

To: The Worshipful Company of Arbitrators

Re: Report on trip to Singapore (November 2022)

Introduction/Overview

I was awarded the Travelling Scholarship by the Worshipful Company of Arbitrators in April 2020 but, owing to the effects of the COVID-19 pandemic, I was unable to travel until 2022. I arrived in Singapore for my month-long visit in November, and stayed in the River Valley neighbourhood. During that time, I met with practitioners from numerous international and local firms (including Drew Napier, Gibson Dunn, Joseph Lopez LLP, Ronnie Tan Chambers, Sidley Austin, White & Case LLP and the Wong Partnership) as well as arbitrators, those in legal consultancy roles, and academics from the National University of Singapore and Singapore Management University.¹ Despite busy practices and professional lives, they were all incredibly generous with their time and gave me a fantastic insight into the disputes market in Singapore, in particular the vibrant health of international arbitration in the region. I also visited Maxwell Chambers², attended a hearing at the Singapore Supreme Court, and participated in the International Chamber of Commerce (ICC) townhall event.

Scope

As a commercial disputes lawyer whose practice includes international arbitration and the enforcement of arbitration awards, I was particularly interested to learn more about how those aspects of legal practice are conducted in Singapore. I was also interested to learn more about the rise in popularity of Singapore as an arbitral seat which, in 2021, had for the first time been ranked first (along with London) as ‘most preferred seat’ in the Queen Mary University of London’s international arbitration survey.³

Summarised below is what I found out about the principal arbitral institutions in Singapore, the role of the Singapore International Commercial Court (SICC), the factors which had supported the growth of Singapore arbitration in recent years, and what the future might hold for arbitration in Singapore.⁴

Legal and Institutional Frameworks

The two key arbitration statutes in Singapore law are the Arbitration Act 2001 and the International Arbitration Act 1994.⁵ The latter incorporates the UNCITRAL Model Law (see s.3).

¹ I shall refer to them in this report, collectively and therefore anonymously, as my ‘correspondents’.

² Not a chambers in the English legal sense; rather, a dispute resolution complex of hearing and meeting rooms, as well as the offices of various dispute resolution institutions, including the ICC, INSOL international, PCA, SIAC, the Singapore International Mediation Centre, and others.

³ See Chart 2/p.6 of the QMUL/White & Case 2021 International Arbitration Survey.

⁴ For a description of the ‘Garden City’, I refer readers to the report prepared by Grace Cheng, the other recipient of the Travelling Scholarship in 2020.

⁵ See also the Arbitration (International Investment Disputes) Act 1968.

The principal arbitral institutions are the Singapore International Arbitration Centre (SIAC), the ICC, and the Permanent Court of Arbitration (PCA).⁶ These institutions produce reports replete with data about case volumes, value of disputes and geographical reach (although not, at the time of writing, for 2022).⁷ For example, SIAC, which celebrated its 30th anniversary in 2021, enjoyed significant case volumes in that year: 469 new cases (86% of which were international cases), with US\$6.54 billion in dispute. Parties from India, China, Hong Kong (which received increased prominence in 2021) and the USA were the top 4 foreign users.⁸

My correspondents noted that the ICC attracted substantial-value disputes, and that the opening of an ICC office in Singapore in 2018 underlined the importance which the ICC attaches to the region.

Role of the Singapore International Commercial Court (SICC) in supporting Singapore’s popularity as an arbitral seat

A key development has been the creation, in 2015, of the Singapore International Commercial Court.

The SICC is a division of the High Court which can exercise jurisdiction over international and commercial disputes referred to it through party choice or by court order. Appeals lie with the Court of Appeal of Singapore (the highest court in Singapore). The SICC’s Judges are drawn both from the High Court and from other common and civil law jurisdictions (including certain eminent English Judges).⁹ There is a degree of party autonomy – for example, the parties can agree upon the applicable rules of evidence.¹⁰ Unlike the High Court, foreign advocates may obtain limited or general admission to appear before the SICC in certain circumstances.

Of the numerous international commercial courts that have cropped up internationally in the past few years, the SICC is one of the biggest success stories,¹¹ and it plays an important role in supporting Singapore’s reputation as a pro-arbitration jurisdiction. Three aspects are worth noting:

First, my correspondents explained that they have not seen many transactional documents in which the parties had expressly selected the SICC (as opposed to the Singapore High Court) but that from time to time they had received requests from clients and/or transaction department colleagues for advice on using such clauses. Thus, a majority of the cases being heard by the SICC have been allocated to it - and allocation was particularly likely in the case of enforcement of international arbitral awards.

Secondly, as a consequence of the first point, much of the SICC’s case load was interlocutory applications rather than trials. Notwithstanding the lack of published trial judgments, my

⁶ For shipping disputes, there is the Singapore Chamber of Maritime Arbitration (SCMA).

⁷ For example (accessed in December 2022): <https://siac.org.sg/wp-content/uploads/2022/06/SIAC-AR2021-FinalFA.pdf> (SIAC); <https://iccwbo.org/media-wall/news-speeches/icc-unveils-preliminary-dispute-resolution-figures-for-2021/> (ICC); <https://docs.pca-cpa.org/2022/04/439c82a8-pca-annual-report-2021-11.04.2022.pdf> (PCA)

⁸ SIAC Annual Report 2021.

⁹ See: <https://www.sicc.gov.sg/about-the-sicc/judges>

¹⁰ See the SICC Rules 2021, the SICC Procedural Guide and the SICC User Guide.

¹¹ For example, by 31 December 2020, the SICC had published 65 first instance decisions and 14 appeals. In the same period, the Netherlands Commercial Court had published 8 first instance decisions: <https://www.rechtspraak.nl/English/NCC/Pages/judgments.aspx>.

correspondents did not consider that parties would be deterred from using the SICC for resolution of substantive disputes on account of a lack of predictability of outcome, given (a) the high quality and experience of the Judges, and (b) the developed and stable nature of Singaporean procedural and substantive law.

Thirdly, my correspondents explained that there are differences in the costs regimes in the SICC and the High Court, in particular that costs schedules (a form of costs budgeting) were not mandatory in the SICC. One practical consequence is that, while proportionality and reasonableness were still the guiding principles when it comes to assessment of costs, a successful party could expect to be awarded a greater percentage of its legal costs in the SICC.

Global Change/Other Factors

My correspondents identified numerous other factors – some recent, others longstanding – which had impacted on the growing popularity of Singapore as an arbitral seat, and on the disputes market in Singapore in general. Four of them are set out below, along with one countervailing factor.

First, the changing political climate in Hong Kong – including the response to the COVID-19 pandemic – had encouraged capital flows (in particular private wealth) into Singapore, as well as the relocation of legal and other professionals. Hong Kong's loss, in this respect, is likely to be Singapore's gain.

Secondly, in addition to the devastating humanitarian impact of Russia's invasion of Ukraine, there have been a myriad of knock-on effects on global economies. From the perspective of legal services, difficulties faced by English law firms in servicing non-sanctioned Russian clients have apparently led to Russian clients seeking to retain firms from other Commonwealth jurisdictions, including Singapore and India, to advise them on issues arising in their English law governed contracts.

Thirdly, the increasing use by Indian companies and those doing business with Indian companies of Singaporean rather than Mauritian investment vehicles has coincided with an increased willingness to adopt Singaporean-seated rather than London-seated arbitration clauses in the transaction documents underlying those investments.

Fourthly, Singapore's geography and highly-developed infrastructure continue to play a role in its popularity as an arbitral seat both in the region and internationally. As to the former, there are self-evident advantages for clients to have their legal advisors in the same (or nearly the same) time zone. As to the latter, the time taken between arrival at Changi airport and getting to the city centre is impressively short and there is plenty of high-quality accommodation, restaurants and other amenities. Taxi apps like 'Grab' and the MRT (Mass Rapid Transit) metro system make getting around Singapore very easy.

On the other side of the coin, my correspondents noted the high cost of resolving disputes in Singapore, both in terms of legal fees and hearing costs (which, in the case of substantial arbitrations, were often very high indeed once one considers the institutional and tribunal fees). Some of my correspondents saw the possibility of nearby jurisdictions, including Malaysia, taking some of Singapore's market share by offering high quality but lower cost alternatives for (for example) hearing venues.

Conclusions

Singapore has consolidated its position as the key Asian dispute resolution centre and one of the top arbitration seats globally. The factors listed above strongly suggest that it will maintain and further improve its position as a jurisdiction of choice in the coming years.

On a personal note, while I have visited Singapore before, it was only for a few days on each occasion. This visit gave me a much better opportunity to explore the city and all it has to offer.

Finally, I acknowledge with grateful thanks the financial support provided by the Worshipful Company of Arbitrators which made my trip possible, and the time given up by my correspondents which made it such a success. I feel lucky to have benefited from such a wonderful opportunity to observe one of the world's most important dispute resolution hubs in action. I intend to apply to the SICC for registration as a foreign lawyer, and hope to return – whether on business or vacation – before too long.

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