



IPBA 2019 – An Ideal Showcase for SICC

With a record number of about 1,200 delegates, this year's Inter-Pacific Bar Association Annual Meeting & Conference 2019 (IPBA 2019) was hosted in Singapore from 24 to 27 April. This yearly gathering provides legal professionals a strong platform to exchange best practices and developments with renowned speakers of various backgrounds, renew business ties and network to build new ones. Against this background, the Singapore International Commercial Court (SICC) had a unique opportunity to showcase its development as a novel approach to international commercial dispute resolution. Not only was the SICC one of the key exhibitors, but it provided a pre-conference tour of the courtroom located within the Supreme Court of Singapore and an update on its developments.



Opening Plenary Session kicks off lively debate

Themed "Technology, Business and Law – Global Perspectives", IPBA 2019 opened with an address by the Prime Minister of Singapore, Mr Lee Hsien Loong. This was followed by a Plenary Session titled "The Rise of International Commercial Courts – Its Impact on International Arbitration", which was moderated by Mr Chan Leng Sun SC. Justice Quentin Loh (left), Judge-in-charge of the SICC, expressed his views, as did the other distinguished panellists, viz. Toby Landau QC, Alexander Fessas and Peter Rees QC.

Such a topic was certain to generate contrary views, and the panel did not disappoint. They had lively discussions on the varying developments of international commercial courts around the world and how the features of various commercial courts could address some of the shortcomings of international arbitration, such as the ability to join third and related parties. The session concluded with a debate on the motion "International Courts are a threat to International Arbitration".

Exhibition allows for greater interaction

As one of the key exhibitors at IPBA 2019, the SICC communicated all the features of the Court through various media like informational posters and banners, and the screening of a newly-produced corporate video. Delegates at the booth were provided with an information pack.

Over the course of three days, hundreds of delegates who were mostly lawyers and in-house counsel learnt more about the SICC, its strategic location in Singapore and a world-class judiciary that is trusted, neutral and efficient to adjudicate international commercial disputes. And knowing that foreign representation is allowed, many practising lawyers also expressed interest to register as registered foreign lawyers (RFLs) with the SICC.



Chief Justice Sundaresh Menon visited the SICC booth on 25 April, before his keynote address at the Gala Dinner. He was accompanied by Mr Francis Xavier SC, then President-Elect of the IPBA.

ON THE SIDELINES OF IPBA 2019



Justice Loh kickstarted the session by introducing SICC and its unique features such as the panel of distinguished international judges (IJs) from both common law and civil law traditions.

He was followed by Mr Cameron Ford (upper right photo), Senior Corporate Counsel of Rio Tinto, a proponent of the SICC as a dispute resolution forum. Rio Tinto has incorporated SICC jurisdiction clauses in relevant contracts. He strongly urged the guests to consider SICC for the adjudication of international commercial disputes as it is typically more cost-effective than arbitration. Moreover, there is the availability of appeal.

Mr Francis Xavier SC (lower right photo), Regional Head (Dispute Resolution) of Rajah & Tann Singapore, wrapped up the session by sharing the perspective of a SICC user, having appeared before the SICC. Mr Xavier shared with the gathering the reasons why he found using the SICC was preferred over arbitration. He cited more reasonable costs and greater efficiency, among other reasons.

Breakfast with SICC

In conjunction with IPBA 2019, the SICC hosted a breakfast meeting on 26 April with the leadership of various legal associations including International Bar Association, IPBA, LawAsia, All China Lawyers Association and Shanghai Bar Association, as well as distinguished lawyers and in-house counsel. It provided an opportunity for the SICC to engage with the august attendees, exchange views on the Court as an effective and appropriate dispute resolution forum, and receive feedback from them. The gathering of about 30 guests was co-hosted by SICC judges Justice Quentin Loh and Justice Kannan Ramesh.



Pinsent Masons MPillay hosts roundtable discussion on the SICC

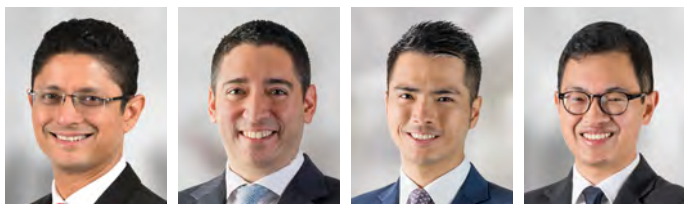
Pinsent Masons MPillay LLP organised an exclusive roundtable dinner discussion on 24 April, featuring the key propositions and features of the SICC. This event stemmed from the fact that the ASEAN region and Asia in general are expected to witness an increase in trade and investments in the years to come, and with that, an increase in the number and complexity of cross-border disputes would naturally follow.

Justice Quentin Loh was the key guest at this exclusive event, and he shared the latest trends and developments surrounding the SICC with 20 other guests from the legal fraternity. Some of the subjects, discussed over food and drinks, include the differences between SICC and international arbitration, what the future holds for the SICC, and how might the SICC be able to address concerns of international businesses on resolving disputes.

Mr Toh Chen Han, Partner at Pinsent Masons MPillay, said: “We were very encouraged indeed by the level of interest that this fully-subscribed event generated. It drew a broad spread of C-suite leaders of international businesses and law firms, who contributed to a lively discourse on the SICC’s unique offering to international dispute resolution.”

PERSPECTIVES

SICC PROVIDES GUIDANCE ON 2002 ISDA MASTER AGREEMENT Macquarie Bank Limited v Graceland Industry Pte Ltd [2018] 4 SLR 87



Written by (from left to right):
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Before the Singapore International Commercial Court (“SICC”), Macquarie Bank Limited (“Macquarie”) claimed US\$1.2 million from Graceland Industry Pte Ltd (“Graceland”) for breach of an over-the-counter commodity swap agreement in respect of 30,000 metric tonnes of urea (the “Transaction”).

In holding that Macquarie was entitled to terminate the Transaction and recover a “Close-out Amount” of US\$ 1.2 million, the Court provided guidance on the 2002 ISDA Master Agreement which is likely to be welcomed by participants in the derivatives market for the reasons discussed below.

The Court found that there was a binding agreement evidenced by the long form confirmation Macquarie sent to Graceland

The Court found that Macquarie and Graceland had agreed that the swap would be on the terms of a draft long form confirmation (“LFC”) circulated between the parties. The draft LFC in turn incorporated the terms of the 2002 ISDA Master Agreement. This agreement was evidenced by an LFC sent by Macquarie which Graceland agreed to.

This finding accords with the market’s expectation of how LFCs work – in circumstances where time does not allow for the negotiation and execution of an ISDA Master Agreement before transacting, market participants typically document a swap using an LFC after having reached an agreement on the swap.

At the same time, while the Court affirmed that an express and direct reference to the ISDA Master Agreement was effective to incorporate its terms, its decision serves as a reminder this might not incorporate certain provisions of the ISDA Master Agreement which had to be expressly “specified” in the Schedule to the ISDA Master Agreement.

Computation of the Close-out Amount

The SICC also provided useful guidance on the computation of the Close-out Amount, in particular the objective “commercially reasonable” standard introduced by the 2002 ISDA Master Agreement.

In summary, the Court’s decision on this issue provides assurance to the market that in determining the Close-out Amount, there will be a range of procedures and results which the Determining Party may choose from. The onus is on the party challenging the determination to prove that the objective standard of commercial reasonableness was not observed by the Determining Party.

Graceland had argued that it was not a “commercially reasonable procedure” for Macquarie to determine the Close-out Amount as at 8 July 2014, because it involved the completion of a large volume of swaps in an illiquid market that typically experienced low volumes. Graceland argued that Macquarie should have waited until the following day to obtain a commercially reasonable quotation for a portion of the 30,000 metric tonnes of urea.

The Court concluded that it was commercially reasonable for Macquarie to have determined the Close-out Amount on 8 July. Among various reasons, the Court observed that it would have been impossible for Macquarie to have predicted the direction of the urea swap market from 8 to 9 July and that if it had waited until 9 July, it would have taken on the risk of further adverse price movements and even greater losses. The Court also observed that although it may have been commercially reasonable for Macquarie to have acted differently (as Graceland argued), this did not mean it was commercially unreasonable for Macquarie to have acted in the way it did.

Finally, the Court held that the Determining Party is entitled to include operations costs and brokerage costs in its calculation of the Close-out Amount. The Court also noted the costs did not have to be actually incurred, so long as they were losses or costs which a Determining Party would have incurred in executing replacement transactions. However, such costs should be commercially reasonable and, particularly in the case of operations costs, adequately documented by the Determining Party.

Other Points to Note

As the SICC found on the facts that there were no misrepresentations, mistakes and/or breach of fiduciary duty by Macquarie (as alleged by Graceland), it was unnecessary for the SICC to decide on Macquarie’s reliance on various contractual clauses to counter these allegations. At the same time, the SICC noted that the Unfair Contract Terms Act would not be applicable since the parties did not contract as “consumer” or on one of the parties’ “written standard terms of business”. ⁵

The views expressed in this article are the writers’ and do not necessarily reflect those of the Supreme Court of Singapore and the SICC.

Latest Judgments

3 May 2019

HE & SF Properties LP v Rising Dragon Singapore Pte Ltd and Anor [2019] SGHC(I) 05: <https://bit.ly/2Zd042f>

14 May 2019

B2C2 Ltd v Quione Pte Ltd [2019] SGHC(I) 06: <https://bit.ly/2wC8Drj>

24 May 2019

Bachmeer Capital Limited v Ong Chih Ching and others [2019] SGHC(I) 07: <https://bit.ly/2Zd0lgb>

29 May 2019

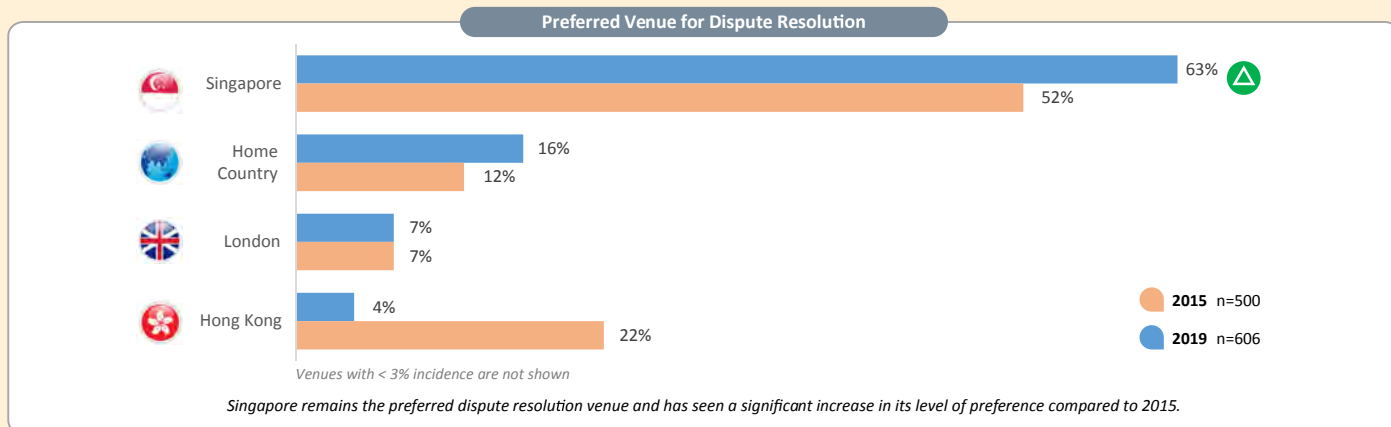
Senda International Capital Ltd v Kiri Industries Ltd & Ors and another appeal [2019] SGCA(I) 01: <https://bit.ly/2Wm2K9x>

31 May 2019

AKRO Group DMCC v Discovery Drilling Pte Ltd [2019] SGHC(I) 08: <https://bit.ly/2WodY4R>

7 June 2019

DyStar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others [2019] SGHC(I) 09: <https://bit.ly/2K5TEi8>



STUDY SHOWS SINGAPORE PREFERRED AS VENUE FOR DISPUTE RESOLUTION & AWARENESS OF SICC INCREASED

A study commissioned by the Singapore Academy of Law (SAL) earlier this year with more than 600 legal practitioners and in-house counsel has found that Singapore remains the preferred venue for dispute resolution for 63% of them. This is a significant increase from a similar study conducted back in 2015.

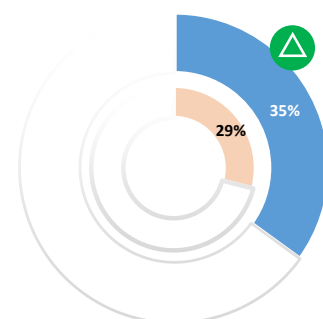
More interestingly, while the respondents' familiarity with the Singapore International Arbitration Centre (SIAC) remains at the same level, familiarity with the Singapore International Commercial Court (SICC) has increased from 29% to 35%. This has not only affirmed the past years' development efforts by the SICC but also cemented Singapore as an ideal and strategic location for international commercial dispute resolution, offering the full suite of litigation, arbitration and mediation.

A majority of the respondents believe that cross-border business in Asia has increased in recent years. In their cross-border transactions, English law is the most frequently-used governing law. However, it has decreased by 5% from 2015 and instead, the adoption of Singapore law has increased, up from 25% to 29%. This is attributed to Singapore's established legal system and jurisprudence, and the users' familiarity with the chosen governing law.

From this study, it bodes well that Singapore and its legal system are highly-regarded amongst legal professionals. SICC stands in good stead as it is a division of the Singapore High Court, tapping on its bench of experienced local judges and panel of esteemed international judges from both common and civil law traditions.

Familiarity* with Dispute Resolution Services in Singapore

Singapore International Commercial Court (SICC)



Significantly increased versus 2015, at 95% CI

*Top 2 box: Very/Quite Familiar

Infographics extracted from the full report with permission from the Singapore Academy of Law. The report can be accessed from <https://bit.ly/2lqdLWn>

SICC Model Clauses

The SICC has model clauses available, including clauses for submission of disputes to the jurisdiction of the SICC (both pre- and post-dispute) and in relation to the parties' rights of appeal. You may view them here: https://www.sicc.gov.sg/docs/default-source/guide-to-the-sicc/sicc_model_clauses.pdf

Enforcement of SICC Judgments

SICC judgments are enforceable in many jurisdictions, both civil and common law. You may access a Note on enforcement of SICC judgments here: <https://goo.gl/2VtHpv>

Registered Foreign Lawyers

As at 31 May 2019, the SICC has 89 registered foreign lawyers (RFLs) on its register. Foreign lawyers are welcome to apply to be registered with the SICC. To view the full list of RFLs and find out more about registration, please visit: <https://www.sicc.gov.sg/registration-of-foreign-lawyers/registration-of-foreign-lawyers>

Access new SICC materials here!

SICC Corporate Video (English): <https://bit.ly/2KG4KLC>
 SICC Corporate Video (Chinese): <https://bit.ly/2WZVzXu>
 SICC Brochure (English): <https://bit.ly/2J9ZqMG>
 SICC Brochure (Chinese): <https://bit.ly/2xpuIPT>