

SICC NEWS

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A Landmark First Case Filed in the Singapore International Commercial Court

On 26 February 2018, merely three years after its establishment, the first writ of summons was filed directly with the Singapore International Commercial Court (SICC). This is a landmark achievement as the 18 other cases which are currently on its docket are international and commercial cases that were transferred from the Singapore High Court.

The plaintiff, *Maybank Kim Eng Securities Pte Ltd*, represented by Rajah & Tann Singapore LLP, commenced the action against the defendant, *PT Mabar Elektrindo*, a company incorporated in Indonesia, for a breach of contract. The defendant is represented by Pinnacle Law LLC and has since filed its defence.

The contract relates to services which were provided by the plaintiff in its capacity as a financial advisor and mandated lead arranger, for the financing of the development of a coal-fired steam power plant project located in Indonesia. The plaintiff alleges that it had performed its obligations under the contract, leading to the successful execution of a facility agreement for about US\$441.6m, but that the defendant subsequently unilaterally terminated the financing arrangements. As such, the Plaintiff claims payment of upwards of US\$2.2m in relation to the financial advisory fee, professional time costs, out of pocket expenses, damages and interest.

The claim was filed with the SICC pursuant to a dispute resolution clause in the contract for disputes arising out of the contract to be submitted to the non-exclusive jurisdiction of the SICC. This is the first dispute to be referred to the SICC pursuant to any such agreement. What is noteworthy is that the contract was

dated 19 January 2015, a mere fortnight after the SICC was launched. This therefore appears to be a strong and early endorsement of the viability of the SICC as an effective forum for the adjudication of international commercial disputes.

Having already achieved success with the expeditious rendering of 23 judgments to date (of which two are from the Court of Appeal) by various corams comprising a diverse range of Singapore judges and respected international jurists from civil and common law jurisdictions, this case will likewise be adjudicated by a coram experienced in resolving international commercial disputes.

Chief Justice Sundaresh Menon first mooted the idea of establishing an international commercial court in Singapore in 2013, and regarding this latest development, he said:

“This is a strong testament to the trust and confidence the wider legal community has in the Singapore judiciary. Whilst still a young court, the SICC shares the same framework as the well-established Singapore High Court, which ensures that all SICC-related proceedings will likewise be managed professionally and expeditiously.”



Costs Recovery in the SICC: A Different Regime



By Lawrence Teh

The question of recovery of costs in the Singapore International Commercial Court (SICC) came into sharp focus in the recent decision of *CPIT Investments Limited v Qilin World Capital Limited and another* in which International Judge (IJ) Ramsey decided that recovery of costs in legal proceedings in the general High Court and recovery of costs in the SICC proceeded on different principles.

In *CPIT Investments*, the plaintiff sued two defendants in the general High Court and the case was subsequently transferred to the SICC. The plaintiff failed to establish liability on the part of the first defendant and succeeded only one of three of its causes of action against the second defendant. The plaintiff sought costs on the basis that it was, on the whole, successful in the litigation and said that any discount ought to be no more than 15%. The plaintiff also asked for costs on an “indemnity basis” because it had served an unbeaten offer to settle. The defendants argued that the plaintiff should not be entitled to recover the whole of the costs and submitted that an issue-based approach gave rise to recovery of only 40% of the plaintiff’s costs. IJ Ramsey’s decision, rearranged here in litigation sequence to aid understanding, contained the following principles or guidelines:

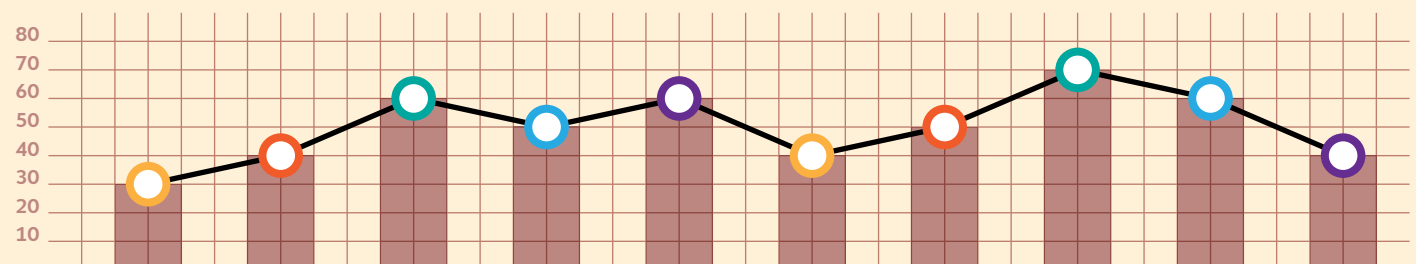
- (1) Costs rules and practice directions in the general High Court apply until such time when the case is transferred to the SICC.
- (2) At the time of transfer, the general High Court or the SICC may direct that the costs guidelines to general High Court litigation apply or the parties may agree application.
- (3) Absent any direction or party agreement, the SICC can (but is not obliged to) take the costs guidelines into account.
- (4) The basis for costs orders in the SICC was the costs rules and practice directions relating to proceedings in the SICC and not the costs rules relating to proceedings in the general High Court.
- (5) The SICC can take the fact of an unbeaten offer to settle into account in determining costs recovery.
- (6) It is essential that the SICC is provided with a sufficient breakdown of the costs so that the paying party can make appropriate comments on the reasonableness

of the costs and understand the work carried out for those costs, better still if there was an identification of the work with costs broken down into hours spent at hourly rates.

In order to appreciate the full importance of what IJ Ramsey has said, it is necessary to understand that the SICC was created to enhance Singapore’s status as a leading forum for legal services and commercial dispute resolution. ***The SICC rules provide that “[t]he unsuccessful party in any application or proceedings in the Court must pay the reasonable costs of the application or proceedings to the successful party, unless the Court orders otherwise”.*** This rule should be understood in an international context. It is language that is more familiar to those involved in civil law countries and in international arbitration. One should consider that just as litigation in the SICC can be conducted by Singapore-qualified lawyers on both sides, it can also be conducted by Singapore-qualified lawyers instructed by international law firms on one or both sides. It can also be conducted by foreign lawyers who have registered with the SICC, including barristers and Queen’s Counsel on one or both sides, or with registered foreign lawyers and Singapore-qualified lawyers as co-counsel.

Material that might be relevant for submission to an SICC judge may range from the UNIDROIT Principles of Transnational Civil Procedure to principles in international arbitration that costs are recovered through the concept of reasonableness and proportionality. ***Future cases on costs recovery in SICC litigation are likely to develop and refine the texture of the traditional, underlying indemnity philosophy in costs recovery that “[c]osts as between party and party are given by the law as an indemnity to the person entitled to them”.*** For now, litigants are well-advised to pay close attention to the guidance given by IJ Ramsey.

Mr Teh has written a more comprehensive piece on costs recovery in the SICC. This article is a condensed version of the original. To read the full article, you may view or download it from www.sicc.gov.sg/Media.aspx?id=92



Lawrence Teh is a senior partner of Dentons Rodyk & Davidson LLP. He was a member of the SICC Rules Sub-Committee and former chairman of the Civil Practice Committee of the Law Society of Singapore.

The views expressed in this article are the writer’s and do not necessarily reflect those of the Supreme Court of Singapore and the Singapore International Commercial Court.

Meeting Kazakhstan's Chief Justice in Singapore

The Supreme Court of Singapore, which includes the SICC, hosted the Chief Justice (CJ) of the Supreme Court of the Republic of Kazakhstan on 27 February. CJ Zhakip Assanov (seated second from right) led the delegation of 10 to Singapore to better understand the use of technology in Singapore courts, as well as the various dispute resolution mechanisms available. Hence, it was opportune for the SICC to share with CJ Assanov the attributes of the three-year-old Court, such as its uniquely flexible procedures and the use of technology like video-conferencing for its case management conferences. This meeting was also significant, especially in light of the newly-launched Astana International Financial Centre Court (AIFC Court).



A Fruitful Meeting with Top Chinese Tech Firm



SICC Development headed to Shenzhen, China, on 6 February to meet with the Global Dispute Management and Litigation team of Huawei Technologies Co. Ltd. (Huawei). Huawei is a leading global information and communications technology solutions provider originating from China, and it has attained multinational status with its varied offerings. Legal directors from Huawei's various regional offices were present to hear about the SICC's flexible procedures, its applications, and the wide-ranging countries where its judgments can be enforced.

“The SICC presentation was truly illuminative. Both presenters delivered informative speeches on how SICC manages to achieve the delicate balance between justice and flexibility of dispute-settlement proceedings. Specifically, we are impressed by its multi-dimensional enforcement framework and access to appeal by which parties can be more assured of the outcome of proceedings. We sincerely consider to fit SICC into our dispute resolution framework, as applicable alternative.”

Mr Victor Chen, Global Dispute Management and Litigation Department, Huawei Technologies Co. Ltd.

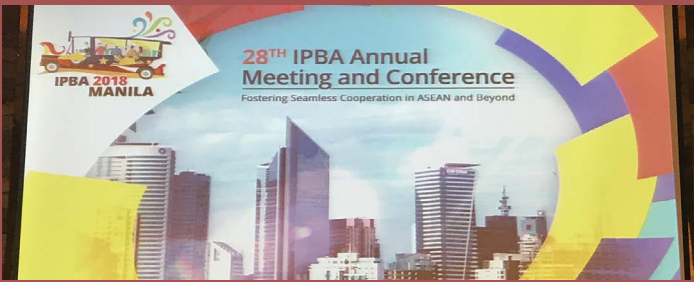
Latest Judgments



The SICC has issued 23 written judgments to date. A full list of these judgments may be accessed at www.sicc.gov.sg/HearingsJudgments.aspx?id=72.

- [13 Feb 2018] Grounds of Decision for Bachmeer Capital Limited v Ong Chih Ching and 7 Ors [2018] SGHC(I) 01: <http://goo.gl/S8pUuG>
- [5 Mar 2018] Judgment on CPIT Investments Limited v Qilin World Capital Limited and Anor [2018] SGHC(I) 02: <http://goo.gl/KxbU5e>
- [6 Mar 2018] Judgment on Qilin World Capital Limited v CPIT Investments Limited and another appeal [2018] SGCA(I) 01: <http://goo.gl/vn6WVP>
- [15 Mar 2018] Grounds of Decision for BNP Paribas SA v Jacob Agam and Anor [2018] SGHC(I) 03: <http://goo.gl/j8FNQ1>
- [20 Mar 2018] Grounds of Decision for B2C2 Ltd v Quoine Pte Ltd [2018] SGHC(I) 04: <http://goo.gl/CZJGRF>

28th IPBA Annual Meeting and Conference



The Inter-Pacific Bar Association (IPBA) is an international association of business and commercial lawyers who live in, or have a strong interest in, the Asia-Pacific region. It met on 14 to 16 March for the 28th IPBA Annual Meeting and Conference in Manila, Philippines. One of the highlights of this year's event was a debate on the Hague Convention of Choice of Court Agreements, aptly titled "The Hague Convention of Choice of Court Agreements - Is it Really a Game Changer? A Debate". Colin Seow, Assistant Registrar of the Supreme Court of Singapore, together with Justice Margaret Beazley AO (President of the New South Wales Court of Appeal) and Chan Leng Sun, SC (Principal of Baker McKenzie, Singapore) spoke for the Convention, whereas Dorothee

Ruckteschler (Partner of CMS, Germany), Yoshimasa Furuta (Partner of Anderson Mori & Tomotsune, Tokyo) and Marion Smith QC (Barrister of 39 Essex Chambers, London) made up the opposing side. The debate was ably moderated by Mohan Pillay (Partner of Pinsent Masons, UK) and Neerav Merchant (Partner of Majmudar & Partners, India), with significant participation of diverse views expounded by the House.

What was clear from the debate was the significant role the Convention plays in enhancing the enforceability of SICC judgments. Countries like the United States, China, Ukraine and Montenegro have signed the agreement and are pending ratification.

Eighth Annual INBLF Asian-Pacific Summit

The International Network of Boutique & Independent Law Firms (INBLF) held their eighth annual summit in Singapore this year, from 8 to 11 March. Besides a strong presence of American solicitors, there were also participants from all across Asia. The SICC addressed the theme of "Singapore: An International Dispute Resolution Hub". The SICC highlighted some of its features such as a panel of international judges from both common and civil law jurisdictions (including one from the United States—Justice Carolyn Berger), the ability to join related parties and the right to appeal.

There was also a lively panel discussion that followed with representatives from the Singapore International Arbitration Centre, Singapore International Mediation Centre and the Singapore Academy of Law. It was moderated by Mr Joseph Liow (pictured in extreme



left), Deputy Managing Director of Straits Law Practice LLC. "The SICC not only completed the suite of dispute resolution offerings in Singapore, it value-added to it with its high-profile judiciary and well-thought-out rules and procedures. I look forward to seeing more of the SICC in action in the days to come," said Mr Liow.



Registered Foreign Lawyers

As at 31 March 2018, the SICC has 77 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 www.sicc.gov.sg/ForeignLawyer.aspx?id=101



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: www.sicc.gov.sg/documents/docs/SICC_Model_Clauses.pdf

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