

# Singapore Exports its Judiciary

## A Bold Move and a Win for All

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If your international law firm had any doubts at all about the wisdom of setting up an Asian office in Singapore, the recent **REPORT OF THE SINGAPORE INTERNATIONAL COMMERCIAL COURT COMMITTEE (the “Report”)** by the Singapore Ministry of Law (the “Ministry”) should put paid to those doubts.

This Report was released by the Ministry in November 2013. It sets out the unequivocal ambitions of Singapore to become the dispute resolution hub of Asia catering to international disputes with an Asian connection. The new impressive weapon it has included in its arsenal has now been revealed- the creation of a new Singapore International Commercial Court (“SICC”).

The SICC will be part of the Singapore Supreme Court, and will specialize in international commercial cases. The cases that the SICC has jurisdiction over include cases where Singapore law is not the governing law, and cases where the transaction has no connection to Singapore save for the choice of governing law (“International Cases with minimal or no Singapore connection”). For more details, please see the Quick Notes below which picks up some key areas in the Report, or read the [Full Report](#) here.

### **Arbitration Prowess Notwithstanding**

In this regard, one would have thought that Singapore could continue to rest on the laurels of the steady successes of the Singapore International Arbitration Centre (“SIAC”), which already garners a fair share of International Cases with minimal or no Singapore connection.<sup>1</sup>

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<sup>1</sup> Para 6 of the Report

After all, the SIAC has emerged as a regional leader in Asia, as the third most preferred seat of arbitration in the world, behind London and Geneva, and on par with Tokyo and Paris. The SIAC is also the fourth most preferred arbitral institution (after the International Chamber of Commerce, the London Court of International Arbitration, and the International Centre for Dispute Resolution).

But no, by creating the SICC as a “court-based” option for international disputes, the Singapore Supreme Court is taking bold “think out of the box” steps to cement its leading position as the dispute resolution hub of Asia.

The reasons given for what might appear as a duplication of effort of the SIAC, include :

1. The private and confidential nature of arbitration hearings does not accord well with the need for “greater harmonization” of laws relating to international transactions’. This is in contrast to the system of reported judgments and precedents in a court-based forum such as the SICC.
2. The expected growth of dispute resolution opportunities in Asia resulting from the tremendous growth of cross border investment and trade into Asia and between Asian economies<sup>2</sup>.

### **The Challenges of Going International**

The Singapore Supreme Court continues to make a mark as one of Singapore’s most progressive institutions. It has built up a reputation for fairness and impartiality in commercial law - a result of the careful selection of judges with diverse and extensive experience in commercial transactions, including specialist areas such as insurance, shipping and intellectual property.

Prolific case judgments delivered by smart and diligent judges may have made it difficult for the busy practitioner to keep up to date with the latest developments in Singapore commercial

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<sup>2</sup> Para 7 of the Report

law, but the resulting commercial jurisprudence lays solid foundations for embarking on a journey to export Singapore's judicial services.

More recently, after the appointments of Singapore's top legal eagles, Sundaresh Menon and K Shanmugam to the positions of Chief Justice and Minister of Law respectively, the legal industry has witnessed bold and innovative moves in a traditionally conservative industry.

Administratively, the Supreme Court Registry operates efficiently. From a technological perspective, from e-filing to the passing of the eDiscovery Practice Directions in 2009, the Supreme Court has in the past decade been at the cutting edge of technology adoption.

Needing to brand and market itself internationally however presents a whole new challenge. This would require clear differentiation of its offerings versus those of the SIAC, and also the ability to enhance the framework for the enforcement of its judgments regionally and internationally.

Other potential hurdles have been identified and addressed in the Report :

1. How will foreign law be adduced?

- The Report states: *"foreign law need not be pleaded and proved as fact in proceedings before the SICC, as the Judges can take judicial notice of foreign law with the assistance of oral and written legal submissions, supported by relevant authorities. The SICC would then apply foreign law to determine the issues in dispute"*

2. Will Forum non conveniens arguments in cases not founded on exclusive jurisdiction agreements be a show stopper?

- The Report states: *"Regarding non-consensual jurisdiction, there is a question of whether the traditional Spiliada test which is applicable under Singapore law remains modern and relevant to the SICC"*

### 3. How will SICC judgments be enforceable in other jurisdictions?

- The Report states: *“By the provision of model SICC dispute resolution clauses”* as well as *“(a) multilateral government agreements (including ASEAN-level arrangements); (b) bilateral government agreements; and (c) court-to-court arrangements.”*

As the lower cost structures, richer natural resources and sheer people numbers in Singapore’s neighbouring countries threaten to challenge her ability to remain competitive in the region; in the business of justice, Singapore’s “efficient, competent and honest judiciary” which is second to none in Asia, will shine even further when the SICC initiative starts to bear fruit.

#### **A Win for All**

The SICC is a win for all stakeholders in the legal industry, particularly international companies with investments in Asia and international law firms with Asian legal dispute teams based in Singapore.

For Singapore law firms, it will mean many more opportunities as well as more competitors. Protection for members of the Singapore Bar still remain as the exclusive right of representation in dispute cases with a substantial connection to Singapore have been restricted to members of the Singapore Bar.

Singapore’s top 5 dispute law firms will continue to be challenged as they each try to win a piece of the increasing international work, but the competition and the learning from their more international peers, will hopefully raise local standards and spark innovation.

## Quick Guide:

1. The SICC will be a part of the Supreme Court of Singapore.
2. The panel of SICC Judges will comprise existing Supreme Court judges as well as Adhoc Associate Judges appointed for a fixed duration
3. The cases that the SICC will have jurisdiction over are:
  - a. Disputes where Parties have consented to use the SICC post-dispute;
  - b. Contracts which stipulate SICC jurisdiction a being applicable;
  - c. Cases transferred by the Singapore High Court to the SICC
4. The cases may include cases where (i) Singapore law is not the governing law; or (ii) the choice of Singapore law is the sole connection to Singapore. In either of these cases, foreign counsel may appear in such cases subject to the foreign counsel undertaking to abide by a code of ethics.

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