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SINGAPORE ADDS TO ADR MIX

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The Singapore International Commercial Court (SICC) was launched Jan. 5 to provide a dedicated commercial litigation forum and further cement Singapore's position as a regional hub for the resolution of international commercial disputes, alongside the Singapore International Arbitration Centre and the Singapore International Mediation Centre.

The rationale behind the SICC, a division of the Singapore High Court, is to provide parties with an alternative to international arbitration and maintain the benefits of court litigation, including the resolution of disputes not well suited for arbitration (such as certain torts, intellectual property matters and trust disputes) and safeguarding the right of appeal.

SICC's Jurisdiction

Parties have submitted to the jurisdiction of the SICC by means of a written agreement similar to an arbitration agreement, or have been transferred to it by the Singapore High Court. Claims are international and commercial in nature, and parties do not seek certain forms of non-monetary relief such as prerogative writs.

The SICC appointed 11 international judges from diverse geographical and civil and common law backgrounds who work alongside members of Singapore's bench. Included are a former judge of the High Court of Australia and the New South Wales Court of Appeal, a former judge of the Delaware Supreme Court, a former President of the Austrian Supreme Court, and judge of the French Supreme Court. Cases are heard by one or three judges, though unlike arbitration, parties are not able to nominate their judge.

Their inclusion means that parties who have submitted to the jurisdiction of the SICC but have chosen a foreign law to govern their dispute may have the matter heard by a judge with expertise in that foreign law.

Decisions of the SICC may be appealed directly to the Singapore Court of Appeal, though appeals may be expressly excluded by prior agreement of the parties.

SICC's Features

The SICC offers detailed rules of procedure but also offers parties flexibility to choose the applicable rules of evidence. Furthermore, questions of foreign law can be determined based on the submissions of counsel, thereby dispensing with the need to provide expert evidence to prove questions of foreign law.

Contrary to the general rule that SICC proceedings are heard publicly, parties can apply for an order that proceedings be confidential. In determining whether to make a confidentiality order, the court will consider the dispute's connection to Singapore and the agreement of the parties.



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To make it more accessible to international users, the SICC allows for international parties to be represented by foreign counsel. Amendments to Singapore's law governing the registration of legal professionals enable foreign counsel to appear before the SICC, and on appeals of SICC decisions, where either Singapore law is not the applicable law to the dispute or the parties' choice of Singapore law as the governing law is the only connection between the dispute and Singapore.

The main disadvantage of the SICC is the limited enforceability of its judgments outside of Singapore. While international arbitration awards are widely enforceable under the New York Convention, an SICC judgment has the status of a national court decision. Failing a reciprocal enforcement agreement, of which Singapore is currently only a signatory to a limited number, enforcement of an SICC judgment depends on the principles governing the recognition of foreign judgments in the relevant jurisdiction.

A Further Innovation

In addressing the enforceability of its judgments, the SICC may want to look to the recent innovation of the Dubai International Financial Centre (DIFC) Courts. On Feb. 25, the DIFC Courts, Dubai's English-language, commercial common law judicial system, introduced a new practice direction allowing for greater international enforcement of its judgments. Through the DIFC's partnership with the London Court of International Arbitration (LCIA), parties subject to the jurisdiction of the DIFC Courts can choose to refer their final judgment for enforcement through the DIFC-LCIA Arbitration Centre. This means that a DIFC Courts judgment could result in the judgment creditor obtaining an arbitral award that would be enforceable under the New York Convention. Although this mechanism is limited to disputes about the payment of money judgments issued by DIFC Courts, it offers a further synthesis between litigation and arbitration.

International arbitration has been criticized for becoming too much like commercial litigation, with users experiencing lengthy proceedings and high costs. With the founding of the SICC and the innovation of the DIFC-LCIA Arbitration Centre, it now seems that more and more courts are trying to emulate the advantages of international arbitration. Nonetheless, it will be interesting to keep an eye on the evolution of the SICC and any further innovations in international commercial courts.

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