

**SINGAPORE INTERNATIONAL COMMERCIAL COURT
USER GUIDES**

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SICC USER GUIDES NOTE 1 JURISDICTION

1. The jurisdiction of the Singapore International Commercial Court (the “Court”) is governed by section 18D of the Supreme Court of Judicature Act (Cap. 322) (“SCJA”) read with Order 2, Rules 1 to 5 of the Singapore International Commercial Court Rules 2021 (“SICC Rules”).

(a) At commencement

2. Under section 18D(1) of the SCJA, the Court has jurisdiction to hear and try an action that is international and commercial in nature, that the General Division of the High Court may hear and try in its original civil jurisdiction, and that satisfies such other conditions as the Rules of Court may prescribe. Those other conditions, which are prescribed by Order 2, Rule 1(1) of the SICC Rules, are as follows:

- (a) the action between the parties when the case was first filed is of an international and commercial nature;
- (b) each party named in the case when it was first filed has submitted to the Court’s jurisdiction under a written jurisdiction agreement; and
- (c) the parties do not seek any relief in the form of, or connected with, a prerogative order (including a mandatory order, a prohibiting order, a quashing order or an order for review of detention).

3. Where the parties have submitted to the Court’s jurisdiction under a written jurisdiction agreement, it is presumed that the action is of an international and commercial nature: see Order 2, Rule 1(8) of the SICC Rules. However, the presumption is a rebuttable one and does not affect the Court’s power under Order 2, Rule 3 of the SICC Rules, to consider its jurisdiction and exercise of jurisdiction in a case, or over a claim in a case.

4. Under section 18D(2)(a) of the SCJA, the Court (being a division of the General Division of the High Court) has jurisdiction to hear any proceedings relating to international commercial arbitration that the General Division of the High Court may hear and that satisfy such conditions as the Rules of Court may prescribe. Where those proceedings are commenced by way of any originating application, the only condition prescribed under Order 23, Rule 3(1) of the SICC Rules is that those proceedings must be proceedings that the General Division of the High Court may hear under the International Arbitration Act (Cap. 143A).

5. The Court may decline to exercise jurisdiction in a case (even if the applicable jurisdictional requirements are met) if exercising jurisdiction would be contrary to the Court’s international and commercial character or would be an abuse of the process of the Court.

6. The Court will not decline to assume jurisdiction solely on the ground that the dispute between the parties is connected to a jurisdiction other than Singapore, if there is a written jurisdiction agreement between the parties: see Order 2, Rule 3(3) of the SICC Rules. In other

words, the fact that there are few or no connecting factors to Singapore does not constitute a basis to ask the Court to decline to assume jurisdiction. Since the parties have agreed in writing to submit to the jurisdiction of the Court, which is an international court, the Court would not examine the connecting factors to Singapore in deciding whether to decline to assume jurisdiction.

7. Additionally, the Court has the jurisdiction to hear and determine a case transferred to the Court under Order 2, Rule 4 and Order 23, Rule 11 of the SICC Rules. It also has the jurisdiction to hear and determine an originating application under Order 12, Rule 6 and Order 18, r 1(3) of the SICC Rules respectively for the production of documents, an injunction or search order before the commencement of proceedings in the Court, and an originating application under Order 25 of the SICC Rules for permission to commit a person for contempt of court in respect of any judgment or order made by the Court: see Order 2, Rule 1(2) of the SICC Rules.

(b) Joinder of additional parties

8. Where the Court has exercised jurisdiction over the case, a person may be joined as a party, including as an additional claimant, defendant or as a third or subsequent party, to the case. This is provided that:

- (a) the requirements in Order 10 of the SICC Rules are met; and
- (b) the claims by or against the person:
 - (i) do not include a claim for any relief in the form of, or connected with, a prerogative order (including a mandatory order, a prohibiting order, a quashing order or an order for review of detention); and
 - (ii) are appropriate to be heard in the Court.

9. Unlike the claims between the claimants and the defendants named in the originating application when it was first filed, there is no requirement that the claims by or against a person sought to be joined to the action must be of an international and commercial nature, so long as the action as a whole maintains an international and commercial character: see section 18D(3) of the SCJA. The Court, in exercising its discretion on whether to join that person, would have to decide whether the claims by or against that person are appropriate to be heard in the Court. In exercising that discretion, the Court would have regard to its international and commercial nature: see Order 10, Rule 5(3) of the SICC Rules.

10. There is also no requirement that a person sought to be joined to the action or proceedings must have submitted to the Court's jurisdiction under a written jurisdiction agreement. There is one exception. A State or the sovereign of a State may not be made a party to a case in the Court unless the State or the sovereign has submitted to the jurisdiction of the Court under a written jurisdiction agreement: see Order 10, Rule 5(2) of the SICC Rules.

11. Where the person sought to be joined has not agreed in writing to submit to the jurisdiction of the Court, the Court may examine the connecting factors to Singapore in

deciding whether to exercise its compulsory jurisdiction and join that person to the action or proceedings.

12. However, this does not mean that the Court is bound to consider and give weight to arguments based on connecting factors made by persons sought to be joined. Where the person sought to be joined has submitted to the Court's jurisdiction under a written jurisdiction agreement, for example, the Court may decide to disregard such arguments in deciding whether to join that person. This would be in the discretion of the Court.

SICC USER GUIDES NOTE 2 COMMENCING AN ACTION

1. Proceedings in the Court must be commenced by an originating application: see SICC Rules Order 4, Rule 1(1).

2. Generally, save for proceedings under the International Arbitration Act (Cap. 143A) (see paragraph 7 onwards), an originating application must be in Form 5: see SICC Rules Order 4, Rule 1(2). The originating application must be accompanied by a claimant's statement, a copy of the written jurisdiction agreement to which the claimant and defendant are party, and the claimant may, when filing the originating application, file an offshore case declaration: see SICC Rules Order 4, Rules 1(4).

3. A claimant's statement must be in Form 6 and must contain a concise summary of the material facts giving rise to the claim, any alleged harm suffered by the claimant, the cause of action against the defendant and the relief sought including where, possible, an initial quantification of the claim amount: see SICC Rules Order 4, Rule 4.

4. An originating application is valid for service for 12 months beginning with the date of its issue: see SICC Rules Order 4, Rule 3(1). A plaintiff may apply to extend the validity of an originating application under SICC Rules Order 4, Rule 3(2).

5. After the originating application and claimant's statement are served on a defendant, the defendant must:

- (a) file and serve a defendant's statement in Form 7 within 28 days; and
- (b) in that defendant's statement:
 - i. state whether the defendant intends to contest the claim or any part thereof;
 - ii. state whether the defendant intends to dispute service and/or jurisdiction;
 - iii. identify the claim or part thereof that is contested; and
 - iv. provide a concise summary of the material facts underlying the defence and the nature and grounds of the defence: see SICC Rules Order 4, Rule 5.

6. Unless otherwise provided in the SICC Rules, the Court will order that a contested claim or counterclaim be decided by one of three adjudication tracks: the pleadings adjudication track; the statements adjudication track; or the memorials adjudication track: see SICC Rules Order 4, Rule 6(1). The pleadings adjudication track is equivalent to the writ action under the Rules of Court in force before 1 April 2022. It involves the filing of pleadings (i.e. Statement of Claim, Defence, Reply, etc) and generally culminates in a trial of the matter. The statements adjudication track is equivalent to the originating summons under the Rules of Court in force before 1 April 2022, which involves the filing of witness statements, and generally

culminates in a hearing on submissions. The memorials track involves the filing of memorials which are generally required to set out in full detail the parties' respective statements of facts, legal arguments, reliefs claimed, and be accompanied by witness statements, expert reports (if any) and supporting documents. In deciding the applicable adjudication track, the Court may have regard to any agreement between the parties on the applicable adjudication track: see SICC Rules Order 4, Rule 6(2).

7. Proceedings under the International Arbitration Act must be commenced by way of an originating application in Form 42 and accompanied by a witness statement which must state the grounds in support of the application, exhibit a copy of the arbitration agreement or any record of the content of the arbitration agreement, the award and any other document relied on by the applicant, set out any evidence relied on by the claimant and must be served with the originating application: see SICC Rules Order 23, Rule 4.

8. The defendant in proceedings under the International Arbitration Act must file and serve a defendant's statement in Form 43: see SICC Rules Order 23, Rule 6(1). If the defendant does not intend to dispute service or jurisdiction and only intends to contest some or all of the claims, the defendant is to file and serve, together with the Defendant's Statement, a witness statement stating the grounds on which the defendant opposes the application: see SICC Rules Order 23, Rule 6(9).

9. Proceedings under the International Arbitration Act will be decided by the statements adjudication track, unless the Court otherwise directs.

SICC USER GUIDES NOTE 3 FOREIGN REPRESENTATION

1. Generally, only advocates and solicitors who are qualified to practise law in Singapore have rights of audience before the Singapore courts. However, in view of the international nature of the Court, parties may be represented by foreign lawyers in proceedings in the Court under certain circumstances: see SICC Rules Order 3, Rule 1(1)(c)-(d) and (2).¹

2. In order to represent parties in proceedings in the Court, the foreign lawyers would have to be registered under section 36P of the Legal Profession Act (Cap. 161). There are 2 types of registered foreign lawyers: a foreign lawyer who is granted full registration under section 36P(1) of the Legal Profession Act (“full registration foreign lawyer”) and a foreign lawyer who is granted restricted registration under section 36P(2) of the Legal Profession Act (“restricted registration foreign lawyer”). The latter may only represent parties for the purposes of making submissions on such matters of foreign law as the Court or the Court of Appeal may permit (see SICC Rules Order 3, Rules 1(1)(d) and 2(1)(d) and paragraphs 17 to 20 below).

(a) Offshore cases

3. The main category of cases in which full registration foreign lawyers may represent parties is offshore cases.

4. An offshore case is an action which has no substantial connection to Singapore, but does not include (a) any proceedings under the International Arbitration Act (Cap. 143A) that are commenced by way of any originating process; and (b) an action in rem (against any ship or any other property) under the High Court (Admiralty Jurisdiction) Act (Cap. 123): SICC Rules Order 3, Rule 3.

5. An action has no substantial connection to Singapore where (a) 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** (b) the only connections between the dispute and Singapore are the parties’ choice of Singapore law as the law applicable to the dispute and the parties’ submission to the jurisdiction of the Court: see SICC Rules Order 3, Rule 3(2).

6. The following illustrations serve to demonstrate, as a matter of general principle, cases where the subject matter of the dispute is regulated by Singapore law. Such cases will consequently fall outside of the scope of offshore cases.

¹ Apart from advocates and solicitors and registered foreign lawyers, parties to proceedings in the Court may also be represented: (a) in specific proceedings in the Court, by persons who have been admitted under section 15 of the Legal Profession Act (Cap. 161) to practise as an advocate and solicitor on an ad hoc basis for the purposes of those proceedings; (b) in the same type of cases where full registration foreign lawyers may represent parties, by solicitors registered under section 36E of the Legal Profession Act; and (c) in the same type of cases where restricted registration foreign lawyers may represent parties for the purposes of making submissions on such matters of foreign law as the Court or the Court of Appeal may permit, by law experts registered under section 36PA of the Legal Profession Act. However, this note will focus on representation by registered foreign lawyers.

- (a) where there is a dispute over the sale of shares in a Singapore incorporated company pursuant to a share purchase agreement governed by New York law, the subject-matter of the dispute (i.e. the shares) is regulated by or otherwise subject to Singapore law.
- (b) where there is a dispute over the transfer of land in Singapore pursuant to a contract governed by English law, the subject-matter of the dispute (i.e. the land) is regulated by or otherwise subject to Singapore law.
- (c) where there is a dispute over the affairs of a company pursuant to a shareholders' agreement governed by Indonesian law and one of the issues relates to the use of a patent registered in Singapore, the subject-matter of the dispute (i.e. the patent) is regulated by or otherwise subject to Singapore law.

7. The Court has jurisdiction over both offshore cases and non-offshore cases, so long as the applicable jurisdictional requirements under section 18D of the Supreme Court of Judicature Act and SICC Rules Order 2, Rules 1 and Order 23 Rule 3 are met.

8. There are two primary implications of an offshore case: first, as mentioned above, full registration foreign lawyers may represent parties in offshore cases; and second, in making a confidentiality order under SICC Rules Order 16, Rule 9, the Court will generally give due weight to the fact that the case is an offshore case and any agreement between the parties on the making of such an order: see SICC Rules Order 16, Rule 9(2).

9. An action is to be treated as an offshore case if:

- (a) either (i) the claimant has filed an offshore case declaration together with the originating process, or (ii) any other party has filed such a declaration together with the first document filed by the party in that case, in accordance with SICC Rules Order 3, Rule 5; or
- (b) the Court decides, on an application under SICC Rules Order 3, Rule 6, that the case is an offshore case.

10. An offshore case declaration must be in Form 1. It must explain why the case is an offshore case and state all the facts relevant to the explanation, and must be served on all other parties to the case: see SICC Rules Order 3, Rule 5.

11. Where no offshore case declaration has been filed in a case in accordance with SICC Rules Order 3, Rule 5, a party to the case may apply to the Court under SICC Rules Order 3, Rule 6(1) for a decision that the case is an offshore case.

12. The differences between (a) an offshore case declaration; and (b) an application to Court under SICC Rules Order 3, Rule 6 for a decision that a case is an offshore case, are summarised in the table below:

	Offshore case declaration	SICC Rules Order 3, Rule 6(2) application

Application necessary?	No.	Yes, see procedure set out in SICC Rules Order 3, Rule 6(2).
By when?	Declaration to be filed by either: (i) the claimant – together with the originating process; or (ii) any other party – together with the first document filed by the party in the case. [See SICC Rules Order 3, Rule 5]	Application to be filed: (i) By the claimant / defendant– no later than 28 days after the service of a Defendant’s Statement; (ii) By a third or subsequent party in proceedings – no later than 28 days after the service of a Defendant’s Statement by the third or subsequent party; [See SICC Rules Order 3, Rule 6(2)]
What effect?	A case will be treated as an offshore case if a party has filed an offshore case declaration, unless the Court decides under SICC Rules Order 3, Rule 7 that the case is not or is no longer an offshore case.	A case will be treated as an offshore case if the Court decides under SICC Rules Order 3, Rule 6 that the case is an offshore case, unless and until the Court decides subsequently under SICC Rules Order 3, Rule 7 that the case is not or is no longer an offshore case.

13. Once either of the conditions set out at paragraph 9 above has been satisfied and a case is treated as an offshore case, the parties can be represented by full registration foreign lawyers in the case. In other words, a full registration foreign lawyer may, among other things, file documents in the Court, appear at hearings before the Court and make submissions to the Court on a party’s behalf.

14. A case ceases to be treated as an offshore case if the Court subsequently decides, on its own motion or on the application of a person under SICC Rules Order 3, Rule 7, that the case is not or is no longer an offshore case. But the Court may, in the interests of the just, economical and expeditious disposal of the proceedings, allow a party who has been represented by a full registration foreign lawyer to continue to be so represented, subject to any conditions that the Court may impose: see SICC Rules Order 3, Rule 7(4).

15. In exercising its discretion under SICC Rules Order 3, Rule 7(4), the Court may take into account all the circumstances of the case, including but not limited to:

- (a) the reason(s) that the case is not or is no longer an offshore case;
- (b) the stage at which the proceedings are at;

- (c) the prejudice, if any, that may be suffered by the parties if they are no longer allowed to be represented by full registration foreign lawyers; and
- (d) whether the parties have local advocates and solicitors acting as co-counsel and/or advising them on the aspects of the proceedings which are connected to Singapore.

16. Purely by way of illustration, the Court may consider exercising its discretion under SICC Rules Order 3, Rule 7(4) and allowing a party who has been represented by a full registration foreign lawyer to continue to be so represented in the following scenarios:

- (a) where a counterclaim made by the defendant that is separate and distinct from the original claim caused the case to cease to be an offshore case;
- (b) where a claim by the defendant against a third party caused the case to cease to be an offshore case, the Court may allow the claimant who is not involved in the third party claim to continue to be represented by a full registration foreign lawyer; and
- (c) where local advocates and solicitors are acting as co-counsel and/or advising the parties on the aspects of the proceedings which are connected to Singapore, or where the parties undertake to engage local advocates and solicitors for this purpose.

(b) Cases involving foreign law

17. The Court may, on the application of a party, make an order under SICC Rules Order 16, Rule 8 that a question of foreign law be determined on the basis of submissions instead of proof, specifying one or more persons who may submit on the question of foreign law, and such further orders and directions as appropriate. Such an order may be made in both offshore cases and non-offshore cases.

18. Before making such an order, the Court must be satisfied that each party is or will be represented by an advocate and solicitor, a person admitted under section 15 of the Legal Profession Act (Cap. 161), a registered foreign lawyer (either full registration foreign lawyers or restricted registration foreign lawyers) or a registered law expert who is suitable and competent to submit on the relevant questions of foreign law: see SICC Rules Order 16, Rules 8(2)-(4).

19. If a registered foreign lawyer or registered law expert is specified in an order under SICC Rules Order 16, Rule 8, that foreign lawyer or law expert may make submissions to the Court on behalf of a party, but the submissions must be confined to submissions on the question(s) of foreign law covered under the order.

20. If a party applies for a foreign lawyer or law expert to make submissions on the relevant questions of foreign law and that foreign lawyer or law expert is not registered under section 36P or 36PA of the Legal Profession Act (Cap. 161), as the case may be, that foreign lawyer or law expert would have to exhibit an undertaking to apply to be registered within 7 days after the date on which the order is made: see SICC Rules Order 16, Rule 8(6)(d). Where a foreign

lawyer or law expert specified in an order under SICC Rules Order 16, Rule 8 is not a registered foreign lawyer or registered law expert, the order will be conditional on that foreign lawyer or law expert being registered: see Order 16 Rule 8(4).

SICC USER GUIDES NOTE 4
DISAPPLICATION OF SINGAPORE EVIDENCE LAW

1. Order 13, Rule 15(1) of the SICC Rules states that the Court may, on the application of a party, order that any rule of evidence found in Singapore law shall not apply and such other rules of evidence (if any), whether found in foreign law or otherwise, shall apply instead. Under Order 13, Rule 15(2), such an application can be made if all parties agree on the rules of evidence that shall not apply, and any rules of evidence that shall apply instead. Such an application must, under Order 13, Rule 15(7), be made by summons and supported by a witness statement. The supporting witness statement must: (i) state the rules of evidence found in Singapore law that the parties agree do not apply; (ii) state any other rules of evidence that the parties agree are to apply instead; and (iii) exhibit a copy of the rules of evidence proposed to be applied, where this is practicable: see SICC Rules Order 13, Rule 15(8).

2. This guidance note sets out some of the substantive rules of evidence found under Singapore law. These rules may, among others, be disapplied by the parties in accordance with Order 13, Rule 15. The main sources of evidential rules in Singapore are the Evidence Act (Cap. 97), the Rules of Court (Cap. 322, R 5) and the common law. With respect to the common law, section 2(2) of the Evidence Act states that rules of evidence not contained in any written law, so far as such rules are inconsistent with the provisions in the Evidence Act, are repealed.

(a) Examples of substantive rules of evidence under Singapore law

(i) Hearsay evidence²

3. Hearsay evidence is inadmissible. This is often known as the hearsay rule. Hearsay evidence refers to evidence of an out-of-court statement which is adduced for the purpose of establishing the truth of what is contained in the statement. A witness must generally give evidence of what he has personal knowledge of and not hearsay evidence, i.e. what was perceived by others and recounted to him. It should be noted, however, that evidence of a statement which is given to establish the fact that the statement was made, and not the truth of what is contained in the statement, is not hearsay evidence.

4. There are a number of exceptions to the hearsay rule.³ One exception pertains to statements made by a person in the ordinary course of a trade, business, profession or other occupation.⁴ Such statements may be admissible even though they are hearsay. The Court, however, retains an overarching discretion not to admit hearsay evidence even if the evidence falls within one or more of the exceptions to the hearsay rule.⁵ The Court would balance the

² See, for example, sections 32 and 33 of the Evidence Act (Cap 97, 1997 Rev Ed) (“EA”) and paras 120.084 to 120.173 of *Halsbury’s Laws of Singapore* (LexisNexis Singapore, 2013 Reissue) (“*Halsbury*”). In *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447, the Court of Appeal held that the EA gave effect to exceptions to the rule against hearsay by rendering the exceptions as *relevant* facts. Save for those exceptions in s 32 of the EA (rendered as *relevant* facts), hearsay evidence is rejected on the basis of a lack of relevance.

³ Section 32(1) of the EA contains some exceptions to the hearsay rule.

⁴ Section 32(1)(b) of the EA.

⁵ See section 32(3) of the EA and *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 at [105] to [110].

significance of the evidence against any factors that militate against its admission, including reliability, costs, delay and prejudice. Where the hearsay evidence sought to be admitted is of limited probative value, such evidence should be excluded.⁶

Example

5. In *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal*,⁷ a report certified coal to be of satisfactory quality. The report was hearsay because the maker of the report was not called to testify to the truth of the report. The report was nonetheless admitted because it was a document that was compiled in the ordinary course of a trade, business, profession or other occupation.

(ii) *Opinion evidence*⁸

6. Opinion evidence is inadmissible. Generally, a witness should only testify to facts which he has personal knowledge of or which he personally perceived. A witness should not give evidence as to his opinion or beliefs drawn from those facts. The reason for this rule is to reserve the drawing of inferences or conclusions to the judge, as the trier of fact, and to avoid unreliable evidence.

7. As with the hearsay rule, there are also certain exceptions to the rule against opinion evidence.⁹ The Evidence Act specifies certain circumstances under which opinion evidence may be admitted. For example, the opinion of an ‘expert’ witness may be necessary because the opinion touches upon a point of scientific, technical or other specialised knowledge which the Court is likely to derive assistance from. Such opinion evidence is admissible. Like the hearsay rule, the Court, however, retains an overarching discretion not to admit opinion evidence even if the evidence falls within one or more of the exceptions to the rule against opinion evidence.¹⁰

Examples

8. In *Raffles Town Club Pte Ltd v Tan Chin Seng and others*,¹¹ the Court allowed opinion evidence on whether there had been a diminution in value of the membership of a club and, if so, the extent of such diminution. Experts were allowed to testify and give their opinions on the valuation of memberships in a social club, as this required specialised knowledge.

9. In *Sim Cheng Soon v BT Engineering Pte Ltd and another*,¹² an issue arose as to whether a working platform was barricaded. Although photographs of the platform were adduced, the photographs were inconclusive. Based on the layout of the scaffolding poles found in the photographs, a factual witness inferred and gave evidence that the working platform was barricaded. This evidence was ruled inadmissible because it was the opinion of the factual

⁶ *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 at [109].

⁷ [2015] 2 SLR 686.

⁸ See sections 32B(3), 47 to 53 and 62(1)(d) of the EA and para 120.095 of *Halsbury*.

⁹ See e.g. sections 32B(3) and 47–53 of the EA.

¹⁰ Section 47(4) of the EA.

¹¹ [2005] 4 SLR(R) 351.

¹² [2007] 1 SLR(R) 148.

witness which was arrived at based on the photographs. Further, this was also hearsay evidence as the witness himself did not personally take the photographs or observe the working platform.

(iii) Privilege¹³

10. Privileged communications are inadmissible. The two most common types of privileged communications are legal professional privilege¹⁴ and without prejudice privilege.¹⁵ As a general rule, privilege must be claimed. If no claim is made, a Court will presume that evidence is not privileged, or if it is privileged, that privilege has been waived.

11. There are two aspects to legal professional privilege – legal advice privilege and litigation privilege. The former refers to communications between an advocate / legal counsel and his client made in the course of and for the purposes of his employment as advocate or legal counsel respectively. The latter refers to all documents prepared or communications made for the dominant purpose of litigation or contemplated litigation. Without prejudice privilege, on the other hand, is the privilege afforded to communications made on a without prejudice basis in the course of and for the purposes of settling a dispute.

Example¹⁶

12. In *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd*,¹⁷ several banks, the appellants, applied for pre-action discovery against the respondent, a company, to produce certain documents. These documents were created in the wake of a fraud committed by a third party, the respondent's finance manager. The finance manager had obtained loans from the banks purportedly on the respondent's behalf but had used the monies for his personal gain. After being informed of the existence of the loans, the respondent hired PricewaterhouseCoopers to *inter alia* identify the nature of the unauthorised transactions and quantify their impact. For that purpose, reports were prepared. The banks sought the production of such reports to ascertain if there was any negligence on the respondent's part. The Court of Appeal held that these reports were protected by litigation privilege as they were prepared for the dominant purpose of aiding litigation.

(iv) Parol evidence rule¹⁸

13. The parol evidence rule prevents a party to a contract that is written and complete on its face to present extrinsic evidence to contradict, vary, add to or subtract from the terms of the contract. More specifically, no evidence of any oral agreement or statement can be admitted to contradict, vary, add to or subtract from the terms of a complete written contract. Such extrinsic evidence is only admissible to aid in the interpretation of the terms of a contract so long as the evidence is relevant, reasonably available to all contracting parties and relates to a clear or obvious context.

¹³ See sections 23 and 123 to 131 of the EA and paras 120.386 to 120.426 of *Halsbury*.

¹⁴ Sections 128, 128A and 131 of the EA and *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and other appeals* [2007] 2 SLR(R) 367.

¹⁵ Section 23 of the EA.

¹⁶ See also the illustrations in section 128 of the EA.

¹⁷ [2007] 2 SLR(R) 367.

¹⁸ Sections 93 and 94 of the EA.

*Example*¹⁹

14. In *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd*,²⁰ a contractual clause excluded insurance coverage in respect of liability resulting from the loss of or damage to property. Zurich Insurance sought to rely on extrinsic evidence pertaining to the genesis of the contract (such as supporting documents and preparatory notes) to oust this clause from the contract. The Court held that the evidence was inadmissible, and cannot be used to contradict the express terms of the contract.

(v) Rules relating to the proving of documents²¹

15. The Evidence Act provides that documents must be proved by primary evidence (that is, the original document itself),²² except where certain conditions are met²³ — for instance, where the original has been destroyed or lost.²⁴ The parties may, however, agree to dispense with the requirements of the rules as to documentary evidence. This is usually done in practice by the filing of an agreed bundle of documents. The effect of an agreed bundle is normally to dispense with proof of a document's existence, due execution and pristine quality but not with proof of the reliability of a document's contents. In other words, parties agree to the authenticity of the documents in the bundle but not as to their contents. The precise terms and scope of such agreement may vary and would have to be determined in each individual case if any question arises as to the nature and extent of the dispensation that has been agreed upon.²⁵

Example

16. In *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another*,²⁶ the plaintiff attempted to adduce copies of documents in order to prove damages. The defendant objected. The trial Judge agreed that the documents were not properly admitted into evidence as the originals had not been produced and no exception applied. On that basis, only nominal damages were awarded. On appeal, the Court of Appeal agreed with the trial Judge's decision.²⁷

(vi) Examination of witnesses²⁸

17. There is a fixed order for the examination of witnesses under the Evidence Act. Witnesses would first be examined-in-chief by the party calling the witness. Generally, evidence-in-chief for trials before the SICC is adduced by way of witness statements.²⁹ A witness statement must contain all material facts which must not be departed from or supplemented by new facts in oral evidence without the permission of the Court.³⁰ After the examination-in-chief, the witness may be cross-examined by the adverse party. After the cross-

¹⁹ See also the illustrations in section 94 of the EA.

²⁰ [2008] 3 SLR(R) 1029.

²¹ See sections 63 to 68 of the EA and para 120.011 of *Halsbury*.

²² Section 66 of the EA.

²³ Section 67 of the EA.

²⁴ Section 67(c) of the EA.

²⁵ See para 120.293 of *Halsbury*.

²⁶ [2005] 4 SLR(R) 417.

²⁷ [2006] 3 SLR(R) 769.

²⁸ See section 140 of the EA and paras 120.445 to 120.447 of *Halsbury*.

²⁹ SICC Rules Order 13, Rule 1(2).

³⁰ SICC Rules Order 13, Rule 1(3).

examination, the witness may be re-examined by the party calling the witness. The cross-examination need not be confined to the testimony in the examination-in-chief. However, the re-examination must be confined to explaining only matters referred to in cross-examination. If the Court gives a party permission to introduce a new matter in re-examination, the adverse party may further cross-examine upon that matter.

18. One exception to this procedure is the provision of concurrent expert evidence under Order 14, Rule 6. Under that rule, the Court may order that expert witnesses testify as a panel instead of one after another. This is often referred to as the ‘hot-tubbing’ of witnesses.

Example

19. In *Teo Wei Hsin Lawrence (Zhang Weixin), Tin Yan Ying Geraldine (Cheng Yanying Geraldine) v Management Corporation Strata Title Plan No 1525*,³¹ a dispute over what caused dampness and moisture in an apartment unit arose. Each party engaged an expert to testify as to the cause and the experts gave concurrent evidence instead of testifying one after another.

(vii) The rule in *Browne v Dunn*³²

20. If a cross-examiner has adduced, or intends to adduce any evidence that in any respect contradicts the evidence of the witness being cross-examined, he should put the contradictory facts to the witness so that the witness is given an opportunity to respond. This is known as the rule in *Browne v Dunn*. Depending on the circumstances, failure to do so may be held to imply acceptance of the evidence-in-chief. However, the rule in *Browne v Dunn* is not a rigid, technical rule and does not require every point to be put to the witness but is required where the point is at the very heart of the matter.³³

Example

21. In *Lo Sook Ling Adela v Au Mei Yin Christina and another*,³⁴ a question arose as to whether a fence was shifted by the appellant. The appellant’s evidence was that she did not move the fence. As it was not put to her in cross-examination that she had moved the fence, the Court held that it was no longer open to the respondents to assert that the appellant moved the fence.

22. An illustration of how it may be put to the appellant in cross-examination that the appellant had moved the fence is as follows:

- Q: Did you move the fence separating your property from the respondent’s property such that it encroached onto the respondent’s property?
- A: No.
- Q: I put it to you that you had in fact shifted the fence such that it encroached onto the respondent’s property.

³¹ [2014] SGDC 350.

³² (1893) 6 R 67 (HL). See para 120.476 of *Halsbury*.

³³ See *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [42].

³⁴ [2002] 1 SLR(R) 326.

- A: I do not agree.
Q: I put it to you that the reason why you did that is to enlarge the size of your own property.
A: No, that is not true.

(b) Examples of disapplication of Singapore evidence rules

Example 1

23. A party may apply under Order 13, Rule 15(1) to the Court for an order that the rule relating to hearsay evidence shall not apply, without stipulating another rule that will apply instead. If this order is granted, parties will be allowed to adduce evidence that may ordinarily be considered to be hearsay, and any doubts as to the reliability of the evidence will only go to weight rather than admissibility.

Example 2

24. A party may apply under Order 13, Rule 15(1) to the Court for an order that the rule relating to the proving of documents under section 66 of the Evidence Act shall not apply. If this order is granted, parties will be allowed to prove documents by secondary evidence (*e.g.*, copies of the originals) without proving that one of the exceptions in section 67 of the Evidence Act applies.

Example 3

25. A party may apply under Order 13, Rule 15(1) to the Court for an order that all rules of evidence found in Singapore law shall not apply but that the IBA Rules on the Taking of Evidence in International Arbitration (“IBA Rules”) should apply instead. If this order is granted, all Singapore rules of evidence will not apply and the IBA Rules as appropriately adapted will apply instead. In this regard, Order 13, Rule 15(3) allows the Court, for the just, expeditious and economical disposal of the proceedings, to stipulate conditions that supplement and are consistent with the parties’ agreement as the Court sees fit.

(c) Conclusion

26. The above rules of evidence in Singapore law are some examples of substantive rules of evidence under Singapore law which may apply to cases before the Court. Under Order 13, Rule 15(1), by the agreement of the parties, these rules may be disapplied and different rules of evidence applied instead.

27. Ultimately, if the parties wish to disapply any rule of evidence under Singapore law, it is incumbent on the parties to identify the specific rule/s to be disapplied and the rule/s, if any, that should apply in its/their place.

SICC USER GUIDES NOTE 5 INJUNCTIONS PROHIBITING DISPOSAL OF ASSETS

1. This Note addresses the Court's practices and procedures in an application for an injunction prohibiting the disposal of assets, i.e. freezing order (also known in some jurisdictions as a Mareva injunction or a pre-judgment attachment order). It supplements Order 18 of the SICC Rules in relation to injunctions. Unless otherwise stated, all terms used in this User Guide have the same meaning given to them in Order 1, Rule 4 of the SICC Rules.

(a) Effects of a freezing order

2. A freezing order may be limited to assets in Singapore, or expressed as covering assets anywhere in the world. It may be expressed as covering all assets of the respondent without limitation, assets of a particular class, or specific assets (such as the amounts standing to the credit of identified bank accounts or trade receivables).

3. A freezing order would generally provide that the respondent is not precluded from utilising the assets covered by the order for a legitimate purpose, such as: ordinary living expenses, legal advice and representation, or in the ordinary and proper course of business.

4. The Court may make ancillary orders, such as an order for disclosure of assets.

5. As a condition of the making of a freezing order, the Court will normally require appropriate undertakings by the applicant, including the usual undertaking as to damages. The undertaking is given to the Court.³⁵

6. The Court may also in certain circumstances require the applicant to furnish security in any form that it considers appropriate to support the undertaking. Forms of security which may be required by the Court include payment into court, provision of a bond to be issued by an insurance company with a place of business within Singapore, a written guarantee issued from a bank with a place of business within Singapore, or any other mode which the Court deems fit.

7. The applicant for a freezing order without notice to the respondent is under a duty to disclose all material facts that he knows or reasonably ought to know, including any matter that may affect the merits of his case adversely.³⁶ This includes defences that are likely to be advanced by the other party. The Court may set aside a freezing order obtained without notice if it is later discovered that the applicant did not make full and frank disclosure. Factors which will be considered by the Court in deciding whether to set aside the freezing order include the seriousness of the non-disclosure, the importance of the undisclosed facts, and the reasons for the non-disclosure.³⁷

³⁵ *CHS CPO GmbH (in bankruptcy) and another v Vikas Goel and others* [2005] 3 SLR(R) 202.

³⁶ Order 18, Rule 1(7) of the SICC Rules.

³⁷ *Bahtera Offshore (M) Sdn Bhd v Sim Kok Beng* [2009] 4 SLR(R) 365 at [18]–[33].

8. A freezing order obtained without notice will remain in force until the trial or further order. However, the respondent to a freezing order obtained without notice may at any time apply to court to vary or discharge the freezing order.

(b) Requirements for the granting of a freezing order

9. An applicant must satisfy two main requirements before the Court will grant a freezing order: (a) that he has a “good arguable case”; and (b) there is a real risk of dissipation of assets.³⁸ The test for this latter requirement is whether the refusal of a freezing order would involve a real risk that a judgment in favour of the applicant would remain unsatisfied; this is an objective test, and there is no need to show an intention to dissipate assets.³⁹

(c) Coram hearing an application for a freezing order

10. The freezing order application will be heard in Chambers by a Judge unless otherwise directed by the Court.⁴⁰ As far as practicable, the freezing order application shall be heard by either the single Judge assigned to the substantive dispute, or, if the coram for the substantive dispute comprises three Judges, at least one of the three Judges in that coram.⁴¹

11. Where, however, an urgent hearing⁴² is requested, whether during or outside office hours, and it is not practicable for any of the Judges mentioned in the preceding paragraph to hear the freezing order application, the application will be heard by another Judge.

³⁸ *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 at [17].

³⁹ *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 at [17].

⁴⁰ SICC Rules Order 20, Rule 1(1)(b).

⁴¹ SICC Rules Order 1, Rule 10(1)-(3).

⁴² For guidelines on the procedure for urgent hearings, see Annex D of the SICC Procedural Guide.

**SICC USER GUIDES NOTE 6
REMOTE HEARINGS**

1. This Note addresses Court hearings or part thereof which are conducted by video conferencing.
2. Where the Court has directed that any hearing or part thereof is to be conducted by video conferencing, parties are to comply with the Video Conferencing Notice issued by the Registry in respect of the hearing. The recording (in video, audio and/or any other form), photography, and dissemination of any recording or photograph, of a remote hearing are strictly prohibited: see section 5(1) of the Administration of Justice (Protection) Act 2016 (Act No. 19 of 2016). In appropriate cases, the Court may require an undertaking that no such recording, photography or dissemination will take place.
3. Where there is any witness who is situated outside of Singapore and needs to give evidence remotely at a hearing because the witness is unable to give evidence physically in Court during the hearing, parties should take note of the following matters.
4. Any application for permission for any witness outside Singapore to give evidence by live video or live television link in any proceedings must be made expeditiously and, in any case, unless the Court otherwise directs, not later than 8 weeks before the date of commencement of the hearing at which the witness is to give evidence: see SICC Rules O 13, Rule 14(1). The application must be made by summons and supported by a witness statement setting out the basis for the application and enclosing a copy of each document the applicant intends to file in the Registry: see SICC Rules Order 13, Rule 14(4).
5. A party applying for permission for any witness outside Singapore to give evidence by live video or live television link must take note of the relevant legislation and requirements in force in the jurisdiction where the witness is giving evidence, and must make all necessary enquiries and take all necessary steps to ensure that the jurisdiction where the witness is giving evidence raises no objection to the giving of evidence in that jurisdiction for court proceedings in Singapore: see SICC Rules Order 13 Rule 14(2). Certain countries or territories may impose prohibitions against, restrictions on, or requirements to obtain permission for or relating to, the giving of evidence by a witness in that country or territory for court proceedings in a different country or territory. The party applying for leave must make all necessary enquiries, and take all necessary steps, to ensure that the jurisdiction where the witness is giving evidence raises no objection to the giving of evidence in that jurisdiction for court proceedings in Singapore.
6. This includes but is not limited to:
 - (a) obtaining advice from a foreign lawyer qualified to advise on the laws of the relevant jurisdiction;
 - (b) making enquiries with the relevant authorities; or

- (c) obtaining permission from the relevant jurisdiction, in accordance with any applicable procedure, for evidence to be given by a witness located in that jurisdiction through a live video or live television link, if such permission is required.

7. An application for the issue of a letter of request, to the relevant authorities of a foreign jurisdiction, for permission for evidence to be given by live video or live television link by a person located in that jurisdiction, if not contained in an application mentioned in paragraph 4, must be made expeditiously and, in any case, unless the Court otherwise directs, not later than 8 weeks before the date of commencement of the hearing at which the person is to give evidence: see SICC Rules Order 13 Rule 14(3). Please see Form 28 in Appendix A of the SICC Rules.

8. A party obtaining the order must prepare a Letter of Request and file it in the Registry. In a case where the jurisdiction in which the evidence is to be given is a jurisdiction which the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters on 18 March 1970 (the “Hague Evidence Convention”) applies, the letter must be in the current version of the applicable Recommended Model Form; or in any other case, in Form 26 in Appendix A of the SICC Rules, with such variations as may be required by the jurisdiction in which the evidence is to be given or by the order see SICC Rules Order 13 Rule 14(6). The letter of request, or a document attached to the letter, must be accompanied by a translation of the letter or document in a language specified by the jurisdiction in which the evidence is to be given, unless that jurisdiction accepts the letter or document in English: see SICC Rules Order 13 Rule 14(7).

9. The party obtaining the order must, when the party files in the Registry the documents, also file an undertaking in Form 27 signed by the party or the party’s counsel to be responsible personally for all expenses incurred by an issuing authority or transmitting authority in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the issuing authority or transmitting authority and to produce a receipt for the payment to the proper officer of the Registry: see SICC Rules Order 13 Rule 14(9).

10. For further information on the Hague Evidence Convention, please refer to the following links:

- (a) The full text of the Hague Evidence Convention can be found at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=82>
- (b) The Recommended Model Form for a letter of request to be issued under the Hague Evidence Convention and the Guidelines for completing the Model Form can be found at <https://www.hcch.net/en/publications-and-studies/details4/?pid=6557&dtid=65>

SICC USER GUIDES NOTE 7 ENFORCEMENT OF SICC JUDGMENTS

1. The Court is part of the Supreme Court of Singapore and is a division of the General Division of the High Court. It is a superior court of law. Judgments of the Court (“SICC judgments”) may therefore be enforced in the same manner as other judgments issued by the General Division of the High Court.⁴³

2. SICC judgments can be enforced in almost all major commercial jurisdictions and in many other regional ones. Presently, as elaborated on below, a judgment of the SICC is likely to be capable of registration or otherwise enforceable in:⁴⁴

- i. common law jurisdictions, including Australia, India and the United States of America (“the USA”);
- ii. the European Union;
- iii. various Asian jurisdictions, such as the People’s Republic of China (“China”), Japan and a number of ASEAN jurisdictions.

3. This note highlights the four usual modes by which SICC judgments may be enforced. They are as follows:

- i. enforcement under the 2005 Hague Convention on Choice of Court Agreements (“the Convention”);
- ii. enforcement by way of registration in the courts of certain countries/territories under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 264) (“RECJA”)⁴⁵ and Reciprocal Enforcement of Foreign Judgments Act (Cap. 265) (“REFJA”)⁴⁶;

⁴² For more information relating to applications relating to the enforcement of a judgment or order of the SICC in Singapore and applications for a stay of enforcement, please see Order 24, Rules 1 and 2 of the SICC Rules.

⁴⁴ For more information on the enforcement of foreign judgments in Asian jurisdictions, please refer to Adeline Chong (Ed), *Recognition and Enforcement of Foreign Judgments in Asia*, (Asian Business Law Institute, 2017) (“**ABLI Publication**”) accessible at https://abli.asia/publications/Recognition_and_Enforcement_of_Foreign_Judgments_in_Asia (accessed November 2021).

⁴⁵ By the Reciprocal Enforcement of Commonwealth Judgments (Repeal) Act 2019 (Act 24 of 2019) (“the RECJA Repeal Act”), the RECJA will be repealed on a date to be appointed by notification in the Gazette. This should not, however, affect the enforceability of SICC judgments in RECJA jurisdictions as the Government has indicated its intention that the list of countries and territories, the judgments of superior courts of which are recognised under the RECJA, will be transferred to the REFJA regime before the RECJA Repeal Act enters into force (see para 15 of the “Second Reading Speech by Senior Minister of State for Law, Mr Edwin Tong on the Reciprocal Enforcement of Foreign Judgments (Amendment) Bill” (2 September 2019) accessible at <https://www.mlaw.gov.sg/news/parliamentary-speeches/second-reading-speech-by-senior-minister-of-state-for-law-mr-edwin-tong-on-refj-amendment-bill> (accessed November 2021).

⁴⁶ Note that the provisions of the REFJA may be extended to Commonwealth jurisdictions by order of the Minister made in the Gazette under section 3 read with section 10 of the REFJA. In respect of judgments of Commonwealth jurisdictions gazetted under the REFJA, the RECJA will cease to apply under section 9 of the REFJA. As of 30 November 2021, no jurisdictions (other than the Hong Kong SAR) have been gazetted under section 3 of the REFJA.

- iii. enforcement under the common law cause of action on a debt; and
- iv. enforcement under a civil law procedure.

Enforcement under the Convention

4. Singapore is a Contracting State to the Convention. Contracting States for whom the Convention has entered into force are required to recognise and enforce each other's judgments to which the Convention applies,⁴⁷ subject only to limited, specified grounds for refusing enforcement. As at 30 November 2021, the Convention has 32 Contracting Parties (31 Contracting States and 1 Regional Economic Integration Organisation, namely the European Union). The Convention has entered into force for all Contracting Parties. A current list of the Contracting Parties can be found at: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98>.

5. Through the Convention, where the Court is a chosen court under an exclusive choice of court agreement concluded in a civil or commercial matter, the SICC judgment in that matter may presently be enforced in:

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- European Union
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Mexico
- Montenegro
- Netherlands
- Poland
- Portugal
- Romania
- Singapore
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom

Registration of SICC judgment

6. As the SICC is a division of the General Division of the High Court, SICC judgments are enforceable in the same manner as other decisions of the General Division of the High Court. Upon registration of a SICC judgment under the reciprocal frameworks in the countries covered by RECJA and REFJA, the SICC judgment can be given the same effect and directly enforced as if it was a judgment issued by a national court of the country of enforcement, save for certain limited exceptions.

⁴⁷ The Convention only applies in international cases to exclusive choice of court agreements concluded in civil or commercial matters: see Article 1 of the Convention. It does not cover matters of personal law (eg. family, consumer, or insolvency matters): see Article 2 of the Convention for the full list of excluded categories.

7. The REFJA facilitates the reciprocal enforcement of foreign judgments (including judgments of inferior or lower courts), such as judicial settlements, consent judgments, money and non-money judgments and interlocutory orders.⁴⁸

8. The RECJA and REFJA do not apply to any judgment which may be recognised or enforced in Singapore under the Choice of Court Agreements Act 2016.⁴⁹

Enforcement under the common law cause of action on a debt

9. Enforcement in common law jurisdiction can generally be done by commencing an action on the SICC judgment against the losing party.⁵⁰ This action is based on the common law cause of action on a debt, with the SICC judgment as evidence of that debt. This generally means that there is unlikely to be re-litigation on the merits of the original action. In this regard, it has been observed that “[i]t is hard to see how there could be a defence to such action. Accordingly, it should be possible to obtain summary judgment and enforce the summary judgment against the debtor as a matter of course.”⁵¹ For example, under the English common law, a foreign judgment (for a debt or definite sum of money) which is final and conclusive on the merits is impeachable only on very limited grounds (namely, lack of jurisdiction, fraud, being against public policy and being contrary to natural justice) and cannot be impeached for any error of fact or law.⁵² Where parties have a written jurisdiction agreement (as is the case for parties named in the originating process in the Court), it would additionally not be possible to resist judgment on the basis that the foreign court did not have jurisdiction.⁵³

Enforcement under a civil law procedure

⁴⁸ See the definition of “judgment” under section 2 of the REFJA. The scope of application of the REFJA was previously limited to money judgments of the superior courts of gazetted jurisdictions. The scope of application of the REFJA was expanded in the above-mentioned terms by the Reciprocal Enforcement of Foreign Judgments (Amendment) Act 2019 (Act 25 of 2019).

⁴⁹ See section 2A of the RECJA and REFJA respectively.

⁵⁰ However, this route may not be available where Singapore judgments (which includes SICC judgments) are directly registrable in that jurisdiction. For example, Singapore judgments are in general directly registrable in Australia and Brunei and legislation has required that registrable judgments should be enforced only by way of registration: see, in this regard, the ABLI Publication at p 7 para 3 (for the position in Australia), and at p 22 para 12 (for the position in Brunei).

⁵¹ Anselmo Reyes, “Recognition and Enforcement of Interlocutory and Final Judgments of the Singapore International Commercial Court” (2015) 2 J. Int’l & Comp. L. 337 at p 342. See, for a similar observation, the keynote address delivered by Justice Quentin Loh at the Asia Pacific Insurance Conference 2017 at pp 13–14 (“In [a common law action on a judgment debt], the SICC judgment simply serves as evidence of the debt, which means the merits of the original action will not be re-litigated ... In many cases, summary judgment, *ie*, obtaining judgment without a full trial, will be available.”), accessible at https://www.sicc.gov.sg/docs/default-source/modules-document/news-and-article/keynote-address-by-justice-quentin-loh-asia-pacific-insurance-conference-2017_6b34f677-8ab0-4487-8c26-be7810ff4f70.pdf (accessed November 2021). For an example of a Singapore money judgment that was sued upon abroad and summary judgment obtained in the foreign court, see the decision of the District Court in the State of New York in *Kim v Co-op Centrale Raiffeisen-Boerenleebank B.A* 364 F.Supp.2d.346 (SDNY, 2005).

⁵² Lord Collins of Mapesbury, *Dicey, Morris and Collins on The Conflicts of Law*, (15th Ed, Sweet & Maxwell) at para [14R-118].

⁵³ Lord Collins of Mapesbury, *Dicey, Morris and Collins on The Conflicts of Law*, (15th Ed, Sweet & Maxwell) at para [14-076].

10. There are many civil law jurisdictions with codes that provide for the enforcement of foreign judgments upon certain requirements being met.⁵⁴ Some common requirements are as follows:⁵⁵

- the court that issued the judgment had jurisdiction over the matter;
- the judgment is final, was obtained in accordance with due process, and is not against the public policy of the enforcing jurisdiction; and
- there is reciprocity in the recognition and enforcement of judgments between the court that issued the judgment and the court that is asked to enforce the judgment.

11. An SICC judgment may be enforceable in civil law jurisdictions when the applicable requirements are satisfied. For example, judgments of the Supreme Court of Singapore, of which the Court is a part, have been enforced in China and Japan in accordance with the principle of reciprocity. In China, the Nanjing Intermediate People’s Court held that reciprocal relations with Singapore have been established,⁵⁶ and recognised and enforced a decision of the Singapore High Court. In Japan, the Tokyo District Court concluded that a judgment of the Singapore High Court had satisfied all the requirements in Art 118 of the Civil Procedure Code of Japan and enforced the Singapore judgment.⁵⁷ In Vietnam, a judgment of the Singapore High Court was enforced by the High People’s Court of Ho Chi Minh City on the basis of the principle of reciprocity.⁵⁸

Procedure for enforcement of money judgments

12. To facilitate the enforcement of money judgments in different jurisdictions, the Supreme Court of Singapore, of which the Court is a part, has also entered into Memoranda of Guidance as to the Enforcement of Money Judgments (“MOGs”) with courts in various jurisdictions. These MOGs set out the mutual understanding of the procedures for the enforcement of money judgments in the other jurisdiction’s courts, generally on grounds similar to common law principles. To-date, MOGs have been concluded with the following courts:⁵⁹

- Bermuda – Supreme Court of Bermuda
- The People’s Republic of China – Supreme People’s Court of the People’s Republic of China

⁵⁴ Samuel P. Baumgartner, “How Well do US Judgments Fare in Europe?” (2008) 40 *George Washington University International Law Review* 173.

⁵⁵ For the position on the enforcement of foreign judgments in Asian jurisdictions generally, see the ABLI Publication. Based on the reports in the ABLI Publication, it appears that the civil law jurisdictions in which Singapore judgments may be enforced include China, Japan, the Philippines and South Korea.

⁵⁶ (2016) Su 01 Xie Wai Ren No. 3 ((2016) 苏 01 协外认 3 号). The Nanjing Intermediate People’s Court relied on the Singapore High Court decision of *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd* [2014] 2 SLR 545 in which a judgment from China was ordered to be recognised and enforced. See also the ABLI Publication at pp 56–58, para 11.

⁵⁷ Judgment of the Tokyo District Court, 19 January 2006 (Heisei 18), *Hanrei Times* No 1229 at p 334.

⁵⁸ Judgment of the High People’s Court of Ho Chi Minh City, Case No 222/2016/TLST-DS, 10 June 2016 (affirmed on appeal to the Appellate Tribunal of the High People’s Court of Ho Chi Minh City in Case No 111/2017/QDPT-KDTM, 21 June 2017).

⁵⁹ See <https://www.sicc.gov.sg/guide-to-the-sicc/enforcement-of-money-judgments> (accessed November 2021).

- Republic of the Union of Myanmar – Supreme Court of the Union, Republic of the Union of Myanmar
- Republic of Rwanda – Supreme Court of Rwanda
- State of Qatar – Qatar International Court and Dispute Resolution Centre
- United Arab Emirates, Abu Dhabi – Abu Dhabi Global Market Courts
- United Arab Emirates, Dubai – Dubai International Financial Centre Courts

Recognition by parties of right to enforcement

13. As the Court’s jurisdiction is primarily consensual, parties who have voluntarily chosen to have their disputes adjudicated by the Court are not expected to need to resort to enforcement measures in most instances. This observation is supported by the experience in international arbitration where disputes are referred to arbitral tribunals by agreement and awards are typically honoured in full.⁶⁰

14. In any event, each of these existing modes of enforcement may be complemented by the deeming provisions in the Supreme Court of Judicature Act (Cap 322), which provides at section 18F(1)(b) and (c) that parties to an agreement to submit to the jurisdiction of the Court shall, subject to express provision in the agreement to the contrary, be considered to have agreed to (i) carry out any SICC judgment without undue delay and (ii) waive any recourse to any court or tribunal outside Singapore against any SICC judgment and the enforcement of such judgment (insofar as such recourse can be validly waived).

15. In addition, parties may include the model SICC dispute resolution clauses in their jurisdiction agreement, which include the provision that parties who have submitted to or agreed to submit to the Court’s jurisdiction are deemed to have waived their right to defend against an action based on an SICC judgment in any jurisdiction. The model SICC dispute resolution clauses may be found at the following link on the Court’s official webpage: https://www.sicc.gov.sg/docs/default-source/guide-to-the-sicc/sicc_model_clauses.pdf

⁶⁰ See Anselmo Reyes, “Recognition and Enforcement of Interlocutory and Final Judgments of the Singapore International Commercial Court” (2015) 2 J. Int’l & Comp. L. 337 at p 341. The article cites a 2008 survey of major corporations which use arbitration services conducted by the School of International Arbitration of Queen Mary College of London. This survey found that “high levels of compliance” were reported, with 84% of respondents indicating that the opposing party had honoured the award in full in more than 76% of cases. The “principal reason” given for compliance with the arbitral award was to preserve a business relationship. See also Gary B Born, *International Commercial Arbitration* vol III (2nd Ed, Wolters Kluwer) at para 26-03, where the learned commentator notes that “the overwhelming majority of international awards are complied with voluntarily”.