



## **New Singapore International Commercial Court**

In a ground breaking move the Singapore International Commercial Court (SICC) was launched on 5 January 2015. For the first time in Singapore, high-value, complex, cross border commercial cases can be heard before international judges and parties can be represented by foreign counsel.

Published 16 January 2015

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The new Court aims to combine the best practices of international arbitration and Singapore's legal system, promoting Singapore further as an international centre for dispute resolution.

The establishment of the SICC is an important development and is likely to be increasingly relevant for players in the maritime industry. Given the increasing complexity of disputes arising out of commercial contracts, as well as the inevitable international focus of the maritime sector, the SICC may well offer a viable and cost-effective alternative to arbitration in determining cross-border disputes.

**What is the SICC?** The SICC is a division of the Singapore High Court (SHC), and has jurisdiction to try an action or a claim that is:

- international and commercial in nature;
- one that the High Court may hear and try in its original civil jurisdiction; and
- satisfies other conditions as may be prescribed by the Singapore Rules of Court.

**What is an international and commercial claim?** A claim is defined as *international* in the new [Order 110, Rule 1](#) of the Rules of Court if:

- the parties have agreed in writing to submit their claim to the SICC and the parties have their place of business in different states;
- none of the parties have their place of business in Singapore;
- a substantial part of the commercial relationship between the parties is to be performed outside any state in which any of the parties have their place of business;
- the place with which the subject matter of the dispute is most closely connected is outside any state in which any of the parties have their place of business; or
- the parties to the claim have agreed expressly that the subject-matter of the claim relates to more than one state.

A claim will be considered *commercial* if it arises from any relationship that is commercial in nature. The [Order](#) sets out a non-exhaustive list of transactions that are considered to be commercial including:

- any trade transaction for the supply or exchange of goods or services;
- investment, financing, banking or insurance;
- a joint venture or any other form of industrial or business co-operation; and
- the carriage of goods or passengers by sea.

By this definition, claims of a maritime nature will in most cases be interpreted as arising under a *commercial* relationship.

**Power to transfer a case to the SICC** Of particular note is that a claim may end up before the SICC without their express agreement. The SHC has a discretion to transfer cases to the SICC where the parties have:

- an international and commercial claim;
- submitted to the jurisdiction of SHC; but
- not agreed in writing to submit their claim to the SICC.

The parties are, however, given an opportunity to make arguments within a specified time as to why the matter ought to remain with the SHC. It is understood that this discretion has already been exercised in a number of pending cases before the SHC.

Furthermore, it is also possible for parties wanting their claim to be heard by the new court, to apply to have their cases heard by the SICC – despite lacking the SICC jurisdiction agreement – provided the other criteria above are met.

### **What sets the new court apart from the SHC and the Singapore**

#### **International Arbitration Centre (SIAC)?** *Panel of experienced foreign judges*

Every claim tried by the SICC will be heard by a single judge or three judges. One of the distinguishing features of the SICC is its composition of judges which includes not only the SHC judiciary but also foreign judges.

The first group of 11 international judges has been appointed for a period of three years. They come from both civil and common law jurisdictions. These include The Right Honourable Sir Bernard Rix (England and Wales) and Mr. Anselmo Reyes (Hong Kong), who are renowned and highly experienced admiralty judges in their respective jurisdictions.

*Appointment of foreign-qualified lawyers* Only Singapore-qualified lawyers have rights of audience in the SHC. In a significant departure from this rule, parties are able to appoint and be represented by foreign counsel in the SICC. A foreign-qualified lawyer is one who is not called to the bar in Singapore, who is qualified (and certified by the relevant authority in the jurisdiction in which he/she is qualified) to practise law in any part of the world, subject to the following conditions:

- that he/she has at least five years' experience in advocacy; and
- that he/she is sufficiently proficient in the English language to conduct proceedings.<sup>1</sup>

A further radical change is that a party may be represented by a registered foreign counsel, without any involvement whatsoever of local Singapore counsel, if the dispute is considered to be an *offshore case*. An [offshore case is defined](#) as a case which has no substantial connection to Singapore because either:

- Singapore law is not the law applicable to the dispute and the subject matter of the dispute is not regulated by or otherwise subject to Singapore law; or
- the only connection between the dispute and Singapore is the parties' choice of Singapore as the law applicable to the dispute and the parties' submission to the SICC's jurisdiction.

Where a dispute is not an *offshore case*, a registered foreign counsel may only represent a party on aspects of foreign law on which counsel is qualified to advise. In that case, it is expected that local counsel will have primary conduct of the matter as if it were a matter before the SHC, with assistance from the foreign counsel as co-counsel rather than an expert on foreign law.

These new rules are ground breaking enabling, for the first time, foreign counsel to represent clients before the Singapore court.

*Foreign law and rules of evidence* Along with the ability to choose foreign counsel, parties may submit (via counsel) their case to the SICC relying on a different system of law than Singapore (rather than having to prove the law via expert evidence as traditionally required under Singapore rules of evidence). 2

In addition, the SICC is not bound by the [Singapore rules of evidence](#) and may apply other rules of evidence on application by the parties.

It is therefore now possible for a claim to come before the SICC which is governed by US law, to be argued by US qualified lawyers (subject to certain conditions as discussed above), before three judges, one of whom is a US international judge.

*Enforcement* One downside of the SICC may be the potential difficulty of cross-border enforcement of its judgments. A SICC judgment, being a judgment of the SHC, may not be as easily enforced as an arbitration award from the SIAC in the absence of legislation equivalent to the New York Convention.

**Challenges** As with any new system for dispute resolution only experience and use over time will make the SICC a success. It will be a challenge in itself to get parties to use the court. There will no doubt be areas which will need to be reviewed and possibly changed now the court is in operation. Finally, there are also likely to be some disadvantages in using the SICC over other dispute resolution forums, such as the enforcement point discussed above.

In conclusion, the SICC provides an innovative alternative to arbitration with flexible rules of evidence, broader choices of counsel and foreign law expertise amongst the judges hearing the dispute.

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Thanks to [Herbert Smith Freehills](#) for providing the basis for this article. The original article can be found at: [Herbert Smith Freehills Asia Disputes Notes](#) .

1 Legal Profession (Foreign Representation in Singapore International Commercial Court) Rules and the Singapore International Commercial Court Practice Directions. 2 The Supreme Court of Judicature Act (Cap. 322), Section 18L.

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