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The Hon Justice Meagher, Chairman and Members of the Organising Committee, Distinguished Speakers and Delegates, ladies and gentlemen, good morning. It is indeed a great pleasure to be delivering today's first Keynote Address, and especially so as it is to an industry with which I had close ties when I was at the Bar. I must congratulate the Conference Organisers for putting together a very well-thought out conference with such topical and compelling issues facing the insurance industry today.

I. The Asia Pacific Insurance Market

I do not think anyone will accuse me of exaggerating if I say the "Asia Pacific" region is huge. The combined population of Asia is about 3.5 billion, this is almost half of the world population. In 2014, these countries generated a combined GDP of close to US$23.3 trillion, which is about 30% of the global economy.[1] ASEAN (Association of Southeast Asian Nations) alone has a population of 628.9 million and a GDP of US$2.4 trillion. It is a market of enormous potential, benefitting from consumer demand from a growing middle class, increasing urbanisation, expanding regional and international linkages and market reforms.[2]

The Asia-Pacific presents significant opportunities for the insurance market, particularly given the low penetration of the region's emerging and developing insurance markets. With total non-life premiums accounting for just 1.3% of GDP in Emerging Asia, the non-life insurance penetration in the region is less than half the global average. The protection gap is particularly pronounced in the area of natural disasters, with only a small fraction of economic losses insured.[3] At the same time, healthy economic growth and rising disposable incomes (including the millennials, roughly 60% of whom are located in the Asia-Pacific[4]) will continue to boost demand for insurance products. Munich Re Economic Research forecasts overall premium growth in Asia to increase by more than 9.5% this year alone.[5] By 2020, Asia is likely to account for almost 40% of the global

[1] Singapore Reinsurers' Association, Asia Reinsurance Pulse 2015, p 8.
[2] MAS: Towards an Integrated ASEAN Insurance & NBSP Market; keynote address by Mr Lin Hng Kiang, Minister for Trade and Industry and Deputy Chairman, MAS at the Inaugural ASEAN Insurance Summit on 1 October 2014.
[3] Singapore Reinsurers' Association, Asia Reinsurance Pulse 2015, p 22.
[4] EY, 2017 Asia-Pacific Insurance Outlook, p 8.
[5] Munich Re Economic Research, Insurance Market Outlook (May 2016).

market.[6] Willis Towers Watson suggests that China may be the largest reinsurance market by 2022.

Another key opportunity is China's One Belt, One Road initiative, which will span 65 countries accounting for 62% of the world's total population and 30% of global GDP. The initiative is set to increase annual trade volume by US$2.5 trillion by 2025. It is expected to create a wave of construction activities and trade liberalisation, driving insurance premium growth in the local Chinese market and abroad. The project is expected to generate US$16 billion in additional premiums from now to 2030. Property, Engineering and Marine insurance stand to benefit the most.[7]

Singapore is recognised as the leading reinsurance hub in Asia, housing regional branches of 16 of the top 25 reinsurers in the world. It is the second largest market for structured credit and political risk worldwide after London. Singapore's insurance industry is envisioned to become a global marketplace by 2020, with the ability to accept not just regional, but global risks. Willis Towers Watson predicts that, for the foreseeable future, Singapore will continue to be strong, stable and lead the Asian Insurance Market.[8] Aon Benfield's 2014 Insurance Risk Study lists Singapore as third in a list of 50 of the world's most promising property and casualty markets.[9]

II. Dispute Resolution

All these international commercial contracts, including insurance and reinsurance contracts, will bring in their wake disputes. That is an unfortunate statistic. As international commerce grows more complex and increasingly crosses multiple jurisdictions and systems of law, so too do the disputes assume greater and greater levels of complexity. Singapore, like many other centres of international dispute resolution, provides various avenues for dispute resolution.

We have arbitral bodies like the SIAC, the Singapore branch of the Chartered Institute of Arbitrators and the Singapore Institute of Arbitrators. We have the SIMC for mediation and other forms of ADR. We have our domestic courts.

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[6] Willis Towers Watson, Asia Insurance Market Review Report 2016, p 22.
[7] Willis Towers Watson, Asia Insurance Market Review Report 2016, p 16.
[8] Willis Towers Watson, Asia Insurance Market Review Report 2016, p 22.
[9] Aon Benfield, Insurance Risk Study 2014, p 16.

Since January 2015, Singapore has established a new division of the High Court, the Singapore International Commercial Court, or SICC. The SICC has some unique features which combine the best practices of international arbitration within a court structure, which are particularly suitable for insurance and reinsurance disputes. Let me illustrate this with a typical scenario, involving an Insured, an Insurer, a Reinsurer and Retrocessionaire(s), with the broker in between.

Lest I be accused of being too academic in my illustration, let me just cite the following cases with similar facts and issues:

> *Hassneh Insurance Co of Israel v Mew* [1993] 2 Lloyd's Rep 243
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> *Insurance Co v Lloyd's Syndicate* [1995] 1 Lloyd's Rep 272
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> *Lincoln National Life Insurance Co v Sun Life Assurance Co of Canada* [2005] 1 Lloyd's Rep 606
>
> *Associated Electric & Gas Insurance Services Ltd v European Reinsurance Co of Zurich (Bermuda)* [2003] 1 WLR 1041, Privy Council on appeal from Bermuda

Cases like this with multiple parties involved, and to varying degrees, with similar issues of fact and law, are best served by having their disputes resolved before one tribunal. These considerations equally apply to typical fact scenarios of infrastructure construction contracts involving an Owner, a Main Contractor, a Subcontractor and various professional design engineers sitting in between: see *Abu Dhabi Gas Liquefaction Co Ltd v Eastern Bechtel Corporation* [1982] 2 Lloyd's Rep 425.

All parties will be before the same tribunal. Expert Witnesses will not be able to give divergent opinions before separate tribunals. The danger of inconsistent decisions will not exist. Findings of fact 'upstream' will be binding on those 'downstream' and there will be consistent application of the law. Unfortunately International Arbitration, a private consensual dispute resolution mechanism between two parties, will not fit the bill. I accept that under the rules of some arbitral institutions, adding third parties is possible. However, in many cases it is limited to consent of the parties and even if it is not, this provides an additional hurdle when it comes to enforcement of the award on the ground that first, a procedure was adopted which was not one which the award debtor agreed to, and secondly another party was added despite the award debtor's objections.

III. The Singapore International Commercial Court

The genesis of the SICC was our Chief Justice's visit to London before he assumed office in 2012. He found that 70–75% of the cases in the English Commercial Court involved at least one foreign party and about 40% of their cases involved only foreign litigants with no connection to England. The statistics today are not very different. Only 28% of English Commercial Court users in 2016/2017 are both English.[10]

The then Chief Justice of England and Wales, the Rt Hon. Lord Thomas of Cwmgiedd, shared his experience as to why this was so and remarked that he was surprised Singapore had not set up an international commercial court as the Singapore Judiciary shared certain characteristics of the English Courts and Judiciary. These included a well-respected, impartial and incorruptible judiciary, who are very well-versed in commercial matters and with judges who had thriving practices in international commercial law before going onto the Bench. Singapore law was very similar to English Common and Commercial law.

This led to the establishment of the Singapore International Commercial Court in January 2015. Singapore thus joined the growing number of dedicated commercial courts – the London Commercial Court (which officially started off in 1895),[11] the Delaware Court of Chancery, the Commercial Court of the Supreme Court of Victoria and the Dubai International Financial Centre Courts (2006).

So what is this creature, the Singapore International Commercial Court? It is a court for cross-border commercial disputes, including disputes which may be governed by foreign law. It is meant to be a dispute resolution forum for foreign parties, especially those in Asia. It is for parties who prefer to have their disputes resolved in court, as opposed to international arbitration.

The SICC is an alternative to international arbitration. It addresses some of the shortcomings of international arbitration while providing the benefits usually associated

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[10] See Michael Cross in the English Law Society Gazette, 2 August 2017, citing the communications consultancy Portland Communications.

[11] Website of English Commercial Court, accessed at <https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/high-court/queens-bench-division/courts-of-the-queens-bench-division/commercial-court/about-us/>.

with the arbitral process. The SICC uses a dispute resolution framework that is internationally accepted. It implements international best practices.

First and foremost, the SICC is a division of the High Court of Singapore with all the attendant powers of a domestic court save for prerogative orders. There are three jurisdictional requirements:

(1) First, the claim must be both international and commercial in nature. I will talk about what this means shortly.
(2) Secondly, the parties must submit to jurisdiction under a written agreement. This submission can be before or after a dispute has arisen.
(3) Thirdly, the parties do not seek any relief in the form of or connected to prerogative orders, (eg. mandatory orders, prohibiting orders, or quashing orders).

SICC judgments may be appealed as of right to the Court of Appeal, although the parties may exclude that right of appeal by contract. This means that an erroneous decision can be corrected on appeal, unlike an erroneous arbitral award. In fact it was for this reason that the Lord Thomas, observed in 2015 that commercial arbitration had been accused of "stultifying the development of English commercial law". In his view, the limited scope for appealing an arbitral award prevented important commercial cases from ever reaching the domestic courts and getting absorbed into local jurisprudence.[12] Further, the confidentiality in arbitrations means there is no corpus of published awards to build up or develop a coherent body of law or international norms. There will be no development of a *lex mercatoria*. By contrast, the availability of SICC jurisprudence at both first-instance and appellate levels will help crystallise substantive principles of commercial law, and over time will increase predictability, thus improving certainty and reducing costs for disputants. If I had to make a prediction, I think there will be a time when the commercial courts of the world will be referring to each other's judgments to establish such principles and norms.

The terms "international" and "commercial" are defined in Order 110 of Singapore's Rules of Court, which are available online. A claim is international if the parties have places of business in different states; if neither party has its place of business in Singapore;

[12] The Rt Hon the Lord Thomas of Cwmgiedd, "The Centrality of Justice: Its Contribution to Society, and its Delivery" (10 November 2015), delivered at the Lord Williams of Mostyn Memorial Lecture, at para 23.

if at least one party has its place of business outside the state where a substantial part of obligations is to be performed or with which the subject matter of the dispute is most closely connected; or if the parties agree that the subject-matter of the claim relates to more than one state.

A claim is commercial if its subject matter arises from a relationship of a commercial nature, whether contractual or not. The parties can agree that the matter is "commercial" in nature. This includes any trade transaction for the supply or exchange of goods and services, distribution agreements, commercial representation or agency, factoring or leasing, construction works, consulting, engineering or licensing, investment, financing, banking or **insurance**, exploitation agreement or concessions, joint ventures or any other forms of business co-operation, merger of companies or an acquisition of one or more companies, carriage of goods or passengers by air, sea, rail or road, see Order 110 rule 1(2)(b), Rules of Court, (Cap 322, R 5, 2014 Ed).

What are the advantages of the SICC, particularly in comparison to international arbitration? They include the transparency of open-court proceedings, the availability of an appeal, the neutrality of the judges, the option to join third and related parties and the publication of judgments. These are factors which boost commercial certainty and confidence in the dispute resolution proceedings, and make it easy for related claims to be settled in the same forum. Importantly, they avoid many of the shortcomings of international arbitration, where the lack of regulation is said to give rise to varying ethical standards, and decisions are less predictable due to the confidentiality of proceedings, the absence of appeal, no corpus of published awards to build up the necessary jurisprudence and no doctrine of precedent.[13]

All Supreme Court of Singapore Judges may also sit in the SICC from time to time and as appointed by the Chief Justice. The Supreme Court Judges have, to name a few, specialist knowledge in international arbitration, admiralty, complex commercial disputes, intellectual property, building and construction and insurance and reinsurance and insolvency matters. We have one of the foremost contract specialists in our Court of Appeal who is recognised world-wide, IP specialist judges, an engineer as well as a naval

[13] Sundaresh Menon, "The Transnational Protection of Private Rights: Issues, Challenges, and Possible Solutions" (2015) Asian Journal of International Law 219 at 228–229.

architect amongst us. Many of us were Senior Counsel when we were practising at the Bar.

A unique feature of the SICC is that there are 12 International Judges, of international renown, drawn from various jurisdictions around the world with each of them having specialist legal knowledge. The SICC is therefore able to draw from this a panel of specialist commercial judges as well as from the judges of the Singapore Supreme Court to hear cases. These 12 International Judges hail from both civil and common law jurisdictions. They are:

- Hon. **Justice Carolyn Berger**, a recently retired Supreme Court of Delaware Judge, Delaware is the home to many of the Fortune 500 companies;
- Rt. Hon. **Sir Bernard Rix** QC, a retired Lord Justice of Appeal of the English Court of Appeal who was one of the pre-eminent commercial silks at the English Bar with a practice with an emphasis on insurance and reinsurance;
- Hon. Justice **Sir Vivian Ramsey**, a retired Judge of the English High Court and formerly judge in charge of the English Technology & Construction Court, prior to his elevation to the Bench, Sir Vivian was the top-rated building and construction silk of the English Bar;
- Hon. Justice **Simon Thorley QC**, a top-tier English Queen's Counsel, considered the doyen of the IP Bar, and a Deputyy High Court Judge;
- Hon. Justice **Sir Bernard Eder QC**, a former Judge of the English High Court and another top commercial silk in practice at the English commercial bar;
- Hon. Justice Dr **Irmgard Griss**, ex-President of the Austrian Supreme Court and Deputy Member of the Austrian Constitutional Court;
- Hon. Justice **John Dyson Heydon** AC QC, a retired judge of the High Court of Australia and Justice of the NSW Court of Appeal;
- Hon. Justice **Patricia Bergin SC**, a recently retired Judge of the Supreme Court of NSW, former head of the Equity Division;
- Hon. Justice **Roger Giles QC**, a retired Chief Judge of the Commercial Division of the Supreme Court of NSW and currently sitting in the Dubai International Financial Centre Court;

- Hon. Justice **Anselmo Reyes SC**, a retired Judge of the Hong Kong Court of First Instance and formerly judge in charge of the Construction and Arbitration, Admiralty and Commercial Lists;
- Hon. Justice (Prof) **Yasuhei Taniguchi**, a Professor Emeritus in Kyoto University, Japan, former Chairman of the Appellate Body, WTO, and the doyen of international commercial arbitration in Japan;
- Hon. Justice **Dominique Hascher**, who sits in the French Supreme Judicial Court.

Between them, these judges have expertise in all areas of corporate and commercial law, admiralty, building and construction law, insurance and intellectual property, to name a few.

Judges are assigned to SICC cases by the Chief Justice, thereby avoiding the concerns about perceived partiality that attend party-appointed arbitrators. Depending on the nature of the case, the Chief Justice may assign one or three judges to hear a case in the SICC.

In offshore cases with no substantial connection to Singapore, parties can elect to be represented by foreign counsel who are registered with the SICC. The registration process is a straightforward one. (The SICC Procedural Guide, which was launched this year, can be found online.)

As of 16 October 2017, 76 foreign lawyers registered with the SICC. They come from 14 countries, including England (36), Australia (10), USA (6), Hong Kong SAR (6), India (5), Japan (4), Malaysia (2); and 1 each from Canada, DIFC, Indonesia, New Zealand, the Philippines, South Korea and Switzerland. These include some top international arbitration litigators.

Procedurally, the SICC offers flexible court procedures which track the international best practices for commercial disputes. On the application of a party, proof of foreign law may be dispensed with and a question of foreign law may be decided on the basis of submissions. If both parties agree, the SICC may dis-apply Singapore rules of evidence, like rules against hearsay and the rule in *Browne v Dunn*,[14] and apply foreign rules of

[14] (1893) 6 R. 67

evidence instead.[15] The discovery procedure is based on, though not identical to, the IBA Rules of Evidence.

Unlike arbitral proceedings, SICC proceedings generally take place in open court. This transparency ensures the fairness and integrity of the judicial process and facilitates the development of commercial law jurisprudence. However, any of the parties may apply for proceedings to be confidential. The court will generally be more inclined to grant confidentiality orders in offshore matters, *ie*, cases with no substantial connection to Singapore. Like arbitration cases in the Supreme Court, we may redact the names of parties and anonymise facts to ensure confidentiality.

Third and subsequent parties can be joined to an action in the SICC, provided such claims are appropriate to be heard in the SICC. The claims in relation to those other parties do not need to be of an international and commercial nature. The third and subsequent parties need not have submitted to the SICC's jurisdiction (unless they are a State or a sovereign of a State). But the claims must not include an application for a prerogative order, or any relief connected to a prerogative order.

Costs in SICC proceedings are at the full discretion of the court hearing the matter, rather than taxed separately. The court has the full power to determine who should pay costs and how much. Generally, the unsuccessful party will be ordered to pay the reasonable costs of the proceedings to the successful party. In making a costs order, the court will take into account various factors, including the conduct of the parties, value of the claim, complexity of the subject matter, skill, expertise and specialised knowledge required, novelty of the issues raised, and time and effort expended.

The SICC currently has 17 cases (2 cases in 2015, 6 cases in 2016 and 9 cases as of 16 October 2017). Of these, 12 are pending and 5 have been concluded. To date there have been 15 written judgments (14 at trial level and 1 at the Court of Appeal) handed down and they are available to the public just like any Singapore Supreme Court judgment.

In the first SICC case, the Chief Justice appointed a 3-Judge panel comprising Sir Vivian Ramsey (United Kingdom), the Hon. Anselmo Reyes (Hong Kong) and myself. It involved a joint venture between Australian parties, who held a patented process for producing coal briquettes with higher calorific values from sub-bituminous coal from coal

[15] Order 110, Rule 23 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).

mines in Kalimantan (Indonesian Borneo) owned by Indonesian parties. The claim is for a sum in excess of US$750 million and a counterclaim of about US$59 million. The case was transferred from the Singapore High Court in March 2015, the first tranche of the hearing was heard in November 2015 and the three-judge panel released its judgment only four months after closing submissions. The judgment has been hailed by a commentator, (a non-Singaporean I may add), as a "masterclass" in how to deal with rules of interpretation, public policy and the implication of terms.[16]

IV. Enforceability of Singapore judgments

We are often asked this question: "A Singapore judgment can only be enforced in Singapore, you do not have the equivalent of the New York Convention for enforcing arbitral awards." This is an erroneous view.

First and foremost, if you look at cases like *Dallah Real Estate and Tourism Holding Co. v The Government of Pakistan* [2010] UKSC 46 and *PT First Media TBK v Astro Nusantara International BV & Anor.* [2014] 1 SLR 372, you will see an award creditor jumping over multiple hurdles in different jurisdictions trying to seize assets to satisfy its award. One can see from the law reports, numerous challenges being raised along the way and often 8 to 10 years after their award, the award creditor is still pursuing payment.

In *Dallah Real Estate*, the arbitral tribunal, seated in Paris, rendered their second partial award in June 2004 and final award in June 2006 awarding Dallah substantial damages of US$20,588,040. Dallah obtained leave to enforce the award in England in October 2006. The Government of Pakistan challenged this and at first instance, the English High Court in August 2008, applying French Law, revoked leave to enforce the award on the ground that the Government of Pakistan was not a party to the arbitration agreement. Dallah's appeal to the Court of Appeal was dismissed in July 2009 and the UK Supreme Court dismissed Dallah's appeal in November 2010.

In parallel proceedings at the seat, Dallah obtained leave to enforce the award in France in August 2009. The Government of Pakistan filed applications to annul the award. In February 2011, the Paris Cour d'Appel gave its decision. It took a diametrically opposite view of the English Courts. It found that the Government of Pakistan's involvement in

[16] Tom Jones, "SICC Hands Down First Judgment" *Global Arbitration Review* (24 May 2106), citing Rashda Rana SC, a dual qualified English-Australian barrister and arbitrator from 39 Essex Chambers in London.

the matter demonstrated that it was a true party to the transaction. It refused to set aside the awards and upheld the decision of the arbitral tribunal.

The New York Convention therefore does not "guarantee" enforcement of the award in all jurisdictions beyond the arbitral seat.

Secondly, many of the older arbitrators will tell you why the New York Convention came into being. It was precisely because it was thought that there would be great reluctance by domestic courts to enforce awards which were basically rendered, then, by non-judges and through a private consensual process. The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and before that the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards, were drawn up precisely so that international arbitral awards could be enforced as widely as domestic judgments.[17]

Thirdly, few people realise that Singapore court judgments are enforceable on at least 3 separate legal bases:

(1) The first is through bi-lateral arrangements. Singapore has the Reciprocal Enforcement of Commonwealth Judgments Act[18] and the Reciprocal Enforcement of Foreign Judgments Act. [19]

(2) The second is through Conventions like the Hague Convention on Choice of Court Agreements.

(3) The third is the Common Law action on a judgment debt.

Bilateral Arrangements

As for the first basis, under the Reciprocal Enforcement of Commonwealth Judgments Act, Singapore judgments can be enforced in Malaysia, Brunei, Papua New Guinea, Australia (including the Federal Court and Family Court and courts of various territories), New Zealand, the Windward Islands, Sri Lanka, India (except the State of Jammu and

[17] *Report of the Committee on the Enforcement of International Arbitral Awards*, UN ECOSOC, 19th Sess, Agenda Item 14 at paras 12–14, UN Doc E/AC.42/4/Rev.1 (1955).

[18] Cap 264, 1985 Rev Ed.

[19] Cap 265, 2001 Rev Ed.

Kashmir)[20], Pakistan, and the UK. The Reciprocal Enforcement of Foreign Judgments Act currently applies to Hong Kong.

The Hague Convention on Choice of Court Agreements

As for the second basis, Singapore ratified the Hague Convention on Choice of Court Agreements ("the Convention") in 2016. The Convention was concluded in 2005. Mexico signed and ratified the Convention in November 2007. The United States signed the Convention on 19 January 2009 but has not ratified it to date. The European Union (comprising 27 countries, excluding Denmark), signed the Convention on 1 April 2009 and ratified the same on 11 June 2015. With the requisite ratification from two countries, the Convention came into force on 1 October 2015. Singapore signed the Convention on 25 March 2015 and ratified the same on 2 June 2016. This extends the enforceability of Singapore judgments to the EU states (except Denmark) as well as Mexico. Ukraine signed the Convention on 21 March 2016. China signed the Convention on 12 September 2017. We are given to understand that Australia will be signing this Convention soon.

The Hague Convention has been described as "the litigation counterpart"[21] to the New York Convention. It establishes an international legal regime in relation to international civil or commercial disputes. It has two remarkable features.

(1) First, where one State is chosen under an exclusive choice of court agreement, the courts of all other contracting States must suspend or dismiss parallel proceedings brought in their jurisdiction in favour of the chosen State.

(2) Secondly, each contracting State must recognise and enforce judgments of the courts of other contracting States, subject to very narrow exceptions. These include cases where:

    (a) the judgment was obtained by fraud in connection with a matter of procedure;

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[20] In *Masterbaker Marketing Ltd. v. Noshir Moshin Chinwalla and Others* AIR 2015 (NOC) 771 (BOM.), the Bombay High Court held Singapore falls within the reciprocating territory under Section 44-A Code of Civil Procedure and there is no ground for refusal under Section 13 CPC, and therefore permitted the enforcement of a Singapore High Court Judgment.

[21] Ronald A Brand and Paul Herrup, *The 2005 Hague Convention on Choice of Court Agreements: Commentary and Documents* (Cambridge University Press, 2008) at p 3.

(b) the defendant was not notified in time to defend the proceedings; and

(c) the recognition would be incompatible with Singapore public policy, including our principles of procedural fairness.[22]

The obligations of recognition and enforcement pertain not only to the judgments of superior courts, but lower courts as well. Therefore twenty-nine countries, including Singapore, have ratified the Convention.[23] Ukraine, like the USA, has signed but not ratified the Convention.

The combined effect of the RECJA, REFJA and the Hague Convention is that SICC judgments are enforceable in about 40 countries, which include the major commercial centres of the world in both common law and civil jurisdictions.[24] The ability to resist enforcement is very much narrower than those grounds for resisting the enforcement of awards under the New York Convention.

Common Law Actions on a Judgment Debt

As for the third basis, even in the absence of any bilateral agreements or Hague Convention, SICC judgments can be enforced through an action on a judgment debt in any common law country, including most states in the USA as well as Canada.

In such an action, the SICC judgment simply serves as evidence of the debt, which means the merits of the original action will not be re-litigated. It will instead be a simplified action with limited defences. In many cases, summary judgment, *ie*, obtaining judgment without a full trial, will be available.

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[22] Indranee Rajah SC, Senior Minister of State for Law, "Enhancing the International Enforceability of Singapore Judgments: The Choice of Court Agreements Act 2016" (26 April 2016), accessed at <https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/Choice%20of%20Court%20Agreements%20Act%202016.pdf>.

[23] These are: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom and Mexico.

[24] Anselmo Reyes, "Recognition and Enforcement of Interlocutory and Final Judgments of the Singapore International Commercial Court" (2015) 2(2) JICL 337 at 343.

For example, in 2005, a Singapore money judgment was enforced by the District Court in the State of New York, which found that the Singapore court had personal jurisdiction and that the Singapore legal system afforded due process.[25]

V. Non-Binding Court-to-Court Memoranda

In addition to these three bases, and to reinforce enforcement, Singapore has signed a number of Memoranda of Guidance, *ie*, non-binding court-to-court agreements which encapsulate an understanding that courts to the MOG will enforce each other's money judgments.

Court-to-Court Agreements

In the last two years Singapore has signed:

(1) a Memorandum of Guidance (MOG) as to Enforcement of Money Judgments with the Abu Dhabi Global Market (ADGM) Courts (March 2017);

(2) an Exchange of Letters on cross-border enforcement of money judgments with the Supreme Court of Victoria (Commercial Court) (March 2017);

(3) an MOG on Enforcement of Money Judgments with the Dubai International Financial Centre Courts (January 2015); and

(4) an MOG on the Enforcement of Money Judgments with the Supreme Court of Bermuda (6 September 2017).

Discussions with other courts on signing MOGs are ongoing.

Singapore has also signed Memoranda of Understanding whereby courts may refer questions of law to each other. For example, if a Singapore Court is hearing a case which involves a contract governed by New South Wales (Australian) Law, it can ask the parties to refer questions of law arising from their contract to the Supreme Court of New South Wales and the answers from the NSW Court will be accepted by the parties and the Singapore Courts as definitive and binding. Such MOUs have been signed between the

[25] These are requirements under Art 53 of the New York Civil Practice Law and Rules. The case is *Kim v. Co-op. Centrale Raiffeisen-Boerenleebank B.A* 364 F.Supp.2d 346, 352 (S.D.N.Y., 2005).

Singapore Supreme Court and the Supreme Court of New South Wales, UK, Dubai (DIFC) and the State of New York USA. This procedure was utilised in a case that was before the Singapore Courts and where the governing law was English law.[26]

VI. Enforcement in Civil Law Jurisdictions

To cap all these bases, from our research, it appears that Singapore and SICC judgments will also be recognised and enforced in civil law jurisdictions as long as they comply with those countries' enforcement requirements contained in the civil procedure codes.

In South Korea, for example, a foreign monetary judgment will be recognised and enforced provided that:

(i) it is a final and conclusive judgment,
(ii) the foreign court had jurisdiction,
(iii) there was proper service of process,
(iv) there is no violation of good morals and social order of South Korea, and
(v) there is reciprocity between South Korea and the foreign jurisdiction.[27]

Similar requirements apply in Japan, France, Germany, Greece, Italy, Spain and Switzerland[28] (the latter 4 countries are now Hague Convention countries).

A Singapore judgment was enforced in Japan in 2006, having satisfied equivalent requirements under Japan's Code of Civil Procedure.[29]

In that case, the plaintiff, a Singapore company, commenced an action in the Singapore High Court against one of its directors, claiming damages for breach of fiduciary duty. The defendant did not appear in the proceedings and the court rendered judgment in favour of the plaintiff. The defendant did not appeal. The plaintiff thereafter filed a petition in the Tokyo District Court to enforce the Singapore judgment.

Pursuant to Article 118 of the Civil Procedure Code of Japan, a judgment rendered by a foreign court shall be effective where it meets all of the following requirements:

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[26] *Westacre Investments Inc v. The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR)* [2009] 2 SLR(R) 166.

[27] Articles 26 and 27 of the Civil Execution Act read with Article 217 of the Civil Procedure Act (South Korea).

[28] Samuel P Baumgartner, "How Well do US Judgments Fare in Europe?" (2008) 40 George Washington University International Law Review 173 at 185–186.

[29] Tokyo District Court, Judgment, 19th January, 2006 (Heisei 18), Hanrei Times, No. 1229, p. 334 [2006].

1. The judgment is final and binding.

2. The jurisdiction of the foreign court is recognized under laws or regulations or conventions or treaties.

3. The defeated defendant has received a service (excluding a service by publication or any other service similar thereto) of a summons or order necessary for the commencement of the suit, or has appeared without receiving such service.

4. The content of the judgment and the court proceedings are not contrary to public policy in Japan.

5. A mutual guarantee exists.

The Tokyo District Court found that all the requirements of Art 118 were satisfied and permitted the enforcement of the Singaporean judgment without any revision.

The requirement of a "mutual guarantee" meant that a judgment rendered by a Japanese court must be effective in the country where the subject judgment was rendered under conditions that were the same, in material respects, as those stipulated in Art 118. Here, the Tokyo District Court analysed the requirement of reciprocity, and found that the requirements for a Singapore court to recognize and enforce foreign judgments were little different in material respects from those under Japanese rules.

More recently, last December, the People's Republic of China recognised a civil judgment of the Singapore High Court for US$350,000[30] see *Kolmar Group AG and Jiangsu Textile Industry (Group) Import and Export Co Ltd.* That was the first time that a Chinese court recognised and enforced a foreign court judgment based on the principle of reciprocity. In that case, the Singapore High Court had issued a default judgment on 22 October 2015 pursuant to Order 13 of our Rules of Court, *ie*, the Defendant did not enter an appearance. The judgment was given in favour of Kolmar Group AG, a Swiss company, against a Nanjing-based textile company. The respondent did not pay the judgment sum. The respondent's assets were located in the PRC. On 7 June 2016, the

[30] *Kolmar Group AG and Jiangsu Textile Industry (Group) Import and Export Co., Ltd*, Civil ruling of the Nanjing Intermediate People's Court, Jiangsu Province, the People's Republic of China, (2016) Su 01 Xie Wai Ren No. 3.

applicant filed an application to the Nanjing Intermediate People's Court for the recognition and enforcement of the Singapore civil judgment.

The relevant legislation was Art 282 of the PRC Civil Procedure Law, which states that a PRC court shall review a foreign judgment to see if it is enforceable under any international treaty or in accordance with the principle of reciprocity. A foreign judgment will not be recognised or enforced if it contradicts the basic principles of the law of the People's Republic of China or violates State sovereignty, security and the public interest. The Nanjing Intermediate People's Court held that the Singapore Judgment should be recognised and enforced on the basis of the principle of reciprocity:

(1) The Singapore High Court had, in the past, recognised and enforced a judgment issued by the Suzhou Intermediate People's Court in January 2014 (*Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd* [2014] SGHC 16).

(2) The Singapore Judgment did not violate the basic principles of the law of the PRC, state sovereignty, security or public interest.

On 15 May 2017, at a meeting of all judges of the Supreme People's Court of China, this case was included for illustration and discussion together with 18 other model cases regarding the provision of judicial services and safeguards for the building of One Belt and One Road (OBOR).

In summary, SICC judgments can be enforced in a multitude of other common law and civil law jurisdictions provided they satisfy basic procedural requirements, without having to re-litigate the merits of the dispute. Many of the grounds for non-recognition and non-enforcement of an arbitral award are inapplicable to a court judgment, for example, defective composition or appointment of the arbitral tribunal, invalidity of the arbitral agreement, non-arbitrability of the dispute, and the award being set aside at the arbitral seat (Art 36(1)(*a*)(ii), (iv), (v) and Art 36(1)(*b*)(i) of the Model Law).

The SICC's procedural features equip it for the efficient resolution of cross-border disputes, including those governed by foreign law. The expertise and diverse backgrounds of its bench make it a natural and trusted court within the region and beyond at the service of the international trading community.

VII. Arbitration and litigation are complementary

It is important that I should not be misunderstood as saying that *all* international and commercial disputes should leave the shores of arbitration for those of international commercial courts. None of this detracts from the significance and growth of international arbitration. For many cases, the inherent advantages of international arbitration will remain and for many parties and for many disputes, it will be the most appropriate method of resolving disputes.

But not all disputes are best resolved by arbitration. As the Chief Justice of Singapore so aptly put it, "Arbitration was conceived as an *ad hoc*, consensual, convenient and confidential method of resolving disputes. It was not designed to provide an *authoritative* and *legitimate* superstructure to facilitate global commerce. It cannot, on its own, adequately address such things as the harmonisation of substantive commercial laws, practices and ethics."[31] For example, ISDA disputes, multi-party disputes and Investor State Treaty arbitrations may prefer the ruling of a national court.

Some disputes, like divorce or winding up[32], are inherently non-arbitrable. Others are simply better-suited to litigation. I have already mentioned two groups of cases. First, cases involving disputes between insureds, insurers, reinsurers, retrocessionaires and often related disputes involving the brokers who placed the risk. Secondly, cases involving the owner, main contractor, subcontractor and related professionals like consultant and design engineers, architects and specialised suppliers. Cases involving sales and sub-sales are yet another category of cases. Such multi-party disputes will benefit from having all related claims decided in one jurisdiction by one tribunal. That will help avoid multiplicity of proceedings and inconsistent findings by different bodies.

It is for this very reason that despite the existence of arbitration clauses in building and construction cases, so many building and construction disputes are brought before the Technology and Construction Courts in England: the possibility of bringing in third and fourth parties ensures that liability is determined on a unified set of factual findings by a

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[31] Sundaresh Menon, "International Commercial Courts: Towards a Transnational System of Dispute Resolution", delivered at the Opening Lecture for the DIFC Courts Lecture Series 2015, at para 14.

[32] *Larsen Oil & Gas Ptd v Petropod Ltd (in official liquidation in the Cayman Islands and in compulsory liquidation in Singapore)* [2011] 3 SLR 414.

single court. The SICC likewise permits joinder of third and subsequent parties without their consent.

Commercial courts do not cannibalise arbitration. This is compellingly illustrated by the complementary growth of commercial cases before the English Commercial Court and the growth of international arbitration in England. In 2015, London was the most preferred and widely used seat of arbitration worldwide.[33] The LCIA received more than 300 arbitrations in 2016, of which over 80% had foreign parties.[34] But the English Commercial Court has also been receiving its share of cross-border cases. From 2016 to March 2017, 72% of litigants in the English Commercial Court were foreign.[35] In April 2016, Lord Thomas CJ spoke on the "complementary relationship between a Commercial Court and arbitration" and observed that "arbitral centres need strong Commercial Courts to ensure that arbitration can function effectively".[36]

As international commerce grows exponentially, so does legal work. Between 2014 and 2019, global legal services are projected to grow at 3.3% per year. In the Asia-Pacific, that rate is 5.5%[37], keeping pace with the swell of international trade and commerce in this region. Amidst the rising tide of dispute resolution work, international commercial courts will sit alongside international arbitration as an important and effective tool in the array of dispute resolution options.

VIII. Standing International Forum of Commercial Courts

Let me now turn to an exciting development that is not well known outside judicial circles. On 4 and 5 May 2017, the Chief Justices or Senior judiciary from 21 countries met in London for the first time in history to form a Standing International Forum of Commercial Courts, the SIFOCC. The commercial courts from these countries spanning

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[33] Queen Mary University of London School of International Arbitration, "2015 International Arbitration Survey: Improvements and Innovations in International Arbitration". The most preferred arbitral institution was the ICC.

[34] London Court of International Arbitration, "2016: A Robust Caseload" (3 April 2017), accessed at <http://www.lcia.org/News/lcia-facts-and-figures-2016-a-robust-caseload.aspx>.

[35] Portland Communications, "Who Uses the Commercial Courts?" (2017), accessed at <https://portland-communications.com/publications/who-uses-the-commercial-court-2017/>.

[36] The Rt Hon the Lord Thomas of Cwmgiedd, "Commercial Dispute Resolution: Courts and Arbitration" (6 April 2017), delivered at the National Judges College, Beijing.

[37] Channel NewsAsia, "Global arbitration institution to open office in Singapore to boost dispute resolution services" (25 July 2017), accessed at <http://www.channelnewsasia.com/news/singapore/global-arbitration-institution-to-open-office-in-singapore-to-9061196>

5 continents,[38] recognised that first, businesses and markets would be better served if best practices from different courts were shared and discussed to keep pace with the growing needs of the international business community with the rapid changes in commerce. Secondly, the differences between countries, legal systems and courts were a tremendous cost to international business. By better understanding each other's differences and moving where possible towards harmonisation and mutual enforcement of court judgments, commercial courts can and should contribute to the ease with which international commercial disputes can be resolved and for rights to be enforced without delays and costly legal actions in different countries. This would also contribute to the Rule of Law and encourage trade and investment thereby contributing to stability and prosperity worldwide. The SIFOCC could also support developing countries by providing training and relevant judicial courses, so that these countries can enhance their attractiveness to investors by offering effective means of resolving disputes.

There was unanimity at the SIFOCC to launch four initiatives:

- first, producing a *multilateral* memorandum explaining how judgments of one commercial court may most efficiently be enforced in another jurisdiction;
- second, establishing a working party to identify best practices with a view to making litigation more efficient;
- third, establishing a structure for commercial court judges to spend short periods of time as observers in commercial courts of other jurisdictions; and
- fourth, considering issues such as practical arrangements for liaison with other bodies, including arbitral bodies, to identify and resolve areas of common concern or difficulty.[39]

The potential of the SIFOCC is enormous. The Chief Justice of Singapore, who was one of the prime movers of this Forum, sees international commercial courts as uniquely positioned to be amongst the primary contributors to the next leap in the development and

[38] Europe, Africa, Middle East, Asia, Australasia, North America and the Caribbean.
[39] Supreme Court of Singapore announcement, "Standing International Forum of Commercial Courts" (18 July 2017).

growth of the *lex mercatoria*.[40] Lord Thomas, the former Lord Chief Justice of England and Wales, has written of his hope that the Forum will be a platform to develop an international procedural code for transnational civil disputes.[41] The convergence of international commercial law in this way would significantly reduce transactional costs for cross-border businesses.

The Forum will next meet in New York in the autumn of 2018. Work on each of these initiatives has started.

Let me conclude by mentioning two other initiatives undertaken by Singapore to support this next leap in the development of the *lex mercatoria*.

Asian Business Law Institute

First, Singapore set up the Asian Business Law Institute (ABLI) at the end of 2015 and launched its inaugural Conference on the Convergence of Asian Business Laws in January 2016. Its aim was to spark a sustained conversation among members of the judiciary, legal and business communities in the key Asian cities and in the region on the imperative for Asia's commercial laws to move in the same direction with the aim of aiding rather than impeding international business and commerce. After this inaugural conference, the Asian Business Law Institute (ABLI) launched the project titled "Convergence in International Civil Procedure: The Harmonisation of the Recognition and Enforcement of Foreign Judgment Rules" in August 2016. It aims to determine the best means of harmonising the recognition and enforcement of foreign judgment rules in ASEAN and five of its major trade partners, namely, South Korea, Japan, India, China and Australia. The first stage of the project is well underway with a mapping exercise to identify each country's existing rules for the recognition and enforcement of foreign judgments. The ABLI expects to publish the country reports this December.[42] It will then embark on the second stage, namely, determining whether and how convergence between the different jurisdictions can be achieved.

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[40] The Honourable the Chief Justice Sundaresh Menon, "Roadmaps for the Transnational Convergence of Commercial law: Lessons Learnt from the CISG" (23 April 2015), speech delivered at the 35th Anniversary of the Convention on Contracts for the International Sale of Goods, at para 28.

[41] The Rt Hon the Lord Thomas of Cwmgiedd, "Cutting the Cloth to Fit the Dispute: Steps Towards Better Procedures Across the Jurisdictions" (2017) 29 SAcLJ 1, first presented at the Singapore Academy of Law Annual Lecture 2016, at para 42.

[42] ABLI website, see <http://abli.asia/PROJECTS/Foreign-Judgments-Project>.

Judicial Insolvency Network (JIN)

Secondly, Singapore initiated a discussion amongst a group of insolvency judges from Australia (the Federal Court and the Supreme Court of New South Wales), Bermuda, the British Virgin Islands, the Cayman Islands, Canada (Ontario), England & Wales, United States of America (Delaware and the Southern District of New York) and the Judicial Insolvency Network (JIN) came into being with the signing of a Joint Memorandum. These pioneer judges worked out a set of Approved Guidelines setting out key features to be reflected in a protocol or order of court communication and co-operation amongst insolvency courts and the insolvency representatives and other parties in cross-border insolvency proceedings appearing before them. The participants took back these Approved Guidelines for incorporation into their respective insolvency rules with a view to adoption in any case involving cross-border proceedings relating to insolvency or adjustment of debt commenced in more than one jurisdiction. To date all the signatories to the JIN Joint Memorandum, (save for Australia, the Cayman Islands, Ontario Canada who require more time), have implemented the Approved Guidelines into their domestic protocols or rules.

The JIN Guidelines have aroused great interest from the People's Republic of China, India, South Korea, Japan and New Zealand.

On 24 and 25 August 2017, during an Insolvency Conference, a mock joint hearing was held between the Singapore Supreme Court and the Southern District Court of New York through video-link with lawyers from Kirkland & Ellis LLP, Milbank, Tweed, Hadley & McCloy LLP, Rajah & Tan LLP and Allen & Gledhill LLP participating with sitting judges from Singapore and New York.

So let me conclude by saying there is this new resolve amongst not only the arbitral institutions, but also the commercial courts of the world to co-operate and move towards harmonisation. On this journey, those who are more advanced, will render assistance to those who ask for it, and there will be a continuing dialogue to achieve the goals set out by the SIFOCC.

I look forward with great anticipation to the day when a businessman from say Germany, who needs his dispute resolved with his Cambodian counter-party, can do so in a Commercial Court in Singapore, or Hong Kong or Shanghai, without the spectre of large

or discrepant principles of applicable substantive and procedural law, and who can be represented by counsel from their home jurisdiction.

I also look forward to the day the SICC receives its first insurance or reinsurance case.

It leaves me to wish all of you a most enjoyable conference.

Thank you.

Justice Quentin Loh
Supreme Court of Singapore
Judge in Charge, Singapore International Commercial Court