

# CLIENT UPDATE

## PLANS UNVEILED FOR THE NEW SINGAPORE INTERNATIONAL COMMERCIAL COURT

### LONDON

Lord Goldsmith QC  
phgoldsmith@debevoise.com

### HONG KONG

Christopher K. Tahbaz  
cktahbaz@debevoise.com

Andy Y. Soh  
aysoh@debevoise.com

Philip Rohlik  
prohlik@debevoise.com

### BACKGROUND

Singapore is looking to create an innovative new dispute resolution system which will be of interest to many clients, especially (but not exclusively) those with business and commercial interests in South East Asia.

In January 2013, Singapore's Chief Justice Sundaresh Menon CJ suggested the creation of a Singapore International Commercial Court (SICC) with the aim of promoting Singapore law, growing Singapore's legal services sector and establishing Singapore as a leading venue for international commercial dispute resolution. In May, a 19-member committee (the "Committee") co-chaired by Singapore's Senior Minister of State for Law and Education and a Singapore Court of Appeal Judge was formed to examine the SICC's viability.

Debevoise & Plimpton's European and Asian Chair of Litigation, Lord Peter Goldsmith QC, was appointed by Singapore's Minister for Law to be one of the members of the Committee.

On November 29, 2013, the Committee submitted its report to Singapore's Ministry of Law, recommending the creation of the SICC. The Law Ministry is currently considering the report and has published it by way of a public consultation.

## THE COMMITTEE'S RECOMMENDATIONS

### *Judges*

The SICC will be a division of the Singapore High Court and form a part of the Supreme Court of Singapore. SICC judges will consist of existing Supreme Court Judges as well as Associate Judges who will be appointed for a fixed period and assigned to SICC cases on an *ad hoc* basis. Associate Judges may be drawn from Singapore or internationally.

Like Singapore High Court proceedings, SICC proceedings will be disposed of by a single judge. The Chief Justice may, on the application of a party, designate three judges to hear a case.

### *Appellate Review*

SICC cases can be appealed to the Court of Appeal, Singapore's highest court. The SICC Court of Appeal judges will be drawn from the panel of SICC judges. Parties can contractually vary, limit or abolish altogether the right to appeal SICC decisions.

### *Caseload*

The SICC will deal with three types of cases:

- where parties have consented to use the SICC post-dispute;
- where the disputants are parties to a contract giving the SICC jurisdiction over any disputes arising out of that contract; and
- cases within the Singapore High Court's jurisdiction which are transferred to the SICC by the Chief Justice.

The SICC, acting as a High Court, has the power to join parties to SICC proceedings without their consent, even if they are outside of Singapore.

### *Confidentiality*

SICC proceedings will generally take place in open court, but parties can unilaterally apply to the court for proceedings to be confidential. For cases which have no substantial connection to Singapore and in which the parties agree that it is desirable to maintain confidentiality, appropriate measures to maintain confidentiality will be taken.

### *Foreign Law*

Unlike the way national courts in common law jurisdictions usually treat foreign law, questions of foreign law will not be treated as an issue of fact and will not need to be proved by way of expert evidence in SICC proceedings. Reflecting the international character of the court, the SICC will take judicial notice of the foreign law by way of oral and written legal submissions and apply it to determine the issues in dispute. The SICC will also consider the applicability of Singapore public policy in deciding cases.

### *Representation*

SICC representation will be governed by the general rules of representation before the Supreme Court of Singapore. Currently, only members of the Singapore bar can represent parties, subject to the discretion of the Court to admit Queen's Counsel or foreign lawyers on an *ad hoc* basis.

In cases which have no substantial connection to Singapore, foreign counsel may appear before the SICC if they are registered with the court. Parties may also apply to the court to disallow foreign counsel if they can show sufficient cause.

### *Enforceability of Judgments*

As with judgments of the Supreme Court of Singapore, SICC judgments may be enforced in other jurisdictions through reciprocal enforcement provisions provided for under Singapore law or through a common law action on the judgment debt.

The Committee has recommended enhancing the enforceability of SICC judgments through the incorporation of model SICC dispute resolution clauses agreed between parties. Other suggestions to facilitate enforcement include multilateral and bilateral agreements between governments and court-to-court arrangements.

## **CONCLUSION**

The proposed establishment of the SICC is an exciting development. It recognises the strong business case for a specialist commercial court operating like the London commercial court does to handle the type of complex disputes we're now seeing in Asia as economies mature and businesses cross borders with increasing frequency. Singapore is a logical location for such a court for a number of reasons – resource, expertise, geography, the quality and integrity of the judiciary, etc. The example of the Singapore International Arbitration Centre shows Singapore can produce an excellent dispute resolution system.

SICC will have the added advantage of experienced foreign judges to add to Singapore's existing judicial expertise.

Many commentators will want to know how SICC will work with SIAC, which has become one of the great Asian arbitration centres. It seems the systems will be complementary, and the existence of specialist Singaporean and foreign judges on the SICC will add greater confidence to SIAC users.

SICC proceedings may hold some advantages over arbitration and other forms of dispute resolution, through expansive provisions for the joinder of third parties and the ability to contract out of any review. The SICC will also have the expertise to deal with complex commercial disputes. While the Committee's report acknowledges the difficulties of enforcing SICC decisions internationally, the international character of the court is preserved through the way it treats questions of foreign law and allows for the involvement of leading foreign practitioners as both counsel and judges.

Whichever form it ultimately takes, the proposed SICC is a cutting-edge, innovative institution – a direct response to the complexities and international nature of 21st century commerce. We look forward to the first SICC proceedings and have no doubt that it will enhance Singapore's reputation as a leading global dispute resolution venue.

\* \* \*

Please do not hesitate to contact us with any questions.

January 6, 2014