

The Singapore International Commercial Court¹

A. INTRODUCTION

1. In this third article of the series on Singapore dispute resolution, we take a closer look at an innovative Singapore legal service offered to the international community through the Singapore International Commercial Court (“SICC”). Building on Singapore’s reputation as a neutral forum for international dispute resolution and backed by Singapore’s robust rule of law and strong legal industry, the SICC provides an alternative to other forms of international dispute resolution and offers commercial parties the option of having their disputes determined by a specialist panel of international and Singaporean judges adopting a flexible process which is also protected by appropriate coercive measures. The SICC process has been described as “arbitration in litigation” and in the short time since its official launch, has made an impressive contribution to Singapore’s dispute resolution ecosystem.

B. BACKGROUND

2. The concept behind the SICC was first introduced by Singapore’s Chief Justice Sundaresh Menon in January 2013. Recognising that the factors² accounting for Singapore’s success as an international arbitration hub could be taken advantage of more fully, Chief Justice Menon saw the establishment of an international court as part of Singapore’s efforts to “*grow the legal services sector and to expand the scope for us to internationalise and export Singapore law*”. The SICC was officially launched on 5 January 2015 and was the first international commercial court in Asia. International courts have subsequently opened in China, France, Brussels, the Netherlands, and Germany.

¹ This article was originally published in the Japanese edition of the Japanese Commercial Arbitration (“JCA”) Journal, Vol. 67, No. 8 (August 2020), p. 25. The author is an English-qualified lawyer and a Counsel with the international arbitration group of Nishimura & Asahi, Tokyo. Prior to her present role, she spent 11 years in professional practice at an international law firm in Singapore. The author would like to acknowledge and thank Mr Laurence Wong of the SICC for his input, as well as her colleagues, Mr Mihiro Koeda, for his assistance with research and translation, and Mr Michael Martinez, for his assistance with research and editing.

² Singapore’s success as an international dispute resolution hub has been explored in the first article in this series, published in the January edition of the JCA Journal.

C. WHAT IT IS

3. The SICC is a international court located in Singapore open to the international commercial community as an option for the resolution of international commercial disputes. Instead of opting for a local court, international arbitration or mediation, parties may choose to refer their disputes to the SICC.
4. In general terms, the SICC has the jurisdiction to hear and try an action if:
 - (a) the claim in the action is of an international and commercial nature;
 - (b) the parties to the action have submitted to the SICC's jurisdiction under a written jurisdiction agreement; and
 - (c) the parties to the action do not seek any relief in the form of, or connected with, a prerogative order (which includes a mandatory order, a prohibiting order, a quashing order or an order for review of detention).
5. In addition, the SICC has jurisdiction to decide certain issues of international commercial arbitration. Recent examples of SICC decisions on arbitration issues have involved parties seeking to set aside arbitration awards.
6. The SICC is a division of the Singapore High Court, but because it is designed for international commercial cases, there are many important distinctions which give SICC proceedings the procedural flexibility usually seen in international arbitration practice. For example:
 - (a) The parties are free to choose the governing law of their contracts and do not have to choose Singapore law. The SICC's recommended model clauses are available on their website and provide a range of options suited to the parties' preferences.³
 - (b) In offshore cases with no substantial connection to Singapore, parties are not bound to use Singaporean lawyers and may be represented by foreign lawyers registered with the SICC. Foreign lawyers are free to apply⁴ to be registered with the SICC and may be granted full or restricted registration. As at 16 June 2020, the SICC had 87 registered foreign lawyers from 13 countries, including 5 from Japan. A foreign lawyer on the SICC Register of Foreign Lawyers is

³ <https://www.sicc.gov.sg/guide-to-the-sicc/model-clauses>

⁴ <https://www.sicc.gov.sg/registration-of-foreign-lawyers>

exempted from Singapore immigration law requirements of having a valid work visa, subject to the fulfilment of certain conditions.

- (c) Parties may determine issues of non-Singaporean law based on submissions by counsel rather than by submitting proof by expert witnesses.
- (d) Parties may agree on the rules of evidence they wish to adopt in lieu of Singapore rules of evidence. For example, the parties may agree to adopt the International Bar Association Rules on the Taking of Evidence in International Arbitration.
- (e) The rules of disclosure or discovery are largely similar to document production rules used in international arbitration.

7. Additionally, parties concerned about the confidentiality of their proceedings may apply for different types of court orders to secure the privacy of their proceedings. This includes an order that all or part of the case be heard in the judge’s chambers, that judgements be published with the party names anonymised, that no person may reveal or publish any information or document relating to the case, or that access to the court file be restricted.⁵

D. ENFORCEMENT⁶

8. SICC judgments are as enforceable as other judgments of the Singapore High Court. However, court judgements are not as internationally enforceable as arbitration awards through the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which nearly every country globally is a signatory. Indeed, the widespread enforceability of arbitration awards is one of international arbitration’s most valued features. Nevertheless, Singapore court judgements are enforceable by way of other international conventions and causes of actions. Of relevance to the Japanese business community is the enforceability of money judgments. While a judgment for payment of money issued by a Japanese court may not presently be recognised by courts in the People’s Republic of China (“China”) (and vice versa), a money judgment of the SICC could be recognized in the courts of both jurisdictions, thereby making the SICC a viable dispute resolution option for contracts between Japanese and Chinese parties.
9. A judgment of the SICC is likely to be enforceable in many jurisdictions, including:

⁵ Rules of Court, O.110, r.31 and 32.

⁶ <https://www.sicc.gov.sg/guide-to-the-sicc/sicc-proceedings-in-general>

- (a) Common law jurisdictions, including Australia, Hong Kong, India and the United States;
 - (b) the European Union; and
 - (c) various Asian jurisdictions, such as China, Japan and a number of ASEAN jurisdictions.
10. There are 4 means by which a SICC judgment may be enforced outside Singapore. Which method is most appropriate will depend on which country the enforcing party wishes to enforce the judgment in its favour.
11. A Singapore court judgment is enforceable as follows:
- (a) By application of the 2005 Hague Convention on Choice of Court Agreements to which Singapore is a contracting state. Essentially, countries where this Convention is in force are required to recognise and enforce each other's judgments, subject only to limited, specified grounds for refusing enforcement. As at 30 April 2020, there were 32 contracting states. A list of the current contracting parties can be found at: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98>.
 - (b) By application of the Reciprocal Enforcement of Commonwealth Judgments Act and the Reciprocal Enforcement of Foreign Judgments Act, which covers Australia, Brunei, Pakistan, Papua New Guinea, Hong Kong, Sri Lanka, India, the UK, Malaysia, New Zealand and the Windward Islands.
 - (c) Depending on the jurisdiction, a party may be able to enforce a SICC judgment as a debt. This is generally possible in common law jurisdictions.
 - (d) In many civil law jurisdictions, foreign judgments may be enforceable upon the satisfaction of certain requirements.⁷ As a matter of track record, Singapore High Court judgments have been enforced by the Nanjing Intermediate People's Court in 2016 and by the Tokyo District Court in 2006,⁸ which concluded that a judgment of the Singapore High Court satisfied the requirements of Art. 118

⁷ According to reports in Adeline Chong (Ed), *Recognition and Enforcement of Foreign Judgments in Asia*, (Asian Business Law Institute, 2017) (<https://www.abli.asia/LinkClick.aspx?fileticket=I0rTeJ0yljw%3D&portalid=0>), it appears that the civil law jurisdictions in which Singapore judgments may be enforced include China, Japan, the Philippines and South Korea.

⁸ (2016) Su 01 Xie Wai Ren No. 3; 19 January 2006 (Heisei 18), *Hanrei Times* No 1229 at p 334.

of the Civil Procedure Code of Japan. In Vietnam, a judgment of the Singapore High Court was enforced by the High People's Court of Ho Chi Minh City.

12. Additionally, with regard to the enforcement of money judgments in different jurisdictions, the Supreme Court of Singapore, of which the SICC is a part, has entered into Memoranda of Guidance as to the Enforcement of Money Judgments with courts in various jurisdictions. While these documents are not international treaties or law, they provide a mutually agreed basis for the procedures for the enforcement of money judgments in the other jurisdiction's courts. At present, Memoranda of Guidance and an exchange of letters have been agreed between the Singapore Supreme Court and the courts of Myanmar, China, Bermuda, Qatar, State of Victoria in Australia, Dubai and Abu Dhabi.⁹

E. COMPARISON WITH ARBITRATION

13. The SICC is not intended to compete with the arbitration institutions for cases. Rather, the objective of the SICC is to provide transnational businesses with another option to resolve international commercial disputes. By leading the way in providing this option, Singapore has consolidated and maintained its position as a leading international dispute resolution hub.
14. As the option of an international court is still fairly new, one may justifiably wonder how the SICC compares with international arbitration, which is presently the most popular form of international dispute resolution in many industries and sectors.

I. Similarities with international arbitration

15. Parties to SICC and international arbitration disputes are free to use Singapore purely as a neutral forum for their disputes. As with international commercial arbitration proceedings seated in Singapore, SICC cases frequently involve international parties and matters with no connection to Singapore.
16. In both international arbitration and in the SICC, parties enjoy procedural flexibility, particularly when it comes to document production and the taking of evidence, and hearings and case management conferences may be conducted virtually.

⁹ <https://www.sicc.gov.sg/guide-to-the-sicc/enforcement-of-money-judgments>

II. Differences between international arbitration and SICC proceedings

17. Unlike arbitration cases where the tribunal is constituted by the parties and/or an arbitration institution, the Chief Justice assigns to each SICC case one or more judges drawn from the SICC's diverse panel of Singaporean and international judges. At present, there are 24 Singaporean judges and 18 international judges from 7 countries, including Justice Yasuhei Taniguchi from Japan.
18. The SICC has coercive powers to compel third and related parties within its jurisdiction to be joined to the proceedings, powers which an arbitral tribunal does not immediately possess. This is particularly relevant for cases where a contract, project, or a transaction involves multiple parties, non-signatory parties or multiple contracts and third parties or non-signatories unwilling to be joined to arbitral proceedings. The SICC's coercive powers also serve to sanction parties where appropriate during the arbitral process. This addresses two common complaints about arbitration – the “*lack of power in relation to third parties*” and the “*lack of effective sanctions during the arbitral process*”.¹⁰
19. In arbitration proceedings, commercial arbitration awards are not usually published and if they are, awards are usually anonymised such that the names of the parties and the tribunal are not revealed. Parties to an arbitration may prefer the confidentiality and anonymity that arbitration provides, but with those perceived advantages have come concerns about the lack of transparency in the tribunal's decision making and the lack of tribunal accountability, especially since there is usually no right to appeal an international arbitration award on a point of law. SICC judgments may be appealed to the Singapore Court of Appeal, unless the parties agree to waive that right. Judgments of the SICC and case summaries are publicly available on the SICC website.¹¹ As mentioned above, the court may issue orders protecting the privacy of the proceedings and parties concerned about confidentiality may, for example, apply to the court for a confidentiality order, such that the judgment is anonymised. As at 1 June 2020, SICC judges have issued 52 written judgments and the Court of Appeal has issued 11 judgments since the official launch of the SICC on 5 January 2015.
20. Another difference between international arbitration and SICC proceedings is the speed (and therefore the cost) of disposal of cases. As at 1 June 2020, the average time for

¹⁰ [http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-\(2\).PDF](http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).PDF), at p. 2.

¹¹ <https://www.sicc.gov.sg/hearings-judgments/judgments>; <https://www.sicc.gov.sg/media/case-summaries>.

disposal of SICC cases that have gone to trial was 16.5 months and decisions are routinely handed down expeditiously. By contrast, cost and lack of speed have long been criticised as being international arbitration's worst features.

F. CONCLUSION

21. The SICC provides the international business community with a viable alternative to arbitration and is a model for international courts which have since opened in other jurisdictions. While geographically located in Singapore, the SICC strives to provide the best international practices to a court-based adjudication of commercial disputes in a neutral forum.