



The bench of the Singapore International Commercial Court. Photo: Supreme Court of Singapore

# The Supreme Court of Judicature (Amendment) Bill and the Singapore International Commercial Court

On 9 January 2018, the Supreme Court of Judicature (Amendment) Bill was passed in Parliament. The Bill can be found [here](#).

The Bill:

- clarifies that the Singapore International Commercial Court (SICC) has the same jurisdiction as the High Court to hear proceedings relating to international commercial arbitration under the International Arbitration Act (IAA); and
- removes the pre-action certification procedure.

My Second Reading speech can be found [here](#).

## The SICC – Blazing a Trail in Dispute Resolution

The SICC was established in 2015 as a division of the High Court to hear international commercial disputes, including those governed by foreign law. It is a neutral venue for international

commercial litigation for parties with little or no connection to Singapore but who seek a neutral jurisdiction with strong rule of law, experienced and highly respected judges and access to high quality legal and professional services.

The SICC was set up in response to growing demand from commercial parties for different dispute resolution options to meet their needs. Together with international arbitration and international mediation, it completes the suite of options that Singapore offers to regional and international parties who need dispute resolution.

It has been a trailblazer for dispute resolution in Asia.

- In its first three years, the SICC has heard 17 cases of diverse subject matter, involving parties from various jurisdictions;
- It is fast gaining a reputation for producing sound and expeditious judgments.

This early success is heartening and augurs well for the SICC.

“... a “masterclass” in how to deal with rules of interpretation, public policy and the implication of terms<sup>1</sup>.”

<sup>1</sup> Global Arbitration Review (24 May 2016), “SICC hands down first judgment”.

## International Judicial Expertise for Proceedings Arising out of International Arbitration

### **Clarification of Jurisdiction over IAA-related Matters**

Under the IAA, the High Court has jurisdiction over certain matters in relation to international commercial arbitration.

The Bill clarifies that the SICC has jurisdiction to hear the same kind of proceedings relating to international commercial arbitration that the High



At the SICC Conference in Jan 2018

**A:** (Left to right): The Honourable Justice Sir Jeremy Cooke, The Honourable Justice Quentin Loh, The Honourable Justice Simon Thorley QC, The Honourable Justice Rt Hon Sir Bernard Rix.

**B:** (Left to right): The Honourable the Chief Justice Sundaresh Menon, The Honourable Justice Robert French, The Honourable Justice Woo Bih Li.

**C:** (Facing camera): The Honourable Justice Rt Hon Beverley McLachlin PC, The Honourable Justice Judith Prakash.

**D:** (Facing camera): The Honourable Justice Lord David Neuberger of Abbotsbury.

Photos: Supreme Court of Singapore

Court can hear, and provides for the Rules of Court to prescribe:

- what constitutes an international commercial arbitration; and
- the conditions that arbitration-related proceedings must satisfy in order to be heard by the SICC.

When parties choose Singapore as the seat of arbitration, the High Court has supervision of various arbitration related matters e.g. applications to set aside the awards. As the SICC is a division of the High Court, parties can choose to bring such applications in the SICC where the conditions in the Rules of Court are met.

A case may also be transferred to the SICC from the High Court (and vice versa) in accordance with transfer requirements as set out in the Rules of Court.

Parties will have the benefit of the expertise of both local and international judges with a wide breadth and depth of experience, and judicial knowledge in arbitration-related matters.

### ***Who can appear as Counsel before the SICC for IAA-related matters***

Only Singapore-qualified lawyers from Singapore law practices can appear before the High Court for IAA-related matters. This is so notwithstanding that the original contract which was the subject matter of the arbitration may have been governed by a foreign law. This is because the IAA is a Singapore Act and is Singapore law. As such, only Singapore counsel may appear before the SICC for IAA-related matters.

For the avoidance of doubt, the Rules of Court will be amended to exclude IAA-related applications from the definition of "offshore case".

### ***Pre-Action Certification***

The Bill removes the procedural provision for a pre-action certificate to certify, among other things, that the intended action is international and commercial in nature, and can therefore be heard by the SICC.

The certification was included when the SICC was originally set up to give parties the option of having these issues determined early, as the SICC



Maxwell Chambers in Singapore currently houses under one roof, partners in arbitration, including the Singapore International Arbitration Centre (SIAC), International Court of Arbitration of the International Chamber of Commerce (ICC) and Permanent Court of Arbitration (PCA), among others.



One of the courtrooms in the Supreme Court of Singapore.

Photo: Supreme Court of Singapore



was a new institution, and parties might have been uncertain over whether the SICC had jurisdiction or whether a case was an “offshore case” with no substantial connection to Singapore.

Users and counsel are now more familiar with the SICC and feedback has been that the pre-action certification procedure is of limited utility. As such, it has been removed.

Potential users who need guidance on the jurisdiction of the SICC and what constitutes an “offshore case” can refer to the following avenues for guidance:

- the [Rules of Court](#);
- the recent case of: [Teras Offshore Pte Ltd v Teras Cargo Transport \(America\) LLC \[2016\] SGHC\(I\) 02](#);
- the [SICC Practice Directions](#); and
- the SICC Registry for general guidance, with the caveat that this does not constitute legal advice.

## Looking Forward: Enforcement and Other Issues

The Ministry of Law has been working with the Supreme Court to enhance the enforceability of Singapore court judgments, which include SICC judgments.

Multiple avenues are already available. For example:

- as judgments of a division of the High Court of Singapore, SICC judgments can be enforced by registration in countries and/or territories scheduled under the Reciprocal Enforcement of Commonwealth Judgments Act and the Reciprocal Enforcement of Foreign Judgments Act.
- enforcement can also generally be achieved in common law jurisdictions by suing on the SICC judgment as a debt;
- in civil law jurisdictions, foreign judgments may be enforced even in the absence of treaties, if certain requirements are met under the laws of the country where enforcement is sought;



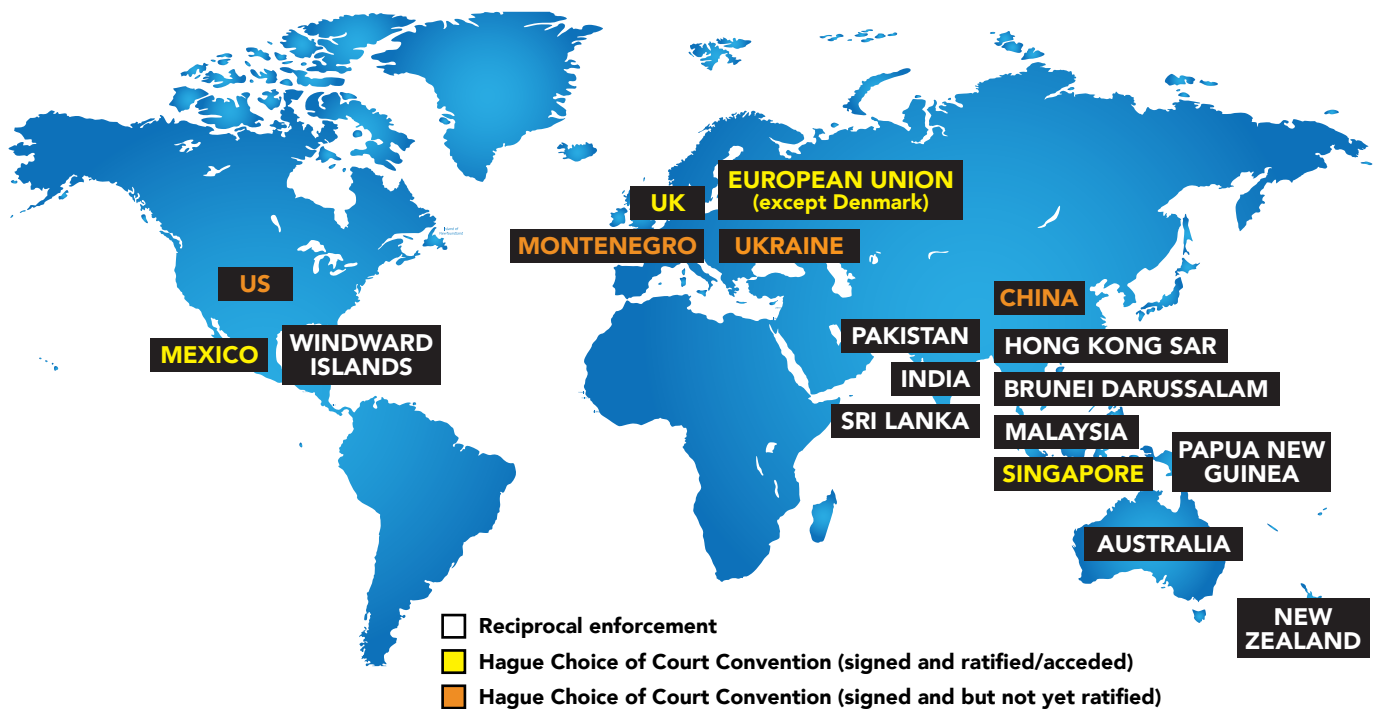
**E:** A visit by the Chief Justice of the Supreme Court of the Union of Myanmar, U Htun Htun Oo (centre), to the SICC (September 2016).

**F:** A networking session and seminar was organised for members of the Association of Corporate Counsel (Singapore Chapter) in the Supreme Court of Singapore. Justice Quentin Loh was also present for a Q&A session (May 2017).

**G:** Justice Quentin Loh and Lord Saville of Newdigate PC (on behalf of the Chief Justices of the Supreme Court of Singapore and the Abu Dhabi Global Market Courts) sign a Memorandum of Guidance on the enforcement of money judgments (March 2017).

Photos: Supreme Court of Singapore

## Enforceability of SICC Judgments by Treaty



- the 2005 Hague Convention on Choice of Court Agreements ("the Convention"), to which Singapore is a party. The other parties to the Convention as at the date of this Note are the EU and its member states (excluding Denmark) and Mexico. The US, China, Ukraine and Montenegro have signed but not yet ratified the Convention.

The SICC's Note on Enforcement of SICC Judgments can be found [here](#).

International economic trends point towards continued demand for international commercial dispute resolution in Asia. These include continued ASEAN economic integration and cross-border infrastructure projects, including the Belt and Road Initiative.

The economic centre of gravity is slowly but surely shifting to Asia. Demand for dispute resolution will grow. The SICC is well positioned to meet the growth of international litigation. ■