

Singapore: a global dispute resolution centre?

Ambitious and innovative plans are underway in Singapore to position it as a multifaceted centre for international commercial dispute resolution. In addition to the existing arbitration centre (the SIAC), there will soon be a new international mediation centre (the SIMC, to be launched in November 2014) and a new international commercial court (the SICC). **Ben Giaretta** and **Katherine McMenamin** consider the potential impact of these initiatives, and what they will mean for commercial parties.

Singapore International Arbitration Centre (SIAC)

The SIAC has been a success story for some time. It has Rules that have kept pace with developments in international arbitration thinking; it has a capable and professional Secretariat; and it has a governing Court consisting of many of the leading arbitration practitioners in the world. The SIAC continues to grow: its caseload has increased by over 300 per cent in the last decade, and it had 619 active cases as at 31 December 2013.¹ It has also expanded outside Singapore, by setting up its first overseas office in Mumbai in April 2013.

The challenge for the SIAC in the future is twofold: firstly, to maintain its success in transcending national borders, and remain a popular choice among parties throughout the Asia-Pacific region and beyond; and secondly, to integrate with the new dispute resolution institutions in Singapore – in particular, with the new mediation centre.

Singapore International Mediation Centre (SIMC)

It has been announced that the SIMC will be launched in November 2014; this follows a report issued in November 2013 by a Working Group consisting of mediation experts from around the world. The Singapore Ministry of Law is currently putting in place

a framework to support the SIMC in line with the recommendations of the Working Group.²

There will be two distinctive features of the SIMC. First, it will be closely linked to the SIAC (the separate Singapore Mediation Centre will remain associated with the Singapore courts), and, to this end, the SIMC will be co-located with the SIAC at Maxwell Chambers. It is hoped that this will orientate the SIMC towards international commercial disputes, and also promote the use of mediation within the arbitrations administered by the SIAC, counteracting a tendency for mediation not to feature as widely in international arbitration cases as it does in court litigation cases in some countries.

Secondly, it is envisaged that the SIMC will not only appoint mediators and administer mediations, but also provide a broad and novel array of other dispute resolution services. It is proposed that these will include:

- a "deal-making service", to support parties during negotiations when any major deal is contemplated;
- "post-merger facilitation", to maximise co-operation and mutual benefit from mergers;
- a "dispute process design service", to help users to develop appropriate dispute resolution procedures; and
- online dispute resolution services.

These are interesting proposals which, if implemented and successful, have the potential to transform the dispute resolution landscape in Singapore. The shift to resolving disputes during or shortly after commercial negotiations might move mediation away from the formal arbitration and litigation processes, and closer in time to the issues that concern the parties, in the hope of dealing with disputes before they escalate. Further, the promotion of online dispute resolution may herald a new era in internet-based dispute resolution in Asia, and provide access to Singapore dispute resolution services from all parts of the globe.

Singapore International Commercial Court (SICC)

The third part of the strategy is the creation of the SICC.³ This will be a division of the Singapore High Court, and its distinguishing features will be:

- parties will be able to make submissions on any law, rather than Singapore law alone;
- foreign lawyers will be licensed to appear before the SICC, as well as Singaporean lawyers; and
- foreign judges will be appointed to hear cases, as well as Singaporean judges.

The result will be a hybrid of international arbitration and national court litigation, combining the adaptability of international arbitration (judges being appointed from an international panel to hear the particular dispute) with the certainty provided by court litigation (with a set procedure, and judges selected by a central authority rather than by the parties).⁴ The hope is that this will prove to be an attractive adjudicative forum to foreign parties for their international commercial disputes, as an alternative to international arbitration.

On the other hand, the SICC will not have the flexibility of international arbitration, and the features described above might become barriers to entry. Unlike arbitration in Singapore (where parties may appoint any representative), in the SICC choice of representative will be restricted to licensed lawyers. Similarly, parties will need to be confident that suitable judges are available to hear their dispute at the SICC, in contrast to the free choice of arbitrator that is available in international arbitration.

Such factors may weigh more heavily in certain cases than in others, of course, but a common feature of all SICC cases will be that the end result is a Singapore court judgment, enforceable via the limited network of treaties that Singapore has with other nations.⁵ This is in contrast to arbitration awards, enforceable

throughout the world via the New York Convention. In the future, Singapore may accede to the Hague Convention on Choice of Court Agreements, which may (if other countries also accede to it) permit international enforcement of court judgments, like the New York Convention.⁶ For the present, the greater scope to enforce arbitration awards compared to Singapore court judgments may lead parties to prefer international arbitration over the SICC.

Practical tips

The developments in Singapore outlined above are worth monitoring, to see if the new dispute resolution procedures that are established would be suitable for incorporation into international commercial contracts. In particular, parties should consider whether:

- the SIMC might offer a route to resolving a dispute that avoids the formal arbitration or litigation processes;
- mediation at the SIMC could be used as a means of settling a dispute that has been referred to SIAC arbitration; and
- the SICC would be a suitable forum for resolving international commercial disputes, bearing in mind the possible places where enforcement might be sought.

Notes

- 1 The SIAC statistics can be found [here](#). There were 64 new cases filed at the SIAC in 2003; this increased to 259 new cases in 2013.
- 2 These recommendations include: a professional body to set standards and mediator accreditation; the enactment of a Mediation Act; enhanced court rules and processes; the extension of tax exemptions and other incentives; and directed marketing efforts. A summary of the Working Group's recommendations can be found [here](#).
- 3 The report into the creation of the SICC can be found [here](#).
- 4 We have referred to the SICC in a [previous briefing](#) as a "hybrid national arbitration court".
- 5 Principally, Commonwealth countries such as the UK, Malaysia, India and Hong Kong.
- 6 The Hague Convention on Choice of Court Agreements is available [here](#). To date, only Mexico has ratified the Convention, although both the European Union and the USA have signed it, and may ratify it in the future.

Further information

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Related briefings: [Evolution of International Arbitration](#); [Expedited Procedure in International Arbitration](#); [The Emergence of Emergency Arbitration](#).

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