

(d) Fourth, the Hague Convention on Choice of Court Agreements, which came into force in 2015, looks set to change the landscape for the cross-border enforcement of court judgments. The Hague Convention has been seen as litigation's answer to the New York Convention. Already, 27 European Union member states, Mexico and Singapore are party to the Hague

[46]Nanjing Intermediate People's Court – *Kolmar Group AG v Jiangsu Textile Industry (Group) Import & Export Co., Ltd.*
[47]Tokyo District Court 19 January 2006, Hanrei Times No. 1229 at p.334.
[48]MOG signed with DIFC Courts, ADGM Courts, QICDRC (Qatar) & Bermuda. Exchange of Letters with State Court of Victoria. Active discussions with Myanmar and China.

Convention; the United States, Ukraine and more recently China and Montenegro have become signatories to it. The Hague Convention stands to potentially place court judgments (including those of the SICC) on a much more even footing with arbitral awards even in relation to enforcement.

(e) Fifth, the availability of enforcement options ultimately turns not on the absolute number of countries where a judgment or award can be enforced but on their availability in key financial and commercial centres. As matters stand, a judgment of a Singapore court is likely to be summarily enforceable:

(i) in any common law jurisdiction;

(ii) throughout the EU (except Denmark) and Mexico pursuant to the Hague Convention;

(iii) in Malaysia, Brunei, India (except the States of Jammu and Kashmir), Pakistan, Sri Lanka, Hong Kong, the UK, Australia, New Zealand, Papua New Guinea and the Windward Islands pursuant to reciprocal arrangements;

(iv) in many ASEAN jurisdictions, in China and Japan on the basis of reciprocity; and

(v) in a number of key Middle East jurisdictions.

30. Finally, let me share with you some of the highlights of the SICC since its launch in 2015. It has been a busy three years. As of today, the SICC has handled 17 cases in its docket and has issued 16 written judgments, including one at the appellate level. These cases involved parties of different nationalities from all over the world, and significant claim amounts – for example, the first SICC case

had combined claims of about $1 billion. These cases have been presided by experienced Singapore and/or international judges hailing from a diverse range of jurisdictions. Most encouragingly, the SICC has quickly gained a reputation for efficiency and excellence. In most instances, decisions are given within 3 months after the cases are argued. Due to the quality of judges and judgments, the SICC has been well received by the international legal community.[49] Indeed, one leading commentator has described the SICC as an "advance" and "a serious new choice" for international commercial justice.[50] The SICC is therefore a strong dispute-resolution option for regional businesses with transnational commercial operations, particularly for the resolution of complex cross-border disputes in a timely manner, without the often staggering costs and cumbersome delays that tends to bedevil the resolution of such matters.

31. Before I conclude, allow me to make a final passing reference to the Singapore International Mediation Centre ("the SIMC"), which commenced operations in 2014. It is the first organisation in Asia focused on offering international commercial mediation services. It aims to deliver quality mediation services in cross-border disputes, and boasts a distinguished panel of mediators who hail from all parts of the world. The SIMC plugs a crucial gap in a commercial world that is becoming more alive to the effectiveness of mediation as a form of dispute

[49] See, for example, Rebecca LeBherz and Zoe Walker, "The Singapore International Commercial Court – Two years on" (29 May 2017) (available at <www.kwm.com/en/au/knowledge/insights/singapore-international-commercial-court-two-years-on-20170529>).
[50] Lucy Reed, "International Dispute Resolution Courts: Retreat or Advance?", the John EC Brierley Memorial Lecture delivered on 11 September 2017.

resolution that not only preserves commercial relationships[51] but is also expeditious, effective and cost-efficient.[52]

IV. Conclusion

32. The SICC, the SIAC and the SIMC are different but complementary tools for the resolution of transnational commercial disputes, each with their unique advantages. They work in concert to provide a full suite of world-class dispute resolution options for transnational commercial disputes in Asia. All three institutions are situated within our robust environment for upholding the rule of law, and provide commercial parties, including businesses based here, with an excellent range of options for meeting their business needs.

33. I hope this quick survey has been helpful in providing you with an overview of how Singapore is seeking to advance the rule of law by securing effective means for the resolution of transnational commercial disputes. As members of our business community, you are in a prime position to benefit from this ecosystem, particularly as you venture beyond Singapore and engage in cross-border operations with commercial parties in the region, and beyond. Thank you.

[51] Brad Berenson, "The Mediation Imperative: Why Successful Companies Cannot Afford to Ignore Mediation", the Singapore Mediation Lecture 2014 delivered on 25 September 2014 (available at <http://www.mediation.com.sg/assets/downloads/singapore-mediation-lecture-2014/02-Berenson-Singapore-Lecture-Sept-25-2014.pdf>) at p 7.

[52] Centre for Effective Dispute Resolution, *The Sixth Mediation Audit: A Survey of Commercial Mediator Attitudes and Experience*, 22 May 2014 (available at: <https://www.cedr.com/docslib/TheMediatorAudit2014.pdf>).