

LUNCHEON KEYNOTE, IADC ASIAN REGIONAL MEETING – SINGAPORE,

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An overview of Singapore as a hub for resolution of commercial disputes (by way of litigation and arbitration) and ADR, which would include the SMC and SIMC

Members of the International Association of Defense Counsel,

Ladies and gentlemen.

1. Good morning and thank you for inviting me to this lunch time event and for the opportunity to speak on Singapore's legal industry as this city-state positions itself as a legal hub for the resolution of commercial disputes in Asia. It is heartening to see so many industry professionals from various parts of the world gathered here today interested to understand more about the dispute resolution landscape in Asia, and in Singapore. I understand that you have had an engaging discussion on recent developments in international arbitration in Asia earlier this morning. And this afternoon, there will be a session on Cross-Border litigation, a very topical subject given today's extremely testing economic environment. Unfortunately, my colleague, Justice Ramesh, who was invited to participate in that session, is unable to come owing to trial commitments. The organisers have asked me to touch on the Judiciary Insolvency Network (JIN) initiated by the Singapore Supreme Court last October. I am happy to oblige as this is just one example of our efforts in broadening judicial cooperation in cross-border disputes with other courts.

As you may appreciate, the recent amendments to our Companies Act will enable more cross-border restructuring schemes involving foreign corporations to be undertaken in Singapore. The JIN effort is part and parcel of the whole spectrum of initiatives taken to position Singapore as a restructuring and insolvency centre.

2. There are four points I wish to make in this keynote.

Legal infrastructure in place

3. Singapore's aspirations as a legal hub can be traced back to meticulous government planning since the 1980s to develop Singapore as Asia's financial services centre. A host of changes were then stringently introduced in the 1990s to eliminate the backlog of cases in the courts and increase the efficiency of disposal of cases, without compromising access to justice and the rule of law. To meet the demands of Singapore's role as a financial services centre, our legal sector was gradually opened up to foreign law firms. A conscious effort to enlarge the legal services provided to include ADR services, primarily arbitration and mediation, followed a few years later.

4. An important pillar of Singapore's success story is her strong adherence to the rule of law. Our legal hub builds upon Singapore's position as a first world country with global connectivity, business friendly eco-system and so on. Singapore is ranked the

second most competitive economy in the world¹ and has been ranked the 7th least corrupt nation in the world, and the only Asian country to make the cut, according to graft watchdog Transparency International's Corruption Perceptions Index.²

5. Singapore is now able to offer a complete suite of services for international commercial dispute resolution. In our court system, we have the Singapore International Commercial Court (SICC) which is a division of the High Court of Singapore. I will come back to the SICC shortly.

6. Singapore's reputation as a commercial dispute resolution centre really took off in the area of international arbitration. The Singapore International Arbitration Centre (SIAC) was established in 1991 and you will be hearing from the CEO herself. SIAC is our flag-bearer in the international arbitration space. For the last five years, Singapore has consistently been ranked the number one seat of ICC arbitration in Asia and the 4th most preferred seat globally for ICC arbitrations.³ The Civil Law Act has just been amended to pave the way for third party funding for international commercial arbitration. In the area of maritime arbitration, there is the Singapore Chamber of Maritime Arbitration (SCMA). Recognition of Singapore as an important dispute resolution centre in Asia was sealed with the inclusion of Singapore as the only Asian seat of arbitration in the BIMCO charter party form. Singapore now stands alongside London and New York as one of three designated arbitration seats for disputes arising under BIMCO standard charter-party form. This

¹ <http://www.singaporelaw.sg/sglaw/resources/latest-singapore-rankings>

² <http://www.straitstimes.com/singapore/singapore-climbs-to-7th-on-global-least-corrupt-index>

³ <http://www.singaporelaw.sg/sglaw/resources/latest-singapore-rankings> and

development is an important and significant milestone for the maritime community in Singapore as well as for Singapore's presence in the international arbitration scene. Singapore is also the third and only Asian seat of arbitration in the New York Produce Exchange Form Time Charter Party 2015. Lastly, there are plans to incorporate into all new and revised BIMCO documents the option to arbitrate in London, New York, Singapore or an alternative venue chosen by the parties.

7. The Singapore Mediation Centre (SMC) was established in 1997 and in 2014, the Singapore International Mediation Centre (SIMC). It must be emphasized that mediation transcends legal regimes and boundaries, requiring only the consensus of parties to come to the negotiating table.

8. The recently passed Mediation Act will strengthen the enforceability of mediated settlements by allowing them to be recorded as court orders. As had been done for arbitration earlier, the Legal Profession Act has been amended to allow the participation of foreign mediators and foreign-qualified counsel in mediation. The formation of the Singapore International Mediation Institute in 2014 further serves to oversee the accreditation of mediators and ensure high professional standards for mediation.

9. Additionally, Maxwell Chambers, which houses the SIAC and the SIMC, will be tripled in size by 2019, to capture the growing regional demand for commercial dispute resolution services. This demand is also underscored by the presence of prominent players

moving to Singapore. Earlier this month, Mr Tony Landau QC, a top London Queen's Counsel, became the first English Queen's Counsel to be admitted to the Singapore Bar. Last year, prominent arbitration lawyer, Lucy Reed took up the position of director of the Centre for International Studies at the National University of Singapore. In 2015, Judith Gill QC of Allen & Overy London relocated to its Singapore office, enhancing its Asian arbitration practice.⁴

10. Singapore has innovatively pushed the dispute resolution bar higher and created the gold standard for dispute resolution with the launch of the Singapore International Commercial Court (SICC) in January 2015. The SICC provides parties the option of having their international commercial disputes resolved by a court with specialist commercial judges from civil and common law backgrounds such as Australia, France, Japan, America, UK and Austria.

11. The enactment of the Choice of Court Agreements Act in 2016 which implements the 2005 Hague Convention on Choice of Court Agreements strengthens the enforcement of agreements which specify Singapore courts as the exclusive dispute resolution forum and also widens the recognition and enforceability of judgments issued by the Singapore courts so chosen.

⁴ <http://www.allenoverly.com/news/en-gb/articles/Pages/Allen--Overy%27s-Judith-Gill-QC-to-relocate-to-Singapore-office.aspx>

12. I digress to emphasize that the existence of centres like SIAC, SCMA, SIMC, SMC and SICC tell a common story which is that there are many dispute resolution options available today in Singapore. These options do not necessarily compete with each other. They are all complementary tools to resolve disputes. The expression “horses for courses” best sums up the thinking and belief that the preferred mode of dispute resolution depends very much on the needs of the parties.

13. For a legal hub to be more than the sum of all the legal infrastructures in the country, thought leadership cannot be ignored. This leads me to my second point.

Thought Leadership

14. The next step in the evolution of a specialist commercial court like the SICC is the development of a meaningful convergence of business laws in Asia. Over time, the aspiration is the development of a set of common principles of commercial law, the *lex mercatoria* of commercial law. In this regard, the Asian Business Law Institute (ABLI) was established as a permanent research institute just last year.⁵ I will tell you more about ABLI shortly.

15. For now, on the subject of thought leadership, if one views transnational commercial disputes as constituting a special breed of case which can and should be dealt

⁵ In January 2016.

with according to procedures that are specifically tailored to commercial best practices, it is not difficult to see how international commercial courts have a potentially important role to play. Such courts can be instrumental in facilitating the harmonisation of commercial laws and practices. They also serve as guardians for the development of the rule of law as a normative ideal in international commerce. This is because there will be greater external scrutiny of their decisions and processes, with increased pressure to justify decisions against international norms.⁶

16. The potential for harmonisation of commercial laws and best practices are quite real here in this legal hub. There have been cases heard in the SICC where a panel of three judges, one from Singapore and the other two from different jurisdictions, sit jointly and parties benefit from the best practices that each judge brings to the case, in a sense, a melting pot of judicial reasoning, enhancing the level of judicial analysis. This judicial diversity extends to the Singapore Court of Appeal hearing appeals from SICC matters. Just over the past week, the Court of Appeal in this instance comprising the CJ, a Judge of Appeal and an international judge released its first decision in relation to a SICC matter.

17. Similarly, one of our Judges of Appeal sits on the Dubai International Financial Centre Courts on an ad hoc basis on appellate matters bringing across her wealth of expertise and returning with enriching judicial insights, increasing our judicial thought leadership.

⁶ Sundaresh Menon, *Opening Lecture for the DIFC Courts Lecture Series 2015*, at [15]

18. As mentioned, alongside the development of legal infrastructure, there is ABLI. It is primarily concerned with stimulating the drive towards thoughtful legal convergence in the region. The stimulus for its practice-oriented work will come from a wide cross-section of stakeholders ranging from businesses, legal practitioners and in-house counsel, to academia, governments and local, regional and international institutions. Crucially, the Singapore judiciary is also a key stakeholder of the ABLI, which leads me to my third point.

Support from Judiciary

19. Our legal landscape benefits from a healthy support from the Singapore Judiciary. Judicial support for our ADR systems is manifest at every division of the courts through conscious encouragement by judicial officers to consider the appropriateness of ADR, the implementation of Practice Directions in support of ADR and costs sanctions.

20. Besides ADR, judiciary support in the form of cross-border cooperation is best explained in the various memoranda of understanding inked between the Singapore Judiciary and its counterparts. The underlying purpose is to achieve better outcomes for the resolution of disputes before the court. For example, the recently renewed MOU (in 2015) between the Supreme Court of Singapore and the Supreme Court of New South Wales on references of questions of law. This MOU (and the corresponding provisions in

the Rules of Court) allows for the references of contested issues of New South Wales law to be determined by the courts of New South Wales (and vice versa).⁷

21. A similar MOU between the Supreme Court of Singapore and the Dubai International Financial Centre Courts was also signed in January 2015. There are also more general memoranda of understanding for judicial cooperation in place – for example between Singapore and the Supreme Judiciary Council of the State of Qatar (signed in 2009), and most recently, with the Abu Dhabi Global Market Courts signed in March this year.

22. A more ambitious project for cross-border cooperation mentioned at the start is the Judicial Insolvency Network (JIN). This is a network of insolvency judges from various key commercial jurisdictions around the world. Its objective is to encourage communication and cooperation amongst courts by bringing together the best practices in court-based cross-border insolvency and restructuring. Through the network, judges can come together to share experiences, exchange ideas, identify areas for judicial cooperation and develop best practices.

⁷ Usually, when an issue of foreign law arises in a case before the Supreme Court, each party to the proceedings engages an expert to provide advice and to attend court – often travelling from overseas – for cross-examination. In effect, the presiding judge is asked to adjudicate between conflicting expert witnesses. Now, consenting parties will have the option to seek a ruling directly from the foreign court about its own laws. A judgment by a foreign court is of course more authoritative, accurate and expedient than opinions by conflicting expert witnesses.

23. The inaugural JIN conference was initiated by our Chief Justice last year, and attended by 11 judges from the Southern District of New York, Delaware, England and Wales, Australia, Bermuda, the Cayman Islands, the BVI, Ontario, Canada, Hong Kong (as an observer) and Singapore. The result was a seminal set of JIN Guidelines for court-to-court communication and cooperation. As of 15 May 2017, six of the participating courts have adopted the Guidelines – the United States Bankruptcy Courts of New York and Delaware, the Supreme Court of Bermuda, the Supreme Court of Singapore, the Chancery division of the High Court of England and Wales, and most recently the British Virgin Islands. The other participating jurisdictions have indicated that they are committed to adopting the Guidelines by the end of this year if not sooner.

24. Significantly, the Guidelines also set out matters relating to joint hearings. The joint hearings can be from case management to the substantive hearings. Joint evidentiary hearing on common issues with the court in one jurisdiction interacting with counsel from another jurisdiction is conceivable. It is early days with much work to be done but the initiative is timely and it has been welcomed by many important insolvency centres in the world. .

25. The insolvency of the multi-national telecommunications group, Nortel Networks, though it occurred prior to the promulgation of the Guidelines, provides a useful example of how a protocol for court-to-court communication and cooperation based on the Guidelines may work. In that case, a protocol for communication and cooperation was approved by the courts in the United States and Canada. Pursuant to that protocol, joint

hearings were conducted between the United States and Canadian judges to resolve issues relating to the distribution of the group's assets within its various entities. After the joint hearings concluded, the United States and Canadian judges communicated and were able in the process to arrive at consistent decisions.

26. This is just one example of what the Guidelines might offer to parties engaged in parallel cross-border insolvency proceedings. With the Guidelines serving as a framework of common understanding between the participating courts, it is anticipated that this will allow for the effective administration of cross-border insolvencies (especially those engaging the jurisdiction of participating courts), with cost and time savings and the consequential maximization of value for all parties involved.

27. Another instance of judicial cooperation is the Council of ASEAN Chief Justices (CACJ), which was conceived by Singapore in 2013. The CACJ provides a forum for the ASEAN Chief Justices to hold discussions on common concerns of ASEAN judiciaries and mutual cooperation.

28. The CACJ is held on the side-lines of the ASEAN Law Association (ALA) Governing Council Meetings. The ALA is a non-government organisation that brings together members of the legal profession – judges, teachers, practitioners and government lawyers – in the ASEAN region. There is opportunity through ALA to assist in developing

and shaping the law in ASEAN Member States towards greater transparency, understanding and harmonisation to facilitate trade and investment in the ASEAN region.

29. In July 2018, Singapore will host the 13th ALA General Assembly themed “The Power of One - Unlocking the Opportunities in ASEAN through Law”. Discussions will focus on the creation of a single multi-jurisdictional component for cross-border business in ASEAN and law as an instrument to facilitate the success of the ASEAN Economic Community. Through law, the idea of a single multi-jurisdictional component to assist business in ASEAN is multi-facet. For example, it can facilitate easier business registration in ASEAN; foster AEC financial integration with the use of a multi-jurisdictional bank guarantee for goods crossing multiple borders; and lastly, deal with cross-border insolvency and restructuring in ASEAN.

Role of Lawyers

30. My final point today is the role of lawyers. Lawyers’ active participation in Singapore’s commercial dispute resolution eco-system is very important. This is the case not only with our local Bar but also applies in equal measure to foreign counsel who may practise on our shores. It is also relevant not just in the context of international arbitrations and mediations conducted here, but also to cases heard before the SICC.

31. In a recent first for the SICC, a four-day trial was concluded at which the defendant, a company incorporated in Delaware, was represented by a Registered Foreign

Lawyer (RFL) from the US. That RFL worked together with a local counsel. The plaintiff is a Singapore incorporated company and it had brought claims *inter alia* for unpaid works and services in relation to the construction of three liquefied natural gas plants in Australia. Under the SICC Practice Directions, when the Court decides that a case is an offshore case – which the Court had decided in an earlier decision in this case – a party to the proceedings and in appeals from such proceedings may be represented by foreign lawyers.

32. You may be keen to know that to-date, there are 78 foreign lawyers on SICC’s Register of Foreign Lawyers⁸ with rights of appearance in the SICC. The point really is that the partnership of lawyers in embracing all *appropriate* forms of dispute resolution is essential for the success of the full suite of dispute resolution services now available in Singapore.

Conclusion

33. The big Asian century is coming our way. This is the firm view of Professor Kishore Mahbubani, a former Singapore Ambassador to the UN. The inaugural Belt and Road Forum in Beijing May 14-15, 2017 was to show case China’s mega-ambitious plan to open several strategic corridors of trade across Asia, Africa and Europe via land and sea. New infrastructures like roads, railways, ports and industrial parks will be built in countries along the “one belt one road” trade routes. There will be projects to finance. The centre of

⁸ <http://www.sicc.gov.sg/ForeignLawyer.aspx?id=102>

trade flows will be in Asia ushering in a “golden age” of globalization as China’s President Xi Jinping puts it. History has shown that human nature being what it is, with economic activities, there will come disputes.

34. Singapore, as a commercial dispute resolution hub, is fully geared up to provide a comprehensive suite of dispute resolution services. On a broader view, having a constellation of commercial dispute resolution solutions in Asia paves the way for an integrated system for resolving cross-border commercial disputes in a transparent, trustworthy and commercially sensible manner.

35. In conclusion, disputants are the ultimate beneficiaries of our new legal landscape for commercial dispute resolution. Parties need to thoroughly assess their case, align their legal strategy with their business strategy and simply choose the most appropriate tool to achieve their aim.

36. I wish you an afternoon of fruitful discussion. Thank you.
