The Singapore International Commercial Court (SICC) – an Alternative to International Arbitration?

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Singapore has developed a formidable transnational dispute resolution hub. The arbitration rules of the Singapore International Arbitration Centre (SIAC)¹ are well known and regularly debated abroad;² expertise in commercial mediation is gathered through the Singapore International Mediation Centre (SIMC).³ In 2015, the establishment of a new state court for international commercial cases, the Singapore International Commercial Court (SICC),⁴ complemented this dispute resolution strategy (Section I).

It is thereby the ambition of the Singapore legislator to provide a jurisdictional option for anyone demanding transnational dispute resolution services. Potential benefits for users (Section II) and legal practitioners (Section III) are thus worth assessing specifically from an international perspective. The following remarks provide, in particular, a European view.

I. Overview

The feasibility of an international commercial court in Singapore was investigated by a ‘Committee to study the viability of developing a framework for the establishment of the SICC’ (the ‘SICC Committee’).⁵ The SICC Committee drew on the expertise of international as well as

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¹ http://www.siac.org.sg/.
² Cf Klötzel, Thomas, Zur 5. Auflage der Schiedsgerichtsordnung des Singapore International Arbitration Centre, German Arbitration Journal (SchiedsVZ) 2014, p 137; Navarro Jiménez, Seguimondo, Comentario sobre el nuevo reglamento de SIAC, Revista del Club Español del Arbitraje 2013, p 123; Wegen, Gerhard / Barth, Marcel, Die neue Schiedsgerichtsordnung des Singapore International Arbitration Centre (SIAC), SchiedsVZ 2008, p 86. – An update of the SIAC Rules has been announced for mid-2016.
⁴ http://www.sicc.gov.sg/. The SICC was officially launched on 5 January 2015.
⁵ Co-chaired by Senior Minister of State for Law and Education Indranee Rajah SC and the then Judge of Appeal VK Rajah.
Singapore-based lawyers and legal experts. It delivered its report on 29 November 2013.6

The SICC Committee carefully assessed the likely development of cross-border investment, intra-Asian trade, trade into Asia, as well as the global gross domestic product. These developments, according to the SICC Committee, give rise to viable opportunities for an ‘Asian Dispute Resolution Hub’,7 providing international arbitration, transnational litigation, and alternative dispute resolution services.

The SICC Committee specifically referred to statistics that 90% of the cases litigated in the London Commercial Court8 involve an international party.9 This remark reveals and confirms, inter alia, that the SICC was inspired by, and to a certain degree modelled on, the London Commercial Court.10 The purpose and ambition of establishing the SICC is thus to attract, like its London counterpart, high value disputes, and to provide corresponding dispute resolution and legal advice services.11

II. Potential benefits for international users

Turning to envisaged benefits for international users, the rules set out for the jurisdiction of the SICC follow well-known patterns (sub-section 1). The court procedure caters to specific needs of transnational disputes (sub-section 2). Furthermore, the rules establishing the SICC provide for the

7 SICC Report, no 7-8.
8 The London Commercial Court is a sub-division of the Queen’s Bench Division of the High Court of Justice of England and Wales. It deals with complex disputes arising out of domestic and international business, in particular international trade, banking, commodity, and arbitration disputes. The procedure in the Commercial Court is governed by Part 58 of the English Civil Procedure Rules (CPR), with the Admiralty and Commercial Courts Guide providing details on how to conduct litigation, see https://www.justice.gov.uk/downloads/courts/admiralitycomm/admiralty-and-commercial-courts-guide.pdf.
9 SICC Report, no 9.
11 The English government has a similar ambition with regard to the English Commercial Court, which it seeks to establish as the ‘gold standard for resolving international disputes’; see, eg, http://www.lawgazette.co.uk/analysis/the-rolls-building-londons-trump-card/64169.fullarticle.
possibility of appointing a ‘bespoke’ bench for each case with judges from different legal backgrounds (sub-section 3).

1. Jurisdiction of the SICC

As for its jurisdiction, the SICC (a) is competent to hear international commercial cases, (b) but assumes jurisdiction only subject to forum non conveniens considerations. The SICC (c) has the power to force a third party into SICC proceedings. Although arguably an important transnational aspect, the SICC (d) does not per se deal with arbitration matters.

a) Grounds of jurisdiction

The SICC’s jurisdiction is defined in the Supreme Court of Judicature Act (Ch 322) (the ‘SCJA’), s 18D:12

(i) Claims brought before the SICC need to be, cumulatively, ‘international’13 and ‘commercial’14 in nature. The SICC has neither general jurisdiction to hear commercial matters (unlike, eg, the London Commercial Court),15 nor does it have jurisdiction over all cases with international implications (family matters, eg, being excluded).

(ii) Furthermore, the international commercial action must be one that the High Court may hear and try in its original civil jurisdiction.16

12 SCJA, s 18D: ‘The Singapore International Commercial Court shall have jurisdiction to hear and try any action that satisfies all of the following conditions: (a) the action is international and commercial in nature; (b) the action is one that the High Court may hear and try in its original civil jurisdiction; (c) the action satisfies such other conditions as the Rules of Court may prescribe.’

13 Cf Rules of Court, O 110, r 1(2)(a), indicating four alternatives for ‘international’ claims. This definition is similar to the definition of ‘international’ in the UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments adopted in 2006), Art 1(3), which reflects the SICC Committee’s proposal and goal of rendering the ‘basis of jurisdiction [of the SICC] familiar to arbitration practitioners’, see SICC Report, no 21(b).

14 Cf Rules of Court, O 110, r 1(2)(b), listing under (i) (non-exhaustively) eleven types of transactions that qualify as ‘commercial’; this list reflects the items in fn 2 to Art 1 of the UNCITRAL Model Law (see above fn 13), as envisaged in the SICC Report, no 21(b), fn 23. A claim is also commercial in nature if it ‘relates to an in personam intellectual property dispute’, r 1(2)(b)(ii), or if the parties ‘expressly agreed that the subject matter of the claim is commercial in nature’, r 1(2)(b)(iii).

15 CPR, Part 58. Any ‘commercial claim’, ie ‘claim arising out of the transaction of trade and commerce’ (CPR, r 58.1[2]), ‘may be started in the commercial list’ (CPR, r 58.4[1]), the commercial list being ‘a specialist list for claims proceeding in the Commercial Court’ (CPR, r 58.2[1]). However, specific cases may also be transferred from and to other specialist lists.

16 SCJA, s 18D(b).
If competent, the SICC exercises such powers as the High Court in its original jurisdiction.

Two scenarios then have to be distinguished with regard to how international commercial cases within the original civil jurisdiction of the High Court end up in the SICC (as opposed to the other divisions of the High Court):

(i) According to SCJA, s 18J, the High Court and the SICC may transfer cases to the SICC or the High Court, respectively, pursuant to the provisions and guidelines in the Rules of Court.

While this type of jurisdiction (by transfer) seems inconspicuous, it reflects a strategic decision and longsighted move on the part of the Singapore legislator, since it may guarantee the SICC a steady flow of cases, which will result in judicial expertise and a relevant body of jurisprudence, irrespective of whether international users will demand dispute resolution services by the SICC right away.

It appears that, in practice, some parties resist the transfer of their case to the SICC, arguing that they had not opted for the SICC. Yet, the High Court may order the transfer on its own motion.

(ii) The SICC is also competent if the parties agree to submit a dispute directly to the SICC. In addition to the already discussed general requirement that the agreement relate to an action with an ‘international’ and ‘commercial’ nature, such jurisdiction agreement has to be ‘in writing’. Both ex post and ex ante jurisdiction agreements are valid.

17 The SICC is established as a division of the High Court, SCJA, s 18A. The High Court and the Court of Appeal constitute the Singapore Supreme Court, SCJA, s 3. SICC proceedings are regulated by Order 110 of the Rules of Court, last amended with effect of 1 January 2016.

18 SCJA, s 18I (with a few exceptions).

19 For details see Rules of Court, O 110, r 7(2)(a) with r 12 (‘Transfer of proceedings to or from [the SICC]’); r 13 sets out the requirements of application and procedure.

20 Rules of Court, O 110, r 12(b)(ii).

21 Rules of Court, O 110, r 7(1).

22 For both the general and specific requirements of the SICC’s jurisdiction under SCJA, s 18D(a), see fn 13 and fn 14.

23 Defined in the Rules of Court, O 110, r 1(2)(e): ‘a jurisdiction agreement is written if its contents are recorded in any form (whether or not the agreement has been concluded orally, by conduct or by other means), including an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference’.

24 As the SICC Report explained, arbitration agreements were used as a ‘model’ for SICC jurisdiction agreements, with the objective of making the latter ‘familiar to arbitration practitioners’ (SICC Report, no 21[b]); see already above fn 13.
The SICC thereby has to be referred to specifically, there being no presumption, even in cases of an international and commercial nature, that a reference to the Singapore High Court reflects a choice of the SICC.25

The effect of such jurisdiction agreement is defined in SCJA, s 18F. Drafters of SICC agreements should keep in mind that a choice of the SICC is deemed to be ‘exclusive’ by default, unless otherwise specified.26

b) Forum (non) conveniens?

Notwithstanding the above rules on its competence, the SICC may ‘decline to assume’ jurisdiction. The underlying concept of jurisdiction might be unfamiliar to many civil lawyers and will therefore be explained briefly in the following.

In a civil law system, courts usually ‘have’ jurisdiction, but they have no choice whether to exercise it (unless, potentially, there is an abuse of process). The situation is different in Singapore, as in other common law countries,28 where the law distinguishes between the courts being competent (ie having jurisdiction) and the courts exercising, at their discretion, such competence (ie assuming jurisdiction). How the courts exercise this discretion is governed by the forum (non) conveniens doctrine of the respective legal system. Under this doctrine, the defendant may seek a stay of the proceedings commenced in an otherwise competent court, arguing that another court would be the (more) appropriate forum, ie the forum conveniens.29

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25 Rules of Court, O 110, r 1(2)(c): ‘an agreement to submit to the jurisdiction of the High Court does not of itself constitute an agreement to submit to the jurisdiction of the’ SICC.
26 SCJA, s 18F(1)(a). – This provision should not come as a surprise to, eg, European parties as the same solution was adopted in Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012, the ‘Brussels Ia Regulation’, Art 25(1), sentence 2.
27 Rules of Court, O 110, r 8.
29 See in general Fentiman, Richard, International Commercial Litigation, 2nd ed, Oxford University Press: Oxford, 2015, no 8.27. For Singapore, in particular, see Rules of Court, O 12, r 7(2): ‘A defendant who wishes to contend that the Court should not assume jurisdiction over the action on the ground that Singapore is not the proper forum for the dispute shall enter an appearance and, within the time limited for serving a defence, apply to Court for an order staying the proceedings.’
The *forum (non) conveniens* doctrine will continue to apply in Singapore, and the SICC ‘may decline to assume jurisdiction in an action under Rule 7(1) if it is not appropriate for the action to be heard in the Court’.30

The extent to which the traditional Singapore *forum (non) conveniens* doctrine, the (English) *Spiliada* test,31 will thereby have to be modified, or at least its application adapted for proceedings in the SICC, is currently open. The Rules of Court specify that the SICC ‘must not decline to assume jurisdiction in an action solely on the ground that the dispute between the parties is connected to a jurisdiction other than Singapore, if there is a written jurisdiction agreement between the parties’.32 Furthermore, the SICC must ‘have regard to its international and commercial character’.33

However, taken literally, these provisions do not prevent the SICC from declining jurisdiction even in cases of exclusive jurisdiction agreements, provided the connection ‘to a jurisdiction other than Singapore’ is not used as the sole reason for doing so.34

A different concept was adopted in the Hague Convention on Choice of Court Agreements35 (and, eg, in the European Brussels Ia Regulation),36 according to which the parties may prorogate an otherwise incompetent forum, without such court being allowed to decline jurisdiction on *forum (non) conveniens* grounds.37 Considering that Singapore has recently signed

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30 Rules of Court, O 110, r 8(1).
31 *Spiliada Maritime Corporation v Cansulex Ltd* [1987] 1 AC 460. The relevant test is whether a foreign court is the ‘clearly more appropriate forum’. This traditional test of the English common law is to date also applied in Singapore High Court proceedings, see *Orchard Capital I Ltd v Ravindra Kumar Jhunjhunwala* [2012] SGCA 16, [2012] 2 SLR 519, para 21; *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2010] SGCA 41, [2011] 1 SLR 391, paras 38 et seq.
32 Rules of Court, O 110, r 8(2).
33 Rules of Court, O 110, r 8(3).
35 Hague Convention of 30 June 2005 on Choice of Court Agreements, see http://www.hcch.net/index_en.php?act=conventions.text&cid=98. The Convention has been signed by the EU, Mexico, Singapore (on 25 March 2015), and the USA. The EU and Mexico have ratified the Convention. It came into force on 1 October 2015.
37 Hague Convention on Choice of Court Agreements, Art 5: ‘(1) The court or courts of a Contracting State designated in an exclusive choice of court agreement shall have jurisdiction to decide a dispute to which the agreement applies, unless the agreement is null and void under the law of that State. (2) A court that has jurisdiction under
this Hague Convention, it will also have to adjust its *forum (non) conveniens* doctrine to the Convention’s requirements, in distinction to the rules currently applicable in the Singapore courts.\(^{38}\)

c) **Joinder: forcing a third party into SICC proceedings?**

One of the perceived shortcomings of arbitration, which led to the idea of a state court for international cases, is the difficulty of joining third parties into the proceedings, *ie* non-signatories of the arbitration agreement.\(^{39}\) Singapore has tried to address in particular this problem by establishing the SICC.\(^{40}\) Since the SICC is a division of the High Court, it has all the High Court’s powers to join third parties to the proceedings, with or against their will.\(^{41}\)

However, the SICC may join a party only if the SICC has personal jurisdiction over such party, as determined according to the general rules. The third party either has to submit to the SICC’s jurisdiction, or it has to have been validly served. Whether and how a party can be validly served depends on whether it is within or outside the jurisdiction (Singapore).

In all these cases, the SICC then still has to determine, according to the *forum (non) conveniens* doctrine,\(^{42}\) whether it is appropriate to hear the case against the third party and to join it. It remains to be seen whether the SICC relaxes, in the context of joinder of third parties, the traditional *forum (non) conveniens* test, and whether the SICC thus accepts jurisdiction over third parties more widely.

In any event, the possibility to join a third party in court proceedings is nothing new. Such regime may have its advantages over arbitration, but it comes with potential negative consequences on the enforcement side, when contrasted with arbitration or choice of court agreements. Foreign states would in particular not be obliged to recognize SICC decisions against third parties under the principles laid down in the Hague Convention on Choice of

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\(^{38}\) Differences between the traditional position at Singapore common law and the concept of the Hague Convention on Choice of Court Agreements were already highlighted in the SICC Report, no 27.

\(^{39}\) SICC Report, no 16.

\(^{40}\) Loh, Quentin, The Limits of International Arbitration and Introduction to the Concept of the Singapore International Commercial Court, in Festschrift für Rolf A Schütze, Beck Verlag: München, 2015, pp 343 (344, 350-351).

\(^{41}\) According to the Rules of Court, O 110, r 9, a party may be joined to proceedings before the SICC whether or not it is a party to the SICC agreement.

\(^{42}\) See above sub-Section II.1.b) for details of the traditional *forum (non) conveniens* doctrine.
Court Agreements (or even less under the New York Convention that only applies to arbitral awards). *Vis-à-vis* non-signatories of SICC jurisdiction agreements, there will be no shortcut to transnational enforcement of SICC decisions.

d) The SICC as a specialised arbitration court?

The London Commercial Court is England’s specialised court for arbitration matters. The SICC currently has no such general competence, but the discussion in Singapore has been launched on whether the SICC should deal with all disputes arising out of international arbitration, and how such competence could be achieved already within the present framework.

2. Fundamental principles of procedure before the SICC

Having secured the jurisdiction of the SICC, international parties in particular will be interested in how the SICC proceedings are conducted. Considering that the success of the London Commercial Court inspired the establishment of the SICC, it is not surprising that many features of English Commercial Court litigation can be found also in SICC procedure. A full comparative assessment is beyond the scope of this article, but the following remarks highlight some key characteristics of SICC procedure.

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44 The SICC Report, no 24 with no 21(b), made a link between joinder, SICC jurisdiction agreements, and arbitration agreements. However, each follow their separate regime.

45 CPR, r 62.1(3) with r 58.1(2)(k). However, the Commercial Court’s competence regarding arbitration matters is not exclusive; also the Mercantile Courts, the Technology and Construction Court, the Chancery Division of the High Court, as well as the county courts fulfil certain functions, see *Andrews, Neil / Landbrecht, Johannes*, Schiedsverfahren und Mediation in England, Stämpfli: Bern, 2015, no 167, with further references.


47 See above, fn 10.

The SICC judges actively manage cases and hold case management conferences. One important feature to reduce cost and delay is that the parties are obliged to try to prepare an agreed List of Issues.

Within the confines set by the judges’ case management efforts, the parties’ counsel will continue to play an important role in the conduct of the proceedings, not the least at trial, when witness evidence is introduced by way of examination, cross-examination and re-examination, rather than the judge leading the discussion and interviewing witnesses.

Nevertheless, the SICC has more flexibility with regard to evidentiary matters and may, for instance, order that Singapore rules of evidence be supplanted by foreign rules of evidence. In addition, it should be noted that some ‘rules of evidence’ might have to be qualified as rules of substance (rather than procedure) under a particular foreign substantive law, and the SICC’s ‘evidentiary rules’ (lex fori) should therefore not be applied anyway.

With regard to document production, the SICC seems to follow a more restrictive approach than the other Singapore High Court divisions, in line with developments in England.

Questions of foreign law may be determined on the basis of submissions rather than on the basis of formal proof.

As the SICC is a division of the High Court, any decision of the SICC, whether judgment or order, is subject to an appeal to the Singapore Court of Appeal according to the general rules.

49 See Singapore International Commercial Court Practice Directions, Part XII, Case Management. – Case management was also an important new feature introduced into English civil procedure by the Woolf reforms in 1998, see Andrews, Neil, The Modern Civil Process, Mohr Siebeck: Tübingen, 2008, no 2.17.

50 Singapore International Commercial Court Practice Directions, para 80.

51 Singapore International Commercial Court Practice Directions, para 120.

52 SCJA, s 18K; Rules of Court O 110, r 23. The ‘SICC User Guides Note 5’ of 9 December 2015 regarding the ‘Disapplication of Singapore Evidence Law’ gives an overview of rules of evidence under Singapore law that may not apply in SICC proceedings (eg, hearsay rule, parol evidence rule).

53 A request to produce, pursuant to O 110, r 15(3)(a), must in particular ‘describe the requested documents with sufficient particularity in order for them to be produced’.

54 According to O 110, r 21, Order 24 (dealing with discovery and inspection of documents in ‘regular’ High Court proceedings) does not apply in SICC proceedings, unless the SICC orders otherwise.

55 One result of the Woolf reforms was the introduction of a more restrictive disclosure test, see Andrews, Neil, The Modern Civil Process, Mohr Siebeck: Tübingen, 2008, no 6.03.

56 SCJA, s 18L; Rules of Court O 110, r 25.

57 SCJA, s 29A; Rules of Court O 110, r 29.
In order to address confidentiality concerns, due to which transnational businesses often choose arbitration over court proceedings, the SICC was given the power to make specific confidentiality orders. In many jurisdictions, confidentiality of state court proceedings is considered to be justified only under exceptional circumstances. The wording of O 110, r 30(2)(a) suggests that also the Singapore legislator is cautious in restricting open justice. However, the legislator seems to consider that a deviation from the principle of open justice can be justified more readily in matters with no connection to Singapore, ie in ‘offshore cases’.

In any event, and unsurprising for a common law jurisdiction that depends on the development of its jurisprudence, O 110, r 31(1) prescribes that the SICC ‘must direct that a judgment made by the [SICC] may be published in law reports and professional publications if the [SICC] considers the judgment to be of major legal interest’, subject to appropriate redactions.

3. The composition of the bench

Having looked at the SICC’s jurisdiction and the rules of procedure applied by this new court, let us turn to the question of who is hearing these cases.

The judge(s) sitting in the SICC can either be regular Supreme Court Judges (other than the Chief Justice this includes Judges of Appeal, Senior Judges, and High Court Judges), or International Judges. International Judges are appointed to the SICC panel for a fixed period of time, but without tenure.

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58 On the position in Singapore arbitration law see, eg, Hwang, Michael / Chan, Andrew / Selvaraj, Ramesh, Singapore, in Moser, Michael, Arbitration in Asia, 2nd ed, Juris, Rel 5-2013, Section [3.7]: ‘It has been held that confidentiality applies generally to arbitration, but this rule is subject to certain exceptions …’

59 See, eg, Lord Mance (discussing whether arbitration-related state court proceedings should be confidential) in Department of Economics, Policy and Development of the City of Moscow v Bankers Trust Co [2004] EWCA Civ 314, § [39]: ‘the court should, when preparing and giving judgment, bear in mind that any judgment should be given in public, where this can be done without disclosing significant confidential information’.

60 ‘Offshore cases’ are defined in Rules of Court, O 110, r 1(1): ‘an action which has no substantial connection with Singapore, but does not include an action in rem (against a ship or any other property) under the High Court (Admiralty Jurisdiction) Act (Cap 123)’. There is thereby, pursuant to O 110, r 1(2)(f), no substantial connection if: ‘Singapore law is not the law applicable to the dispute and the subject-matter of the dispute is not regulated by or otherwise subject to Singapore law’; or ‘the only connections between the dispute and Singapore are the parties’ choice of Singapore law as the law applicable to the dispute and the parties’ submission to the jurisdiction of the Court’.
as a regular judge, and they may come from different backgrounds, in particular foreign jurisdictions. Already the SICC Report envisaged specifically that judges with a civil law background be appointed.62 International Judges may only sit in the SICC and in appeals from the SICC.63

As in regular Singapore High Court proceedings,64 SICC proceedings are normally conducted before a single judge. However, SICC proceedings must be heard by three judges if the parties so agree (subject to the Chief Justice directing otherwise), or if the Chief Justice so directs.65 In fact, the first ever SICC case was heard by a three member panel.66

It is not unusual for a common law jurisdiction that the composition of the bench is determined only once the case has been filed and the subject-matter is already known.67 However, the appointment of International Judges will vastly increase the flexibility for tailoring the SICC’s bench to the specific needs of each individual case.

III. Potential benefits for foreign practitioners

In the context of establishing the SICC, Singapore has also sought to render the SICC attractive for foreign counsel (sub-section 1), although making use of these opportunities will require submission to Singapore’s regulation of counsel conduct (sub-section 2).

1. Rights of Audience in the SICC

With regard to the rights of audience, the SICC in principle operates like a regular Singapore court. Before the High Court, according to the Legal

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62 SICC Report, p 17, fn 31. This in fact has happened as judges from Austria, France, and Japan have been appointed.
63 SCJA, s 5A with s 9(4)(b) and s 29(4).
64 SCJA, s 10(1).
65 Rules of Court, O 110, r 53(1).
66 BCBC Singapore Pte Ltd & Anor v PT Bayan Resources TBK & Anor, SIC/S 1/2015, heard by Justice Quentin Loh, Justice Vivian Ramsey, and Justice Anselmo Reyes. Justice Reyes, from Hong Kong, acted as International Judge.
67 Common law jurisdictions have in general not developed a concept similar to the ‘gesetzlicher Richter’ under, eg, German law, whereby the judge hearing a case must be defined in advance for each case, ie according to abstract rules and principles; see, eg, Koch, Harald, Rechtsvergleichende Fragen zum ‘Gesetzlichen Richter’, in Festschrift für Hideo Nakamura, Tokyo: Seibundo, 1996, p 281; Seif, Ulrike, Historische Bemerkungen zur Rolle des Richters in Deutschland und England, in Festschrift für Hans-Joachim Musielak, München: Beck, 2004, p 535.
Profession Act (Ch 161) (the ‘LPA’), parties may only be represented by members of the Singapore bar, with the exception of foreign lawyers of eminent distinction, who can be admitted on an ad hoc basis.

In order to make the SICC more attractive to foreign counsel, who indirectly, as transaction counsel, have an important influence on the parties’ preferences when choosing a dispute resolution forum, there are now special provisions for foreign counsel appearing before the SICC.

This regime of rights of audience is a balancing act between reserving litigation work in Singapore to Singapore-qualified lawyers, and opening the system enough to establish an acceptable alternative to international arbitration, since neither arbitrators nor counsel require special admission in order to participate in arbitration proceedings seated in Singapore.

In turn, clients benefit from the advantage that they can be represented in SICC proceedings by foreign counsel with whom they may be already familiar.

2. Policing counsel conduct

Yet, being allowed to appear before the SICC comes with a burden. According to LPA, s 36S, ‘(e)very foreign lawyer who is registered under section 36P shall be subject to the control of the Supreme Court’. The possibility to represent clients in SICC proceedings therefore entails regulatory duties on the part of the foreign lawyer. In essence, advocates appearing at the SICC require a ‘bar admission’ to the SICC.

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68 See LPA, s 29(1): ‘Advocates and solicitors shall, subject to the provisions of any written law, have the exclusive right to appear and plead in all courts of justice in Singapore according to the law in force in those courts …’

69 In practice, most foreign practitioners admitted under that route are English Queen’s Counsel (specifically mentioned in LPA, s 15[1][a][i]), while in theory this exception is open to any other foreign practitioner of equivalent distinction (LPA, s 15[1][a][ii]).

70 SCJA, s 18M: ‘A party to a case in the Singapore International Commercial Court, or to an appeal from that Court, may in accordance with the Rules of Court be represented by a foreign lawyer who is registered in accordance with Part IVB of the Legal Profession Act (Cap. 161).’ The foreign lawyers’ competence is defined in more detail in LPA, s 36P(1).

71 Cf LPA, s 35(1)(a) and (b).

72 However, there are currently limits to this advantage from a purely practical perspective: according to the Register of Foreign Lawyers published on the SICC’s website, the only non-common-law jurisdictions represented in the ‘SICC bar’ to date (February 2016) are Indonesia, Japan, and South Korea.

IV. Conclusion

Is the SICC, ultimately, a relevant option for international, in particular European users?

It seems that not all practitioners involved in transactions in Singapore and in the region are yet familiar with the SICC. Nevertheless, from the perspective of European companies and legal practitioners, the establishment of the SICC is an interesting development which will provide a further option for dispute resolution in Asia.

The SICC might, in particular, become a viable competitor of the London Commercial Court, if parties with a stake in the region prefer litigating in Singapore rather than litigating in England. As almost all of the SICC judges are fully familiar with the common law tradition, and many Singapore practitioners are educated in England, there may develop, from a practical point of view, a potential for choice between London and Singapore as a ‘venue’. The number of registered foreign lawyers at the SICC with their ‘home’ admission, and often main place of practice, in England & Wales demonstrates that English colleagues are already anticipating this development.

Yet, it remains to be seen whether the SICC will become attractive for users with a civil law background, and with a civil law dispute, that would otherwise not litigate in a common law court. This will depend first and foremost on whether suitable candidates for adjudicating relevant issues can be appointed. At present, there are not enough International Judges to provide for an expert in each legal tradition. In arbitration, on the other hand, the parties are free to select candidates with the most relevant legal background.

In any event, the SICC was not intended to be a competitor of international commercial arbitration. Rather, it was intended to complement Singapore’s strength in the arbitration sector. International players should assess the advantages of making use of this new feature, but they should not expect to find a ready alternative to arbitration.

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74 According to a survey on governing law and jurisdictional choices, commissioned by the Singapore Academy of Law and published on 11 January 2016 (http://www.singaporelawwatch.sg/sw/attachments/75874/SAL_Singapore_Law_SurveyV3.pdf), (only) 45% of Singapore based lawyers, 20% of internationally based lawyers, and 27% of in-house counsel are currently ‘familiar’ with the SICC, compared to overall 82% that are ‘familiar’ with SIAC.

75 See the SICC Report, no 6, on the successful track record of establishing Singapore ‘as the leading arbitration hub in Asia’.
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Summary

The SICC, a division of the Singapore High Court, opened its doors about a year ago. This new state court is the latest addition to Singapore’s comprehensive strategy for providing dispute resolution services.

To sum it up in one sentence, the SICC will have a familiar ring to users of English Commercial Court litigation, as the English Commercial Court and its transnational success provided a model and an inspiration for the architects of the SICC structure.

The SICC’s rules on jurisdiction and procedure follow well-known patterns of many common law systems. However, and notwithstanding its common law origin, the SICC is also set up to cater to the specific needs and expectations of civil law users and practitioners, and in particular in a transnational and mixed legal context.

The SICC was established to complement, not to replace, Singapore’s arbitration landscape. The SICC should therefore be welcomed as an interesting additional option for dispute resolution in the region, although it might not, for most European users, be an alternative to international arbitration.
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- Leading cases of the Swiss Federal Supreme Court
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Each case and article is usually published in its original language with a comprehensive head note in English, French and German.

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