



RESOLVING INTERNATIONAL DISPUTES IN SINGAPORE – 101

Introduction

Singapore has been a trade bridge between the East and the West for close to 200 hundred years. It has one of the busiest ports and one of the best airports underlying its fantastic transportation links. For one of the most densely populated places on earth, the traffic flows smoothly, people get to places reliably on the metro network and there is a large number of taxis that gets you anywhere you need to be in about 10 minutes, or 20 if getting to or from the airport.

It is choc-a-bloc with quality hotels catering to various budgets. It is safe, secure, clean, has plenty of trees and the shopping is to die-for. It is a cultural hot-pot with four official languages and a staggering choice of cuisine from all over the world where a full meal can be had for less than US\$5 or if one prefers, there are many Michelin-starred delights to opt for. There are 3.6 million citizens comprising three major Asians: the Chinese, the Indians and the Malays in this tiny spot in the middle of the Malay Archipelago. The other 1.5 million residents hail from literally everywhere else on the world.

Almost everyone you encounter will speak English. Just ask if you need help.

The rule of law prevails and the penchant of its citizens to follow-the-rules is legendary. It is a top venue for international arbitrations and the judiciary is recognized to be of the very highest standard. The Honourable Chief Justice is the current Patron of the Chartered Institute of Arbitrators (CIArb).

The two major venues where international disputes are resolved have excellent facilities. Mediations and litigation take place in the Supreme Court Building, a marvel of architect Norman Foster. Arbitrations and mediations are the focus in Maxwell Chambers, which is so attractive that the ICC, ICDR, ICSID, LCIA, WIPO-ADR, CIArb and the Permanent Court of Arbitration have sited offices there.

Non-resident arbitration counsel and arbitrators can obtain a work pass exemption online after entering Singapore on a short-term visit pass. Non-resident arbitrators are exempt from income tax.

Law of the Forum

The law, including the law of contracts, is based on the English common law that is so familiar to Commonwealth jurisdictions, but infused with pragmatic and logical flavour. Court judgments frequently survey the state of the law from diverse backgrounds including European, English, Canadian, American, Australian, Hong Kong and New Zealand before reaching a conclusion that is rational and justiciable. A recent study found that the Singapore courts considered over 1,500 foreign cases in 2013.

Decisions of the higher courts are binding on the lower courts and as such, the state of the law is clear and discernible.

Mediation

Mediation has firmly taken hold as a key dispute resolution offering in Singapore. It is relatively inexpensive, voluntary, confidential and expedient.

The key institutional centres are the Singapore Mediation Centre (SMC) and the Singapore International Mediation Centre (SIMC) established in 2014.



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The SMC has been the traditional route for the administration of a mediation session and has an outstanding 75% track record for successful mediations where 90% of which concluded within a day.

While new, the SIMC has two unique offerings that echo its international aspirations. First, its panel of mediators have a larger non-Singaporean core panel of mediators. Second, a collaboration with the Singapore International Arbitration Centre (SIAC) allows for arbitral disputes to be referred to the SIMC and for parties to agree to enforce a mediated settlement as if it were an arbitral award under the SIAC Rules.

There is little to dislike about mediation: It carries minimal risk and offers a high probably of conjuring a livable outcome (or a better, a win-win) from an acrimonious dispute.

Arbitration

Singapore is a choice venue for international arbitrations. It is the fifth most popular seat for ICC arbitrations in the world, and the SIAC is a firmly entrenched institution in the international circuit. Many international law firms and chambers have practices focused on arbitration in Singapore. The SIAC Rules is a popular choice for Japanese and Indian parties, adding to the good number of Europeans, Americans and Australasians that use it.

The rules are actively reviewed to take in the best international practices and to also address any perceived gaps. For example, procedures for emergency arbitrators were recently introduced to cover the need for interim measures in the period before a Tribunal is constituted.

Arbitral awards are internationally recognized in 152 countries under the New York Convention and parties are assured of confidentiality.

The courts will readily assist in supporting arbitration including in enforcing interim measures, ordering a stay in favour of arbitration and in enforcing awards.

A challenge in the courts against an arbitral award rarely succeeds as the courts have emphasized time and again that there will be no interference with an award even if it is wrong on the facts or in law. The prevailing sentiment is that the parties' contractual agreement to submit their dispute to arbitration is near sacrosanct.

Litigation

The Singapore judiciary took pioneering pro-active steps over a decade ago to increase efficiency by active case-management, an approach that has been emulated in many other jurisdictions. The use of technology and electronic filing of records is cutting-edge.

After tackling and mastering speed, attention has now been focused on costs.

Simplified Procedure for Claims in the Magistrates Court, and optionally at the District Court

Procedures in the Magistrate Courts for claims of SGD 60,000 or less have been greatly simplified in 2014 with up-front disclosure of all relevant documents; dispensation of traditional discovery, interrogatories and summary judgment; and even time-limits at trial (such as a 60-minute limit for cross-examination per witness). These measures take into account years of experience in identifying the time-wasting and unnecessarily costly elements of litigation that do not make sense in such small claims.

Parties in a District Court claim (up to SGD 250,000) can volunteer for the same simplified procedure if they wish to – a course that remains sensible.



High Court

Claims in the High Court are for the value of upwards of SGD 250,000. The Judges are of the highest calibre and experience, many of whom were commercial lawyers with a wealth of experience in cross-border transactions.

From the High Court, there is only one level of appeal to the Court of Appeal. Respect and confidence in the Court of Appeal, both domestic and international, has never been higher. If mistakes have been made in the lower courts, a common sentiment is that the Court of Appeal will get-it-right.

A large number of international litigants choose to resolve their disputes in the High Court, which embraces a benchmark timeline of 18 months from start to finish. An appeal to the Court of Appeal takes up another short 6 months or so.

Singapore International Commercial Court

As successful as international arbitration has grown, there are rumblings that some of its strengths have been turned on its head.

Justice Quentin Loh, a Senior Counsel prior to his elevation to the bench, has been quoted: "There has been increasing criticism of international arbitration, that it is getting more expensive, taking longer, less transparent because of confidentiality – all this will be dealt with and disappear with a commercial court."

Further, since there is no over-arching governing body controlling international arbitrators and counsel, some disquiet over consistency, conduct and ethics has arisen. Also, as noted above, arbitral awards are very difficult to overturn, even if it is wrong. While some might see this as a strength in giving finality, thwarted justice may be too high a price to pay. There is much to be said that when parties contract to refer a dispute to arbitration, they intended for a right (not convenient) decision to be made.

Despite growing shortcomings that is very difficult to tackle given the disparate stakeholders, international arbitration still retains features that make it attractive.

With the launch of the Singapore International Commercial Court (SICC) in 2015, there is now an additional alternative that is very promising.

The SICC offers a potent mix of the attractive and differentiating features of international arbitration and court litigation. This is not surprising when a leading international arbitrator becomes a dynamic Chief Justice.

The key strengths of the SICC we identify are:

- **Confidence:** In addition to the tested and selected current and former High Court judges (the quality of their decisions are published and of public record), respected jurists from other common law and civil law jurisdictions have been appointed to sit in the SICC. At launch, these include 3 from the United Kingdom, 3 from Australia, and 1 each from the USA, Austria, France, Hong Kong and Japan. There is no question that these decision-makers are impartial, possess excellent judicial temperament and are legally sound.
- **Regulated:** As the SICC is part of the High Court of Singapore, the judiciary maintains authority over its proceedings and any matter of conduct and ethics. It also means that benchmarks will be set for timelines and efficiency.
- **Justice:** The public record of its decisions and the scrutiny available by an appeal to the Court of Appeal means that the right decision will be made and the rule of law will be upheld.



- **Faster:** The case-management prowess of the Singapore courts have been married with some of the light-touch rules that is familiar in international arbitration. International arbitration-style discovery and evidentiary rules are indicated. A party may even choose the faster originating summons process to resolve a dispute where there is little factual dispute and only questions of law is posed. The foreseeable result is that proceedings will move at a good clip.
- **Cheaper:** The SICC fees (around SGD 10,000 in total) and hearing fees (SGD 3,500 per day for a single Judge and SGD 10,750 per day for a 3-Judge Court) are published and fixed. They are undoubtedly reasonable, if not a bargain, for the anticipated quality of adjudication in comparison with the administrative fees and arbitrator fees payable in an international arbitration. The efficiency of proceedings should also lead to lower fees to one's legal team. The award of costs on a final result will also be moderated by the court and can be expected to be scrutinized and be reasonable.
- **Adding Parties:** Unlike an international arbitration which is hampered by its inability to join parties to proceedings when they have not agreed to, the SICC, like any other court, has the power and authority to join third parties into proceedings where justice requires. This overcomes arbitration situations where multiple proceedings are necessitated or Tribunals make decisions with less than a full set of relevant evidence and facts.
- **Confidential:** In line with international arbitration, parties are expressly given the option of seeking to make proceedings confidential and conducted out of the public eye. When decisions are published, it is expected that names and identifying indicia can be redacted to preserve the confidentiality granted. Without the confidential cover, the record of proceedings will be available for public inspection.
- **Foreign Counsel:** Unlike regular litigation where foreign law needs to be formally proven by expert evidence, foreign counsel can be allowed to join the legal team to submit on foreign law. Further, where Singapore law plays no part in the dispute, or where the only Singapore connection is the choice of Singapore law and use of the SICC, a party may seek to be represented entirely by foreign registered lawyers.
- **Enforcement:** As a judicial body, it has at its disposal the immediate enforcement mechanisms of the courts. This is in contrast to an arbitral Tribunal which takes time to be constituted and whose orders have no compulsive force on their own but for the additional step of seeking the court's assistance.

The last factor could also well be the only significant downside to an SICC adjudication, it is not enforceable under the New York Convention as an arbitral award. Even so, a judgment of the SICC is enforceable under reciprocal arrangements with the United Kingdom, Australia, New Zealand, Sri Lanka, Malaysia, Brunei, Hong Kong, Pakistan, India and Papua New Guinea. It may also be enforceable as a debt in many other countries.

Concluding Remarks

As a destination and venue, Singapore is a very easy place to comfortably hit the ground running. There is a full suite of avenues and options available for the resolution of international disputes in a professional, competent, neutral and efficient manner.

It is bad enough if one has a dispute to resolve, there is no need to make it worse by choosing a venue that is less attractive than Singapore.