X. Singapur

Should a Dispute Be Brought to the Singapore International Commercial Court or to Arbitration?

*Dr. Patrick Dahm, Singapore**

* The author is a German Rechtsanwalt, a Foreign Practitioner certified to practise both Singapore law and foreign law in Singapore, and a Registered Foreign Lawyer with the Singapore International Commercial Court. He also serves as an arbitrator. The author would like to thank *Chantik Bhatt* for her critical review of the manuscript and her valuable comments.

The European legal community has taken note of the opening of the Singapore International Commercial Court (SICC) in 2015, but often only superficially, although the SICC may serve as a practical example in the current discussion and establishment of commercial courts in Europe, particularly in Germany. This article introduces the SICC in more detail and assesses whether it should be considered as an alternative to the more widely used arbitration for the resolution of commercial disputes. It does so by examining how the strengths and weaknesses of arbitration compare with those of the SICC, given its role as a specialised state court.

I. The SICC – A Specialist Commercial Court in Singapore

The Singapore International Commercial Court (SICC), a specialised court for international commercial matters, has been operational for about a decade. This has not gone unnoticed by the European legal community, in particular the German-speaking one,[1] although the SICC has not been studied in detail in German

1 See *Dahm*, Singapurischer Internationaler Handelsgerichtshof eröffnet, 7 January 2015, https://tinyurl.com/4x9v8yed (retrieved on 15 July 2025); *Redaktion beck-aktuell*, Sin-

until recently.[2] However, an in-depth study of the SICC could contribute to the ongoing debate on specialised commercial courts throughout Europe, especially in Germany,[3] if only to demonstrate that the SICC was quickly established

gapurischer Internationaler Handelsgerichtshof eröffnet, 9 January 2015, https://tinyurl.com/mphhehmm (retrieved on 15 July 2025); *Wilske/Markert/Bräuninger*, Entwicklungen in der internationalen Schiedsgerichtsbarkeit im Jahr 2014 und Ausblick auf 2015, SchiedsVZ 2015, 49, 57–58; *Walter*, EBS Law School Arbitration Day: 'All New and All Better? From New Rules to New Courts: The Quest for Improved Systems of Arbitration', SchiedsVZ 2017, 100; *Curschmann*, Justizstandort Deutschland stärken!, IWRZ 2018, 241, 242; *Länderarbeitsgruppe „Justizstandort Deutschland: Stärkung der Gerichte in Wirtschaftsstreitigkeiten"*, Diskussionspapier zum Symposium am 03.09.2018 in der Vertretung des Landes Nordrhein-Westfalen beim Bund, IWRZ 2018, 234; *Hoffmann*, Von „Law – Made in Germany" zu „Commercial Litigation in Germany", IWRZ 2018, 58, 59; *Respondek/Witte*, in: Salger/Trittmann (eds.), Internationale Schiedsverfahren, 2019, para. 1261; *Alexander/Kück*, Das „Ökosystem" der Mediation in Singapur, IWRZ 2020, 64, 65, 70; *Hertog*, Große internationale Wirtschaftsstreitigkeiten und staatliche Gerichte im 21. Jahrhundert, 2021, pp. 108–115; *Domhan*, Internationale private Streitschlichtung, 2022, pp. 65–71; *Grohmann*, Internationalisierung der Handelsgerichtsbarkeit, 2022, pp. 197–218.

2 See now, *Dahm*, SICC oder Schiedsgericht?, 2024.

3 See Beschlussempfehlung und Bericht des Rechtsausschusses zu dem Gesetzentwurf der Bundesregierung – Entwurf eines Gesetzes zur Stärkung des Justizstandortes Deutschland durch Einführung von Commercial Courts und der Gerichtssprache Englisch in der Zivilgerichtsbarkeit (Justizstandort-Stärkungsgesetz) of 16 May 2024 (BT-Drucks. 20/11466); *Armbrüster*, Modernisierung des Schiedsverfahrensrechts, ZRP 2024, 66, 68; *Flockermann/Deuring*, Ein Blick in die nahe und fernere Zukunft von Wirtschaftsprozessen, NJW 2024, 879; *Hau*, International Commercial Courts: Drivers of Contractualisation, Hobby Horses of Politicians or Apocalyptic Riders of Civil Justice?, in: Cabral/Nylund (eds.), Shaping Civil Litigation Using Procedural Agreements, 2024, 115–130; *Kondring*, Flucht vor dem deutschen AGB-Recht, BB 2024, 970; *Lasthaus*, Internationale Wirtschaftsstreitigkeiten, 2024; *Linke/Hau*, Internationales Zivilverfahrensrecht, 9th ed., 2024, para. 1.68, 8.59; *Müller*, Commercial Courts in Deutschland, IWRZ 2024, 55; *Pfeiffer*, Der ungebrochene Bedarf für eine Reform des AGB-Rechts, ZRP 2024, 2; *Riehm/Thomas*, Germany, in: Yip/Rühl (eds.), New International Commercial Courts, 2024, p. 293; *Weiler*, Streitbeilegung am Schiedsort Deutschland – was die Modernisierung des Schiedsverfahrensrechts für Unternehmen bedeutet, RIW 2024, 245; *Sieg*, Gesellschaftsrechtliche Streitigkeiten zu Commercial Courts, NZG 2024, 321; *Burianski/Fleckenstein*, Commercial Courts und Schiedsverfahrensreform, ZRP 2023, 162; *Eckhoff/Meyer/Schiering*, Die Attraktivität Deutschlands als Forum internationaler Streitbeilegung, RIW 2023, 804; *Fischer/Michel*, Ausblick auf die geplante Einführung von sog. Commercial Courts, ZAP 2023, 435; *Henning*, Bundesweite Einführung von Commercial Courts, jM 2023, 273; *Münch*, Vom Beruf unserer Zeit zur Reform des Schiedsrechts, JZ 2023, 958; *Reichert/Groh*, Lehren aus der Schiedsgerichtsbarkeit für staatliche Commercial Courts, NZG 2023, 1007; *Raeschke-Kessler*, Schiedsgerichtsbarkeit und Commercial Courts, SchiedsVZ 2023, 158; *Raeschke-Kessler*, Von der Schieflage zum ausbalancierten System – Schiedsgerichte und Commercial Courts, NJW 2023, 3558; *Rath*, Braucht es Commercial Courts?, DRiZ 2023, 254; *Riehm*, Commercial Courts, ZIP 2023, 1561; *Römermann*, Commercial Courts – Deutsche Elite-Gerichtsbarkeit goes international, GmbHR 2023, R52; *Wagner*, Zum Eckpunktepapier des Bundesministeriums der Justiz zur Modernisierung des deutschen Schiedsverfahrensrechts, ZIP 2023, 1393; *Wolff*, Bewegung am Streitbeilegungsstandort Deutschland, SchiedsVZ 2023, 209; *Wolff*, Modernisierung

and seems to be functioning well. Additionally, given Southeast Asia's growing economic significance, the SICC is increasingly relevant to German businesses engaged with the region.[4]

This article focuses on one key question: Why would parties take their commercial disputes to the SICC rather than to the more popular arbitration? In addition to answering this question, this article examines whether this international commercial court[5] is actually succeeding in its role, identifies potential problems and suggests ways in which it could be improved.

The article is structured as follows: First, it provides a brief overview of the SICC's history (I 1), leading to the research question and a summary of the research method used (I 2). It then briefly outlines the advantages and disadvantages of arbitration versus litigation based on existing literature and practice (II). These advantages and disadvantages serve as a benchmark for analysing the SICC's laws.[6] The key question is then explored through theses, which are examined and tested. This includes checking if there are aspects of the SICC that might discourage parties from using it and whether these issues could or should be addressed (III).

1. Origins

The story of the SICC's creation is often described as one of agile decision-making and swift, efficient execution, being 'remarkably quick and devoid of controversy'.[7] While this is accurate, the origins of the SICC actually trace back further than commonly believed.

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des deutschen Schiedsverfahrensrechts, ZIP 2023, 1623; *Bauer*, Mittelstands-M&A und die neuen Commercial Courts, BB 2022, 1225; *Domhan* (no. 1), pp. 47–61; *Grohmann* (no. 1); *Riehm/Thomas*, Deutschlands „Commercial Courts" auf dem Prüfstand, NJW 2022, 1725; *Diekmann*, Commercial Courts – Innovative Verfahrensführung trotz traditioneller Prozessordnung?, NJW 2021, 605; *Hertog* (no. 1); *Köhler/Hudetz*, Commercial Courts – Staatliche Konkurrenz für die Schiedsgerichtsbarkeit?, BB 2020, 2179; *Pfeiffer*, Justiz neu denken – Brauchen wir einen Commercial Court?, IWRZ 2020, 51; *Hess/Boerner*, Chambers for International Commercial Disputes in Germany: The State of Affairs, Erasmus Law Rev. 12 (2019), 33; *Kruisinga*, Commercial Courts in the Netherlands, Belgium, France and Germany, IPRax 2019, 277; *Podszun/Rohner*, Initiative der Landesjustizminister für „Commercial Courts", ZRP 2019, 190.

4 *Hertog* (no. 1), p. 103.

5 For the definition and concept of the term, see *Yip/Rühl*, General Report, in: Yip/Rühl (eds.), New International Commercial Courts, 2024, pp. 1, 3–16.

6 The details of the laws of the SICC, including an account of Singapore as a jurisdiction, are beyond the scope of this article, but see *Dahm* (no. 2).

7 *Bookman*, Arbitral Courts, Va. J. Int. Law 61 (2021), 161, 192; on the impediments and baseline requirements for the creation of international commercial courts, see *Yip/Rühl* (no. 5), pp. 1, 19–24.

a) Southwell*'s Proposal for a Singapore Commercial Court*

The idea of creating a specialised commercial court in Singapore dates back to 1990. During a visit to the city-state, *Southwell*, a British barrister, delivered a lecture at the Singapore Academy of Law, where he proposed setting up a Singapore Commercial Court modelled after the Commercial Court for England and Wales, which had been in place since 1895.[8] The venue was well chosen. The Singapore Academy of Law, established under the Singapore Academy of Law Act 1988 (SLA),[9] serves several key functions. These include promoting and maintaining high standards of conduct and learning of the members of the legal profession in Singapore and the standing of the profession in the region and elsewhere; promoting the advancement and dissemination of knowledge of the laws and the legal system; and promoting legal research and scholarship and the reform and development of the law.[10] Modelled after the Inns of Court of Barristers in England and Wales, the Academy includes all lawyers (including foreign lawyers), legal academics, judges, and other legal practitioners in Singapore.[11]

In his presentation, *Southwell* advocated for a court that would be international in substance if not in name, particularly for the Pacific region, where the rapid growth of trade had sparked a rise in commercial disputes, creating an 'obvious need' for an efficient and trustworthy commercial court.[12] Twenty-five years after Singapore gained independence, its judges, lawyers, and the staff of the Supreme Court Registry were ready to meet this challenge.[13] Allowing foreign lawyers to practise in the Singapore Commercial Court would certainly promote an exchange of knowledge and foster healthy competition between members of the Singapore and international legal professions.[14]

We do not know how *Southwell*'s lecture was received by the audience. Regardless, his proposal for a Singapore Commercial Court did not move forward at the time. The idea was not revisited until twenty-two years later.

b) Announcement, Conception and Establishment of the SICC

The idea of a specialist commercial court in Singapore was revived by *Menon*, a former litigation lawyer who later became Attorney-General of Singapore. In August 2012, he was appointed a Justice of Appeal,[15] and shortly after, in November

8 See *Southwell*, A Specialist Commercial Court in Singapore, Singapore Academy of Law Journal (SAcLJ) 2 (1990), 274.

9 Section 3 SLA.

10 Section 4(1)(a) to (c) SLA.

11 *Abdullah*, The Legal Profession, in: Tan (ed.), Essays in Singapore Legal History, 2005, pp. 193, 207.

12 *Southwell*, SAcLJ 2 (1990), 274, 279.

13 *Southwell*, SAcLJ 2 (1990), 274, 279–280, 283–285.

14 *Southwell*, SAcLJ 2 (1990), 274, 284.

15 *Teo*, A-G to Be Appointed Appeal Judge, Today Online, 1 June 2012, https://tinyurl.com/3ftd2rfe (retrieved on 15 July 2025).

of the same year, he was sworn in as the fourth Chief Justice of the Republic of Singapore.[16]

It is customary for the Chief Justice of Singapore to use his inaugural address to outline his goals and announce a major project for his tenure. The first Chief Justice of the Republic of Singapore laid the groundwork for an independent judiciary.[17] In 1990, his successor initiated the judiciary's transformation from the 19th to the 21st century, marked by the abolition of traditional wigs for judges and lawyers and changes in how Supreme Court judges were addressed, moving away from 'my lord' and 'your lordship'.[18] In his inaugural speech in 2007, the third Chief Justice, *Menon*'s predecessor, called for significant improvements in the court system's efficiency, particularly in case completion rates and digitisation.[19] The newest Chief Justice would introduce a new court.

Menon got the idea during his visit to the Commercial Court in London in September 2012. He observed that as the arbitration market grew, the number of cases pending before the Commercial Court also increased. This observation led him to conclude that arbitration and commercial litigation were not mutually exclusive; rather, both dispute resolution systems could coexist and evolve together.[20] In his inaugural speech as Chief Justice in January 2013, *Menon* announced, somewhat awkwardly, that a committee would 'study the viability of developing a framework for the establishment of the Singapore International Commercial Court'.[21] He also highlighted the opportunities for growth which would come from expanding the scope of the Singapore legal profession, increasing its regional reach, and internationalising and exporting Singapore law.[22] Unlike *Southwell*, *Menon* did not mention the potential exchange of knowledge and enriching competition between Singaporean and non-Singaporean lawyers.

The SICC Committee, chaired by a Senior Minister of State for Law and a Justice of Appeal, included a Permanent Secretary of the Singapore Ministry of Law, a former Attorney General of England and Wales, a former Solicitor General of India, a senior officer from the Singapore Supreme Court, a corporate lawyer from IBM,

16 *Teo*, Sundaresh Menon Is New Chief Justice, Today Online, 30 August 2012, https://tinyurl.com/u48r4nr3 (retrieved on 15 July 2025).

17 See *Koh*, The First Chief: Wee Chong Jin, 2010, ch. 4.

18 *Lum*, CJ Yong Overhauled Justice System, The Straits Times, 1 April 2006, https://tinyurl.com/bx3sm4fe (retrieved on 15 July 2025).

19 See *Chan*, Opening of Legal Year 2007: Response by The Honourable The Chief Justice, 6 January 2007, https://tinyurl.com/2s4ef5nh (retrieved on 15 July 2025).

20 *Menon*, International Commercial Courts: Towards a Transnational System of Dispute Resolution, 19 January 2015, para. 10, https://tinyurl.com/456z7c6b (retrieved on 15 July 2025).

21 *Menon*, Opening of the Legal Year 2013 and Welcome Reference for the Chief Justice, 4 January 2013, para. 33, https://tinyurl.com/fwby2tr8 (retrieved on 15 July 2025).

22 *Menon* (no. 21), para. 33.

and several active and retired judges from Singapore, India, and New South Wales. The Committee also featured lawyers and legal academics from Singapore, the UK, and Sweden.[23]

The Committee had not yet published its report when Singapore's Law Minister *Shanmugam* spoke at a conference in October 2013. *Shanmugam* described the project as a commercial court grounded in strong common law tradition, aimed at addressing the growing number of cross-border disputes in Asia, and stressed that the court would build on the high reputation of the Supreme Court of Singapore, its judges, and its jurisprudence, which he said was unrivalled in Asia.[24] *Shanmugam* outlined the main objective as promoting Singapore's legal sector and positioning the commercial court as an attractive venue for disputes that would not typically be heard by an arbitral tribunal or court in Singapore.[25] In November 2014, just before the opening of the SICC, *Shanmugam* reiterated this goal in Parliament.[26] Like *Menon*, he did not mention the exchange of knowledge and competition between Singaporean and non-Singaporean lawyers.

In line with the Law Minister's comments, the SICC Committee, in its report released at the end of November 2013, recommended establishing an international commercial court in Singapore to bolster the country's reputation as a leading centre for legal services and dispute resolution.[27] The Committee suggested integrating the new court into the Supreme Court as a division of the High Court. It proposed that the commercial court be staffed by Supreme Court judges and temporary associate judges, including international ones.[28] These associate judges would handle cases on an ad hoc basis, including at the appellate level.[29] The commercial court's jurisdiction would be determined either by party agreement or by the Chief Justice referring cases that would otherwise be subject to the High Court's jurisdiction.[30] Representation by lawyers would follow the applicable law governing the legal profession, and for disputes not having a substantial connection to Singapore, provi-

23 See *Rajah/Rajah/Ang et al.*, Report of the Singapore International Commercial Court Committee, 29 November 2013, para. 1, 2, https://tinyurl.com/y4bsc3vk (retrieved on 15 July 2025).

24 *Shanmugam*, International Dispute Resolution: The Singapore Perspective in an Evolving Landscape, 29 October 2013, para. 24–26, 28–29, https://tinyurl.com/4c467hrc (retrieved on 15 July 2025).

25 *Shanmugam*, (no. 24), para. 36.

26 See *Shanmugam*, Second Reading Speech by Minister for Law on the Constitution of the Republic of Singapore Bill, 4 November 2014, para. 18, https://tinyurl.com/57aahub5 (retrieved on 15 July 2025).

27 *Rajah/Rajah/Ang* et al. (no. 23), para. 4.

28 *Rajah/Rajah/Ang* et al. (no. 23), para. 20.

29 *Rajah/Rajah/Ang* et al. (no. 23), para. 4, 35.

30 *Rajah/Rajah/Ang* et al. (no. 23), para. 4.

sions should allow representation by authorised foreign lawyers.[31] The Committee recommended modelling the commercial court's procedures and procedural law on international best practices, particularly those of the Commercial Court for England and Wales.[32] It also noted that the legitimate interest of parties in confidential proceedings should be considered,[33] and that foreign law may not need to be pleaded and proved in the common law tradition,[34] but may be presumed to be known to the court following submissions by the parties.[35]

In recommending the establishment of an international commercial court, the SICC Committee's report highlighted the sustained growth of world trade over the past twenty years, especially in Asia, and the resulting rise in cross-border disputes.[36] It argued that in Singapore, as a dispute resolution centre, these disputes should be resolvable not only through arbitration but also by a court.[37]

This official motive reflects the broader trend where governments seek to enhance the effectiveness, efficiency, and predictability of their legal institutions to attract global capital in a competitive global market.[38] It also indicates that the Singapore government, regardless of where it falls on the liberal-totalitarian spectrum,[39] uses its legal system and courts not only to foster economic growth but also to legitimise[40] and maintain political power.[41]

Unlike *Menon* and *Shanmugam*, the SICC Committee addressed the issues of knowledge sharing and competition between Singaporean and non-Singaporean lawyers in its report. However, it subtly rephrased these concerns by noting that with the exponential growth of cross-border trade and investment in Asia, 'legal practices and judiciaries have to evolve to keep up with the increasingly transnational nature of legal work.'[42]

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31 *Rajah/Rajah/Ang* et al. (no. 23), para. 4, 37–39.

32 *Rajah/Rajah/Ang* et al (no. 23), para. 29.

33 *Rajah/Rajah/Ang* et al. (no. 23), para. 33.

34 See *Chong/Yip*, Singapore Private International Law, 2023, para. 6.33.

35 *Rajah/Rajah/Ang* et al. (no. 23), para. 34.

36 *Rajah/Rajah/Ang* et al. (no. 23), para. 7–10.

37 *Rajah/Rajah/Ang* et al. (no. 23), para. 10.

38 *Moustafa*, Law and Courts in Authoritarian Regimes, Annu. Rev. Law Soc. Sci. 10 (2014), 281, 285; *Kötz*, Deutsches Recht und Common Law im Wettbewerb, AnwBl 2010, 1–2.

39 *Thio*, A Treatise on Singapore Constitutional Law, 2012, p. xi.

40 *Bookman*, Arbitral Courts, Va. J. Int. Law 61 (2021), 161, 203.

41 *Antonopoulou*, The 'Arbitralization' of Courts: The Role of International Commercial Arbitration in the Establishment and the Procedural Design of International Commercial Courts, J. Int. Disput. Settl. 14 (2023), 6; *Moustafa*, Annu. Rev. Law Soc. Sci. 10 (2014), 281, 285.

42 *Rajah/Rajah/Ang* et al. (no. 23), para. 11.

For two months, in December 2013 and January 2014, the public had the opportunity to comment on the SICC Committee's report, although these comments were not published.[43] Meanwhile, preparations for the new court were underway, including addressing legal, organisational, staffing, and infrastructure needs.[44] This involved recruiting fifteen judges from various nations and jurisdictions[45] and incorporating special procedural rules into the general Rules of Court 2014 (ROC 2014). The Rules of Court consist of individual rules, which are subdivided into orders. The special rules for the SICC were set out in Order 110 (O. 110), which included 55 rules (r. 1 to r. 55) and an annex with a table of costs.[46] The SICC began its activities on 5 January 2015 with the implementation of O. 110.

c) First Case and First Decision

The dispute involved a complex joint venture in Indonesia between listed Australian and Indonesian companies, along with their related companies in Australia and Singapore, for the extraction and sale of refined sub-bituminous coal from East Kalimantan using technology developed and patented in Australia.[47] The SICC delivered its first judgment in this first case on 12 May 2016.[48]

d) First 'Own' Case, No Published Decision

Three years after its inauguration, on 26 February 2018, the SICC received its first direct case – one not referred by the High Court but initiated by the parties invoking the SICC directly: *Maybank Kim Eng Securities Pte Ltd v PT Mabar Elektrindo*.[49] The dispute involved a USD442 million project finance facility syndicated by the bank to PT Mabar Elektrindo, an Indonesian company under Indonesian-Chinese

43 *Ministry of Law*, Public Consultation on the Report of the Singapore International Commercial Court Committee, 3 December 2013, https://tinyurl.com/2ksuyrps (retrieved on 15 July 2025).

44 Author's interview with a former employee of the SICC (2 December 2022).

45 *Reyes*, The SICC, International Judges and International Commercial Dispute Resolution in: Dziedzic/Young (eds.), The Cambridge Handbook of Foreign Judges on Domestic Courts, pp. 71, 72.

46 See *Pillay/Toh*, The SICC Handbook, 2016.

47 *Teh/Yeo/Seow*, The Singapore International Commercial Court in Action, SAcLJ 28 (2016), 692, para. 7.

48 *BCBC Singapore Pte Ltd v PT Bayan Resources TBK* [2016] Singapore High Court (International) (SGHC(I)) 1; see *Teh/Yeo/Seow*, SAcLJ 28 (2016), 692.

49 SICC News No. 11, April 2018, p. 1, https://tinyurl.com/nhbtxhke (retrieved on 15 July 2025).

ownership.[50] The outcome of the case is not publicly known, and no decision has been published in the official law reports.[51]

e) Extensions and Amendments to Procedural Law, Separate Rules of Procedure

Subsequently, the rules of court applicable to the SICC and other SICC-related legislation have been expanded and amended. Notably, in early 2018, Section 18D(2)(a) of the Supreme Court of Judicature Act 1969 (SCJA) was clarified to confirm that the SICC, as a subdivision of the High Court, has jurisdiction to hear any proceedings related to international commercial arbitration for which the International Arbitration Act 1994 (IAA) provides High Court jurisdiction.[52]

A civil law reform introduced a separate set of rules for the SICC, known as the Singapore International Commercial Court Rules 2021 (SICC Rules). This change underscored the intention to accentuate the operational independence of the SICC from the General Division of the High Court and to highlight its distinct international character.[53]

f) Development of Incoming Cases

The number of cases pending before the SICC has increased steadily, rising from eight cases at the end of 2016 to either 83 or 77 cases at the end of 2021 – the data is unclear. Most cases are referred by the General Division of the High Court,[54] indicating that the SICC is not typically the first court the parties choose. The table below shows the number of cases per year:

Date	Number of Cases	Referrals from the General Division of the High Court	Direct invocation of the SICC	Direct invocation of the SICC in per cent
End of 2016[55]	8	8	0	0
End of 2017[56]	17	17	0	0

50 *Maybank*, Annual Report, 2016, 75, 79, https://tinyurl.com/mr2c7axu (retrieved on 15 July 2025).

51 See the official database of SICC judgments at https://www.judiciary.gov.sg/singapore-international-commercial-court/hearings-judgments/judgments (retrieved on 15 July 2025).

52 Supreme Court of Judicature (Amendment) Act 2018. On that point, *Rajah*, Second Reading Speech by Senior Minister of State for Law and Finance on Supreme Court of Judicature (Amendment) Bill, 9 January 2018, para. 9 to 13, https://tinyurl.com/4avkfwvm (retrieved on 15 July 2025).

53 *Chong/Yip* (no. 34), para. 3.251.

54 *Reyes* (no. 45), pp. 71, 74.

55 SICC News Issue No. 3, Dezember 2016.

56 SICC News Issue No. 10, February 2018.

Date	Number of Cases	Referrals from the General Division of the High Court	Direct invocation of the SICC	Direct invocation of the SICC in per cent
End of 2018[57]	29	28	1	3.4
End of 2019[58]	45	40	5	11.1
End of 2020[59]	62	56	6	9.7
End of 2021 (SICC)[60]	83	73	10	12
End of 2021 (Second Minister for Law)[61]	77	73	4	5.2
End of 2022	unknown	89 (end of August 2022)[62]	unknown	unknown
Since end of 2022	unknown	unknown	unknown	unknown

The figures for 2021 are unclear due to two different values for the number of direct invocations of the SICC that year. A memo from the SICC in February 2022 cites ten direct invocations,[63] while a speech by the Second Minister for Law in September 2022 mentions only four 'fresh filings',[64] which in SICC parlance refers to direct invocations of the Court.[65] Assuming there were 73 referrals from the General Division of the High Court in 2021, the SICC memo indicates a direct invocation rate of 12 per cent. In contrast, the Minister's speech suggests a rate of only 5.2 per cent for direct invocations.

From January up until the end of August 2022, the ministerial speech mentioned 89 cases referred to the SICC.[66] Since that speech, no specific case figures for the

57 SICC News Issue No. 16, February 2019.

58 SICC News Issue No. 21, April 2020.

59 SICC News Issue No. 26, February 2021.

60 SICC News Issue No. 27, February 2022.

61 *Tong*, Opening Remarks at SICC INSOL Seminar, 22 September 2022, para. 9, https://tinyurl.com/3adpzvnd (retrieved on 15 July 2025).

62 *Tong* (no. 61), para. 9.

63 SICC News Issue No. 27, February 2022.

64 *Tong* (no. 61), para. 9.

65 *Lao Holdings NV v Government of the Lao People's Democratic Republic* [2022] SGHC(I) 6, para. 26; *CBX v CBZ* [2021] Singapore Court of Appeals (International) (SGCA(I)) 4, para. 17.

66 *Tong* (no. 61), para. 9.

SICC have been officially published. This does not imply that fewer cases have been referred to the SICC since 2021 compared to previous years, which could be attributed to the outbreak and global spread of COVID-19 during that period.[67] Nor can it be concluded that the SICC has been directly invoked less frequently since 2021. However, the absence of precise case numbers since 2022 contrasts with the transparent communication policy of previous years and raises questions about the reasons behind it. Despite repeated requests,[68] the SICC has not disclosed the total number of cases pending at the end of 2022 or the number referred by the General Division of the High Court. Additionally, Singapore lacks a Freedom of Information Act that would provide a right of access to official information.[69] Based on the available data, it is evident that the SICC has been directly invoked in approximately 10 to 12 per cent of cases since 2019, if not less.

Less than a decade after the opening of the SICC, these figures are not surprising – even without the impact of a global pandemic. Initially, there would have been few contracts in which the parties agreed to the SICC's jurisdiction, and among those that did, not many would have resulted in a dispute.[70] It has been argued that the SICC would need to market its services as an international commercial court actively – a task courts are not typically accustomed to, especially on the international stage.[71] Even under the most optimistic scenario, the SICC could not expect parties to start including jurisdiction clauses for the SICC in their contracts until at least one to two years after a serious marketing campaign abroad.[72] A further one to two years would then pass before the first disputes under these contracts emerged, meaning that the SICC might not receive its first 'own' cases until three to four years after it began self-marketing at the earliest.[73]

2. Research Question

Marketing is crucial in the competition between jurisdictions and dispute resolution systems.[74] However, marketing alone will only persuade a limited number of parties in international trade to include SICC jurisdiction clauses in their contracts.

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67 See *Han/Yin/Wu et al.*, Environment and COVID-19 Incidence: A Critical Review, J. Environ. Sci. 2023, 933.

68 E-mails from the author to the SICC dated 12 May, 9 June and 5 July 2023.

69 On that point, see *Han*, The Singapore I Recognise, 2023, pp. 77–85.

70 *Yeo*, Commercial Conflict of Laws, 2023, para. 06.082; *Bell*, The New International Commercial Courts – Competing with Arbitration? The Example of the Singapore International Commercial Court, Contemp. Asia Arbitr. J. 11 (2018), 193, 212.

71 *Hwang*, Commercial Courts and International Arbitration – Competitors or Partners?, Arbitr. Int. 31 (2015), 193, 197.

72 *Hwang*, Arbitr. Int. 31 (2015), 193, 197.

73 *Hwang*, Arbitr. Int. 31 (2015), 193, 197.

74 *Kötz*, AnwBl 2010, 1, 7.

Effective marketing must be supported by thorough market research to understand the needs and preferences of potential clients.[75] Market research indicates that arbitration, which has been the dominant form of dispute resolution for international commercial disputes for years, remains overwhelmingly popular.[76] Some studies show that arbitration is the preferred method for resolving cross-border disputes for 90[77] or even 97 per cent[78] of those involved, while other studies report it as the preferred method for 76 per cent.[79] Against this background, the question arises regarding the extent to which parties should choose to settle their commercial disputes before the SICC rather than an arbitral tribunal.

Arguments in favour of the SICC include the anticipated increase in cross-border investment in Asia, which was expected to highlight the limitations of arbitration and suggest the advantages of a court system (albeit hypothetically).[80] Other arguments supporting the SICC were more implicit[81] or merely referenced. For example, aside from public interests (which are not typically decisive for private parties), the raison d'être of the SICC was also seen in the fact that the international commercial courts being established in China at the same time would primarily handle New Silk Road projects, potentially leaving an (unspecified) gap that the SICC could fill.[82]

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75 *Peter*, Warum die Initiative „Law – Made in Germany" bislang zum Scheitern verurteilt ist, JZ 2011, 939, 946.

76 *Blackaby/Partasides/Redfern*, Redfern and Hunter on International Arbitration, 7th ed., 2022, para. 1.03; *Tan/Grundy*, Current Perspectives on the Choice of Singapore Jurisdiction and Governing Law in Cross-border Transactions in Asia, SAL Practitioner (SAL Prac) 2022, para. 1; Queen Mary University of London, 2021 International Arbitration Survey: Adapting Arbitration to a Changing World, 2021; Singapore Academy of Law/IPSOS, 2019 Study on Governing Law & Jurisdictional Choices in Cross-Border Transactions, 2019; *Yip*, The Singapore International Commercial Court: The Future of Litigation?, Erasmus Law Rev. 12 (2019), 82, 84; Queen Mary University of London, 2018 International Arbitration Survey: The Evolution of International Arbitration, 2018; Queen Mary University of London, 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration, 2015; *Loh*, The Limits of International Arbitration and Introduction to the Concept of the Singapore International Commercial Court, in: Geimer/Kaissis/Thümmel (eds.), Ars Aequi et Boni in Mundo, 2014, pp. 343, 354; *Rajah/Rajah/Ang* et al. (no. 23), para. 16.

77 Queen Mary University of London, 2015 (no. 76); Queen Mary University of London, 2021 (no. 76).

78 Queen Mary University of London, 2018 (no. 76).

79 Singapore Academy of Law/IPSOS (no. 76).

80 *Rajah/Rajah/Ang* et al. (no. 23), para. 8, 16; *Menon* (no. 20), para. 22, 23; *Hwang*, Arbitr. Int. 31 (2015), 193, 194–197.

81 See *Landbrecht*, The Singapore International Commercial Court (SICC) – An Alternative to International Arbitration?, ASA Bulletin 34 (2016), 112; *Thevar*, The SICC: Competitor, Companion or Captain?, Singapore Law Gazette 7, 2015, https://tinyurl.com/28hcdcf3 (retrieved on 15 July 2025).

82 *Yip*, Erasmus Law Rev. 12 (2019), 82, 84–85.

On the other hand, counter-arguments have been addressed only cursorily[83] or selectively,[84] often in relation to commercial courts in general or other courts, rather than specifically to the SICC.[85] Some authors critique commercial courts as such.[86]

From a business perspective, recent analyses of the requirements for an attractive dispute resolution forum have focused primarily on court proceedings under the German Code of Civil Procedure (*Zivilprozessordnung*, ZPO) and arbitration proceedings under German arbitration law. The SICC has only been briefly considered among several international commercial courts.[87]

As of 15 July 2025, 226 SICC decisions or appeal decisions from SICC proceedings have been published in the official law reports. This allows for an empirical and retrospective examination of what factors prompted the parties to invoke the SICC, provided the necessary information is available. Such an analysis would be valuable but is beyond the scope of this article. Instead, the question of why parties might choose the SICC was examined analytically and argumentatively, from a theoretical and prospective point of view. Even the 76, 90, or 97 per cent of respondents who prefer arbitration might consider taking a commercial dispute to the SICC if the advantages of arbitration applied equally or even more effectively to the SICC. They might also opt for the SICC if, despite the popularity of arbitration, there are disadvantages to arbitration that are lessened or avoided in SICC proceedings. The analysis of the extent to which these factors apply is summarised here.

II. The Benchmark: Direct Pros and Cons of Arbitration

The pros and cons of arbitration are much debated[88] and need not be discussed in detail here. Suffice it to say that the focus will be on the advantages and disadvantag-

83 See *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 208–212.

84 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 17–21; *Reichert/Groh*, NZG 2023, 1007, 1012–1013; *Bookman*, Va. J. Int. Law 61 (2021), 161, 201–214; *Walker*, Specialised International Courts: Keeping Arbitration on Top of Its Game, Int. J. of Arb. Med. & Disp. Man. 85 (2019), 2, 10–21; see *Stamboulakis/Crook*, Joinder of Non-Consenting Parties: The Singapore International Commercial Court Approach Meets Transnational Recognition and Enforcement, Erasmus Law Rev. 12 (2019), 98.

85 In this respect, *Stamboulakis/Crook*, Erasmus Law Rev. 12 (2019), 98.

86 See *Hau* (no. 3), pp. 115–130; *Linke/Hau* (no. 3), para. 1.68, 8.59; *Antonopoulou*, J. Int. Disput. Settl. 14 (2023); *Rath*, DRiZ 2023, 254; *Alcolea*, The Rise of the International Commercial Court: A Threat to the Rule of Law?, J. Int. Disput. Settl. 13 (2022), 413; *Grout/Blair*, The Role of International Commercial Courts in Commercial Dispute Resolution, in: Brekoulakis/Dimitropoulos (eds.), International Commercial Courts: The Future of Transnational Adjudication, 2022, p. 29; *Schultz/Bachmann*, Possible Problematic Social Externalities of a Dispute Resolution Product with Good Market Potential, in: Brekoulakis/Dimitropoulos (eds.), International Commercial Courts: The Future of Transnational Adjudication, 2022, p. 52; *Bookman*, Va. J. Int. Law 61 (2021), 161.

87 See *Lasthaus* (no. 3); *Domhan* (no. 1), pp. 83–115.

88 In detail *Dahm* (no. 2), para. 2.1–2.154; *Ahuja*, Taming the Guerrilla in International Commercial Arbitration, 2022, pp. 28–42; *Grohmann* (no. 1), pp. 157–172; *Münch* in: Münc-

es that directly affect the parties themselves, as this approach allows us to examine *the parties'* reasons for choosing the SICC over an arbitral tribunal. Consequently, the reasons of third parties or overarching legal policy issues are not included. This exclusion relates to aspects such as the involvement of third parties in arbitration (which requires the consent of all parties), the role of arbitration as a 'transmission belt for legal concepts' ('*Transmissionsriemen für Rechtsvorstellungen*') or 'catalyst for legal culture' ('*Katalysator für Rechtskultur*') through which values, structures and the balancing of interests are gradually and indirectly transmitted,[89] and Singapore's efforts to establish itself as a major dispute resolution centre and promote its legal sector and law (I 1 b)). Also not addressed are issues such as allegations of democratic illegitimacy and opacity in arbitration,[90] conflicting ethical obligations of lawyers from different jurisdictions,[91] the lack of precedential effect of arbitral awards (especially in jurisdictions with binding judicial precedents),[92] and compulsory arbitration in associations and organisations.[93] Although these overarching concerns are significant, they are not likely to be the determining factors for the parties when choosing between arbitration and the SICC for their specific dispute. With this in mind, the advantages and disadvantages of arbitration can be outlined as follows.

1. Advantages of Arbitration

Arbitration offers several advantages over litigation. It can be more neutral, allows parties to select their arbitrators, and enables them to tailor the procedure to their

hKomm ZPO, 6th ed, 2022, Vorbem. zu § 1025, para. 112 ff.; *Hertog* (no. 1), pp. 65–102; *Walker*, Int. J. of Arb. Med. & Disp. Man. 85 (2019), 2, 10–21; *Lachmann*, Handbuch für die Schiedsgerichtspraxis, 3rd ed., 2008, para. 119; *Schwab/Walter*, Schiedsgerichtsbarkeit, 7th ed., 2005, ch. 1, para. 8.

89 *Münch* in: MünchKomm ZPO (no. 88), Vorbem. zu § 1025, para. 136.

90 On that point *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 14–15; *Bookman*, Va. J. Int. Law 61 (2021), 161, 201–212; *Walker*, Int. J. of Arb. Med. & Disp. Man. 85 (2019), 2, 17; *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 208–209.

91 On that point *Wolf/Eslami* in: Beck'scher Online-Kommentar ZPO, 51st ed., 2024, § 1025, para. 27d; *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 209; *Rajah*, W(h)ither Adversarial Commercial Dispute Resolution?, Arbitr. Int. 33 (2017), 17, 24, 27–28.

92 On that point *Ahuja* (no. 88), pp. 39–40; *Bookman*, Va. J. Int. Law 61 (2021), 161, 212–214; *Walker*, Int. J. of Arb. Med. & Disp. Man. 85 (2019), 2, 7, 18; *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 209–210; *Rajah*, Arbitr. Int. 33 (2017), 17, 24, 27; *Kaufmann-Kohler*, Arbitral Precedent: Dream, Necessity or Excuse?, Arbitr. Int. 23 (2007), 357; *Zweigert/Kötz*, Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts, 3rd ed., 1996, pp. 253–259.

93 On that point *Wolf/Eslami* in: Beck'scher Online-Kommentar ZPO (no. 91), § 1025, para. 27e; *Wilhelmi*, Grenzen der fremdbestimmten Schiedsvereinbarung, SchiedsVZ 2024, 1; *Adolphsen*, Sport, Spiel und Schiedszwang, 2022; *Schwab/Walter* (no. 88), ch. 1, para. 9; *Schack*, Internationales Zivilverfahrensrecht, 8th ed., 2021, para. 1354.

specific needs. The arbitral tribunal may have additional powers, and parties are not required to be represented by a lawyer (or a particular type of lawyer). The tribunal remains actively involved throughout the dispute, hearings can be private and confidential, and enforcing awards internationally is relatively straightforward. Moreover, the general environment in arbitration is often more favourable than in court.

2. A Matter of Opinion: No Appeal

In between the pros and cons is the general lack of appeal against arbitral decisions,[94] unless the applicable arbitration law allows the parties to do otherwise. This finality of arbitration is a matter of perspective:[95] some see it as an advantage,[96] while others see it as a disadvantage[97] compared to litigation.

3. Disadvantages of Arbitration

Since arbitration relies on consensus and private autonomy,[98] it will reach its limits when no consensus exists or when a matter exceeds the bounds of private autonomy. Thus, arbitration can face a drawback compared to litigation: some disputes cannot be resolved through arbitration. Additionally, involving third parties in the arbitration may prove difficult or even impossible. The same challenges arise with granting and enforcing interim measures during arbitral proceedings. Moreover, arbitral awards tend to be less predictable than court judgments. Arbitration also faces issues of judicialisation, and it can be costly and time-consuming. Additionally, there is the concern of potential partiality among arbitrators.

III. The SICC as an Alternative to International Commercial Arbitration: Theses and Rationale

Having briefly covered the strengths and weaknesses of arbitration, we will now apply this benchmark to the law of the SICC, thereby crystallising the research question into theses. These theses will then be substantiated and tested.

94 *Reichert/Groh*, NZG 2023, 1007, 1008.

95 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 11; *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 210.

96 *Grohmann* (no. 1), p. 164; *Harms/Macher*, in: Hamm (ed.), Beck'sches Rechtsanwalts-Handbuch, 12th ed., 2022, para. 27b; *Walker*, Int. J. of Arb. Med. & Disp. Man. 85 (2019), 2, 14; *Schwab/Walter* (no. 88), ch. 1, para. 8.

97 *Hwang*, Arbitr. Int. 31 (2015), 193, 197.

98 *Trittmann/Salger/Essen*, in: Salger/Trittmann (eds.), Internationale Schiedsverfahren, 2019, para. 6.

1. Comparison between Arbitration and SICC Proceedings

Why should parties choose to resolve their commercial disputes before the SICC instead of going through arbitration? In general, the SICC does not possess the strengths of arbitration (III 2). However, it does avoid many of the common drawbacks associated with arbitration (III 4). Thus, proceedings before the SICC are neither distinctly better nor worse than those before an arbitral tribunal. Parties who see the benefits of arbitration as outweighing its drawbacks will have little incentive to choose the SICC. Conversely, parties for whom the disadvantages of arbitration are particularly problematic are more likely to prefer the SICC for resolving their disputes. This is particularly, though not exclusively, relevant to the question of who should have control over procedural flexibility. If the parties wish to retain most of the procedural flexibility for themselves (and their lawyers), then arbitration is the preferred option. Conversely, if the procedural flexibility is to be primarily managed by the dispute resolver, then the SICC procedure is more suitable.

Whether the fundamental but waivable right of appeal in SICC proceedings is an advantage or a disadvantage is a matter of opinion. In this respect, it is similar to the general absence of an appellate body in arbitration (III 3).

2. Advantages of Arbitration over SICC Proceedings

If the reasons in favour of arbitration applied equally or more strongly to the SICC, the SICC would be a compelling alternative to arbitration for parties to a dispute. However, it is evident that, for the most part, such reasons do not apply to the SICC.

a) Neutrality and the SICC

The SICC is less neutral than arbitration. This applies to both the neutrality of Singapore as a venue and the neutrality of the court itself, including both the SICC as an institution and its judges.

aa) Neutrality of Singapore and the SICC as an Object and Persons

In this context, neutrality is understood as value freedom or balance on a spectrum that arises from an entity's being and suchness,[99] as well as from a person's impartiality and independence. Similar to an arbitral tribunal, the neutrality of the SICC includes both the neutrality of the venue, Singapore, and the neutrality of the court itself. While the neutrality of Singapore can only be considered here as an object, the neutrality of the SICC requires examining both the institution as an object and the individuals within it, particularly its judges. The neutrality of the SICC as an institution relies on its being and suchness, while the neutrality of the SICC as a body of individuals depends on the impartiality and independence of its judges.

99 This method is explained, albeit in a very different context, by *Eitel*, Die überzonale Rechtsmacht deutscher Verwaltungsakte, 1961, p. 47.

bb) Neutrality of Singapore

As with arbitration, complete local neutrality before the SICC can be achieved if either all parties are resident in or from Singapore, or none of the parties are. Otherwise, a home advantage might benefit one party, or an away disadvantage might benefit another. Structurally, however, the situation in SICC proceedings mirrors that of arbitration proceedings.

If all parties reside in or are from Singapore, they all benefit from the home advantage of speaking the language(s) and being familiar with the country, its people, and customs. In this respect, there is local neutrality, as Singapore is equally familiar to all parties involved. However, this neutrality of location, which generally provides an all-around home advantage, may be compromised for logistical reasons. For instance, if a party that is actually domiciled in Singapore cannot be present in Singapore at the time and therefore has to travel for the court hearing, the neutrality may be affected in favour of one party, to the detriment of the other.

Even if all parties are domiciled in Singapore, the neutrality of the venue can be affected by the passage of time or other factors. For instance, if one party has been domiciled in Singapore for a longer period or is much better known, established, or recognised than the other party, neutrality may be compromised. An extreme example would be a dispute between a traditional company owned by a long-established trading family and a newly established, foreign-owned private company in Singapore. Up to this point, arbitration and SICC proceedings are similar in terms of venue neutrality and the factors that can threaten that neutrality.

In SICC proceedings, the degree of local neutrality becomes even more questionable if one of the parties is a state-owned enterprise or if state interests are involved. For instance, it is unclear whether the provisions for redaction and sealing of documents,[100] Singapore's eLitigation system for electronic submissions to the courts,[101] or general e-mail traffic between lawyers and clients effectively prevent interested government agencies from accessing confidential procedural correspondence. This concern is relevant in Singapore, where privacy of correspondence, mail, and telecommunications is not protected by fundamental liberties, data protection laws do not apply to the public sector,[102] and there have been instances such as the Prison Service handing over correspondence between prisoners awaiting capital punishment and their families or lawyers to the Public Prosecutor,[103] which was later accepted by the Court of Appeal as an oversight in two cases.[104]

100 O. 19., r. 7, O. 20, r. 13(1) SICC Rules.

101 O. 27, r. 9(1) SICC Rules.

102 Section 4(1)(c) Personal Data Protection Act 2012.

103 *Syed Suhail bin Syed Zin v AG* [2021] Singapore High Court (SGHC) 59, para. 3; *Gobi a/l Avedian v AG* [2020] Singapore Court of Appeals (SGCA) 77, para. 90.

104 *Gobi a/l Avedian v AG* [2020] SGCA 77, para. 93.

Furthermore, local neutrality is further diminished when an action before the SICC, despite its international nature, has a substantial connection with Singapore through at least one party, making it not an offshore case.[105] In such situations, the party with the connection to Singapore is likely to have some form of home advantage over the others. Complete local neutrality exists only when all parties are foreign and the case has no substantial connection with Singapore, in which case the proceedings do not provide any party with a home advantage, making it an away game for everyone.

cc) Objective Court Neutrality: The SICC as an Institution

As an object, the SICC is neutral to the extent that its existence and character ensure value freedom and balance between the parties. Given its role as a subdivision of the General Division of the High Court,[106] there is no inherent lack of neutrality in the SICC.

However, a critical issue arises with the qualification criteria for International Judges. According to Singapore's Constitution, anyone can be appointed as an International Judge if the Chief Justice deems them to have the necessary qualifications, experience, and professional standing.[107] This discretionary power poses a risk of imbalance and neutrality breaches. If the Chief Justice, even unintentionally, appoints a candidate who is unqualified, inexperienced, or of less professional standing, the neutrality of the SICC could be compromised. This concern is amplified when an International Judge is appointed for a specific case, as allowed by the Constitution.[108] Indeed, the professional standing of one of the SICC's first International Judges was called into question by past allegations of sexual harassment. This led to his resignation.[109]

dd) Subjective Court Neutrality: Judicial Impartiality

The impartiality of judges in the SICC is more at risk compared to an arbitral tribunal. Like any other person, SICC judges are exposed to the risk of being partial, consciously or unconsciously, covertly or overtly, in favour of certain parties, places, institutions or rights. Every SICC judge has this in common with every arbitrator. The impartiality

105 O. 3, r. 3(1) SICC Rules.

106 Section 18A SCJA.

107 Article 95(4)(c) Constitution of the Republic of Singapore (Constitution).

108 Article 95(4), (5) Constitution.

109 See *Sai*, SICC Judge Resigns Following Sexual Harassment Inquiry in Australia: Reports, Asian Legal Business, 25 June 2020, https://tinyurl.com/hsxaj966 (retrieved on 15 July 2025); *Knaus*, Former High Court Justice Dyson Heydon Sexually Harassed Staff, Inquiry Finds, The Guardian, 22 June 2020, https://tinyurl.com/47yffhtd (retrieved on 15 July 2025).

of the bench is enhanced when there are fewer individuals with personal connections to the case, even if such connections are only related to the applicable law.[110] Specifically, in the SICC, for cases governed by Singapore law or having a connection with Singapore, impartiality is most likely achieved if the bench does not include a Singaporean jurist, especially a professional judge from Singapore. Conversely, for disputes governed by foreign law or with foreign connections, impartiality is best preserved if no International Judge with ties to that jurisdiction or familiarity with the relevant foreign law is involved. However, the published decisions indicate that Singaporean professional judges are frequently part of the SICC bench, not only in offshore cases but also in those with significant or exclusive ties to Singapore. Additionally, the SICC's structure allows for and even encourages the appointment of International Judges who may have connections to the legal issues in the case.[111] Therefore, unlike in arbitration, parties before the SICC cannot prioritise the impartiality of the bench as a primary consideration in choosing where to resolve their disputes.

ee) Subjective Court Neutrality: Judicial Independence

Moreover, the independence of SICC judges is threatened in ways that are less prevalent or differently manifested in arbitration. These risks are somewhat abstract but still significant. One of the less likely threats to the independence of a person holding high judicial office, including a judge of the SICC,[112] is an attack in Parliament. The Constitution protects judges from such attacks by a parliamentary minority,[113] but in Singapore, where the ruling party has held a majority since independence in 1965, this protection mainly guards against coordinated opposition attacks. In practice, discussions about judicial conduct in Parliament are rare.

A more tangible risk is the power of the President of Singapore to remove a judge for misconduct, albeit only on the recommendation of a tribunal of at least five members.[114] This potential for removal could compromise a judge's independence, especially in cases involving state-owned enterprises or state interests.[115] Historically, there have been repeated[116] but controversial[117] allegations of a lack of judicial independence in Singapore.

110 *Reyes* (no. 45), pp. 71, 75.

111 O. 1, r. 13(2) SICC Rules; *Reyes* (no. 45), pp. 71, 75.

112 Article 2(1) Constitution.

113 Article 99 Constitution.

114 Article 98(3), (4), (5) Constitution.

115 *Bookman*, Va. J. Int. Law 61 (2021), 161, 195, 208.

116 *Silverstein*, Singapore: The Exception That Proves Rules Matter, in: Ginsburg/Moustafa (eds.), Rule by Law, 2008, p. 73; *Seow*, The Politics of Judicial Institutions in Singapore, 1995, https://tinyurl.com/d2suwc25 (retrieved on 15 July 2025).

117 *Thio*, Lex Rex or Rex Lex? Competing Conceptions of the Rule of Law in Singapore, UCLA Pac. Basin Law J. 20 (2002), 1; *Singh*, in: Singapore Parliament (ed.), Parliamentary Debates, 1995, column 229.

Additionally, the independence of an SICC judge may be influenced by the Chief Justice and the Registrar. The Chief Justice has the authority to reassign judges, including International Judges, across different courts,[118] while the Registrar handles the day-to-day allocation of cases.[119] This allocation might use general criteria or be subject to more subjective decisions, potentially assigning sensitive cases to judges perceived as predictable. There have been past allegations of 'manual' case assignment in Singapore's courts[120] and claims of transfer of judges who did not rule as expected, though these were dismissed by a Commission of Inquiry.[121]

These risks of interference, whether from Parliament, the President, the Chief Justice, or the Registrar, create incentives for judges to align with expectations. A tenured judge might wish to maintain good standing with their employer for career advancement, while an International Judge or Judicial Commissioner – effectively, a probationary judge[122] – might seek to extend their term by satisfying their employer, the state.[123] As International Judges are paid on a time basis,[124] they also have a financial interest in their assignments,[125] a situation not faced by arbitrators who lack a direct employer.

There is also the possibility, and therefore the risk, that an International Judge or Senior Judge – a former judge of the Supreme Court, usually one who has reached retirement age[126] – may come into contact with parties or circumstances that may compromise his independence. Such other circumstances may arise from external sources, such as *other* employers or parties that regularly appoint arbitrators, which create similar incentives for maintaining favourable conduct. While Supreme Court judges in Singapore generally maintain their independence by virtue of their tenure, this is less clear for International or Senior Judges who are not tenured, especially if they have other roles, such as acting as judges or arbitrators elsewhere.[127] There is at

118 Article 94(6) Constitution.

119 O. 1, r. 13(2) SICC Rules.

120 See *Seow* (no. 116).

121 See *Tan*, in: Lee/Pittard (eds.), Asia-Pacific Judiciaries: Independence, Impartiality and Integrity, 2017, pp. 284, 296–297; *Seow* (no. 116); Commission of Inquiry, Report of the Commission of Inquiry into Allegations of Executive Interference in the Subordinate Courts, 1986.

122 See *Tan* (no. 121), pp. 284, 292–294.

123 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 19; *Dziedzic*, An Introduction to Foreign Judges on Domestic Courts, in: Dziedzic/Young (eds.), The Cambridge Handbook of Foreign Judges on Domestic Courts, pp. 1, 23; *King/Bookman*, Am. J. Int. Law 116 (2022), 477, 513.

124 *King/Bookman*, Traveling Judges, Am. J. Int. Law 116 (2022), 477, 502.

125 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 19; *King/Bookman*, Am. J. Int. Law 116 (2022), 477, 513.

126 See *Tan* (no. 121), pp. 284, 292.

127 *King/Bookman*, Am. J. Int. Law 116 (2022), 477, 503.

least one International Judge of the SICC where this is the case.[128] Another example in a non-Singaporean context is the case of the judge who sat on the bench of both a Cayman Islands court and a court in Qatar, and who was appointed to sit in the Cayman Islands court in proceedings against a Qatari state-owned company.[129]

ff) Subjective Court Neutrality and Codes of Conduct

The judicial duty of neutrality and the associated risks of impairment are addressed by codes of conduct adopted by the Supreme Court and, specifically for International Judges, by the SICC as part of judicial self-governance.[130] However, these codes are designed primarily as guidelines and are not legally binding.[131] As such, they are intended more for public information and promotion rather than as enforceable regulations.[132] Essentially, these codes highlight the principle of judicial neutrality without effectively mitigating the objective risks of its compromise.

gg) Relationship between Subjective Court Neutrality and Impartiality

Maximising the neutrality of SICC judges would require not only claiming their impartiality and independence but also establishing it objectively, or at least to the satisfaction of the parties involved. In arbitration, parties attempt to achieve this by observing the market,[133] often through informal 'beauty contests' where they shortlist candidates and interview them personally before making an appointment.[134] This approach is feasible in arbitration due to its reliance on private autonomy and the flexibility of selection that characterises the process.

A state institution like the SICC cannot aim for maximum or absolute judicial neutrality, as it must also address overriding interests such as the administration of justice[135] or the development of the law (I 1 b)).[136] Consequently, the requirement

128 *Alcolea*, J. Int. Disput. Settl. 13 (2022), 413, 431; *King/Bookman*, Am. J. Int. Law 116 (2022), 477, 504.

129 See *Almazeedi (Appellant) v Penner and another (Respondents) (Cayman Islands)* [2018] UKPC 3.

130 See Judicial Code of Conduct for the Judges and Judicial Commissioners of the Supreme Court of Singapore, 6 November 2020; Judicial Code of Conduct for International Judges of the Supreme Court of Singapore, 6 November 2020.

131 Judicial Code of Conduct (no. 130), p. 2; Judicial Code of Conduct for International Judges (no. 130), p. 2.

132 Judicial Code of Conduct (no. 130), p. 2; Judicial Code of Conduct for International Judges (no. 130), p. 2.

133 *Honeyman*, How to Find an Arbitrator, 2013, https://tinyurl.com/2uh5bb7y (retrieved on 15 July 2025).

134 *Lachmann* (no. 88), para. 122, 827.

135 *Rappo, Tania v Accent Delight International Ltd* [2017] SGCA 27, para. 122.

136 *Menon* (no. 20), para. 27.

of judicial neutrality must be balanced against these interests when conflicts arise. This implies that while judicial neutrality may be an ideal – as outlined in the codes of conduct for judges adopted by the Supreme Court and the SICC –, its highest expression in a specific case may often take a back seat to factors such as the qualifications, experience, or availability of the judges. This approach is justified by the belief that even if a judge is not perfectly neutral due to existing prejudice or dependencies, as long as these do not manifest as actual partiality, they will not objectively harm the parties, the proceedings, or the law.

b) Flexibility of Choice and the SICC

Arbitration offers more flexibility than the SICC in deciding whether an arbitral tribunal or the SICC should handle a dispute. This does not affect the initial choice of one or the other; both options remain available to the parties. However, once the choice has been made and the usual follow-up issues arise, the SICC must step back. Unlike an arbitral tribunal, the parties cannot choose their judges and ultimately have no say in whether the SICC acts or not.

aa) Exercise of Jurisdiction

The parties have less control over whether the SICC will handle their dispute compared to whether an arbitral tribunal will decide the matter. Even though the parties can establish the SICC's jurisdiction through a written jurisdiction agreement,[137] the SICC ultimately decides whether to exercise that jurisdiction, the only caveat being that the SICC cannot refuse to exercise its jurisdiction simply because the dispute involves a legal system other than Singapore's.[138] This situation could only change if the SICC completely abandoned its current doctrine of *forum non conveniens*. This is highly unlikely, as it would contradict the court's international and commercial focus and could allow parties to bring non-international and non-commercial disputes under the SICC's jurisdiction.[139]

bb) Composition of the Bench

Any foreign judge of the SICC, especially an International Judge, faces the same limitations as a foreign arbitrator in Singapore arbitrations in respect of residence and employment law.[140] However, this does not enhance the parties' flexibility of choice in SICC proceedings. Unlike arbitration, parties cannot decide on the bench's composi-

137 O. 2, r. 1(1)(b) SICC Rules.

138 O. 2, r. 3(3) SICC Rules.

139 *Rajah/Rajah/Ang* et al. (no. 23), para. 28.

140 Section 2, 10(1), (2), 4, 5(1), (2), (3), 10(1) Employment of Foreign Manpower Act 1990, No. 2 Foreign Manpower (Workpass Exemptions – Specified Activities) Notification.

tion[141] or directly influence it.[142] Instead, the Registrar determines the composition of the bench based on an International Judge's familiarity with the relevant foreign law.[143] Additionally, the SICC's website provides detailed information about its judges, including their nationality, professional background, and specialisation,[144] which might help the parties anticipate which International Judges could be involved in their case.[145] Once the bench is set, parties may only reactively challenge a judge for actual,[146] imputed,[147] or apparent bias.[148] However, this does not equate to the fundamental arbitration practice of seeking or influencing a specific appointment, for example based on industry expertise.[149]

So far, the SICC has assigned at least one International Judge to each case,[150] allowing the claimant, but not the respondent, the chance to influence the bench by strategically organising the pleadings.[151] However, whether this indirect flexibility of choice can be fully realised remains uncertain. While the SICC's bench is relatively international, with 24 International Judges from ten jurisdictions as of 15 July 2025, there is an imbalance.[152] Twenty of these judges come from common law jurisdictions (Australia, Canada (British Columbia), England and Wales, Hong Kong, India, and the United States), while only four come from civil law jurisdictions (China, France, Germany, and Japan). This lack of balance between common law and civil law traditions,[153] as well as other legal traditions, limits even the indirect flexibility of choice at the SICC.[154]

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141 *Chong/Yip* (no. 34), para. 2.34; *Bookman*, Va. J. Int. Law 61 (2021), 161, 214; *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 212.

142 *Chong/Yip* (no. 34), para. 2.34.

143 O. 1, r. 13(2) SICC Rules.

144 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 12.

145 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 12; *Chong/Yip*, Singapore as a Centre for International Commercial Litigation: Party Autonomy to the Fore, J. Priv. Int. Law 15 (2019), 97, 101.

146 On that point *Chee Siok Chin and Another v Attorney-General* [2006] SGHC 153, para. 9.

147 On that point *Yong Vui Kong v Attorney-General* [2011] SGCA 9, para. 147.

148 On that point *BOI v BOJ* [2018] SGCA 61, para. 103.

149 *Reichert/Groh*, NZG 2023, 1007, 1011.

150 *Walker*, A Comparative Perspective on International Commercial Courts in: Brekoulakis/Dimitropoulos (eds.), International Commercial Courts: The Future of Transnational Adjudication, pp. 115, 144; *Godwin/Ramsay/Webster*, International Commercial Courts: The Singapore Experience, Melb. J. Int. Law 18 (2017), 1, 30.

151 *Chong/Yip* (no. 34), para. 2.34, fn. 83.

152 *King/Bookman*, Am. J. Int. Law 116 (2022), 477, 514.

153 *King/Bookman*, Am. J. Int. Law 116 (2022), 477, 514.

154 *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 200.

Increasing the flexibility in SICC proceedings could involve allowing parties to influence directly, if not determine fully, the bench of judges. For instance, parties could choose judges they deem most suitable from the SICC's roster or from a larger pool. This would be especially beneficial for cross-border litigation in Asia (I b)), where most legal systems follow civil law.[155] However, unrestricted choice could lead to costly tactical manoeuvring, as seen in international arbitration.[156] Therefore, any right to choose judges should be limited in duration. To ensure adequate choice, the SICC should expand and diversify its bench or provide more candidates from civil law jurisdictions,[157] similar to the arbitrator panels in international arbitration institutions. This would allow a selected candidate to be appointed as an International Judge for specific cases, as permitted by Singapore's Constitution.[158]

c) Flexibility of Procedure and the SICC

In general, SICC proceedings offer less flexibility for the parties than arbitration. Parties cannot set their own procedural rules, but must follow the detailed and sometimes rigid requirements of the SICC Rules. Procedural flexibility is thus limited to working within the framework of these rules, though parties may occasionally deviate from them to suit their needs or preferences. By contrast, the court can apply the SICC Rules with much greater flexibility.

aa) Flexibility and Sovereignty of Procedure

The procedure under the SICC Rules is designed to offer maximum flexibility, alongside the principles of speedy and efficient justice, fairness, impartiality, practicality, and compatibility with international trade. However, this flexibility is primarily for the court to exercise in interpreting the provisions and applying its powers under the SICC Rules.[159] While the parties must assist the court,[160] they do not have the same control over the proceedings as they would in arbitration. The court retains sovereignty over the proceedings. Accordingly, the SICC Rules grant the court, and only the court, maximum procedural flexibility. The court can decide flexibly on the consequences of complying with or failing to comply with procedural rules. It can make any order it considers just, appropriate and necessary or desirable for the just, expeditious and economical resolution of the case, even if this goes beyond the specific provisions of the SICC Rules.[161] Where there are no

155 *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 200.

156 *Reyes* (no. 45), pp. 71, 80.

157 *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 200.

158 Article 95(5)(a) Constitution.

159 O. 1, r. 3(1) SICC Rules.

160 O. 1, r. 3(2) SICC Rules.

161 O. 1, r. 11(1) SICC Rules.

explicit provisions in the SICC Rules, the court can refer to the general law of civil procedure in Singapore, the Rules of Court 2021, for guidance.[162]

However, the court's procedural flexibility has limits. It applies only to the procedural rules of the SICC Rules, not to statutes such as the Supreme Court of Judicature Act 1969, the Legal Profession Act 1966 (LPA) and its subsidiary legislation, or to court decisions with precedential effect (vertical stare decisis).[163] Additionally, if a procedural rule requires a party's consent, the court must obtain that consent;[164] it cannot unilaterally bypass *this* requirement. Moreover, the court's discretion to exercise procedural flexibility is confined to Singapore and does not extend to actions taken abroad. Apart from these limitations, the broad procedural discretion granted to the court means that the express requirements of the SICC Rules largely serve as guidelines for the court, which it may choose to follow or disregard as it sees fit.

From a purely legal standpoint, it would be possible to shift sovereignty over SICC proceedings further from the court to the parties, provided that the court's statutory responsibilities and powers[165] remain intact. This is particularly relevant to Sections 18A to 18M SCJA, which often require details to be governed by the SICC rules of procedure,[166] thus necessitating their existence and validity. Consequently, these rules of procedure cannot be left entirely to the parties. Therefore, any transfer of procedural flexibility from the court to the parties can only occur within the framework of the SICC Rules. Allowing the parties to exercise procedural flexibility in this way would risk unregulated outcomes if they agreed to replace the SICC Rules with another set of procedural rules. Specifically, certain court powers, such as involving third parties without their consent,[167] might remain unaddressed. Consequently, any consequences arising from such an agreement would be solely the responsibility of the parties.

Although legally possible, a transfer of procedural flexibility sovereignty to the parties is unlikely for policy reasons. Where procedural flexibility in arbitration has not led to international best practices (I b)) but rather to disadvantages for the parties, the legislator adopts a different approach, aiming for greater accountability and transparency in the SICC compared to commercial arbitration.[168] Indeed, the legislator's approach involves regulating procedural flexibility in the opposite manner to arbitration. Instead of allowing largely unrestricted flexibility, which can be

162 O. 1, r. 11(3) SICC Rules.

163 See *Peter Low LLC v Higgins, Danial Patrick* [2017] Singapore High Court, Registrar (SGHCR) 18, para. 21; *Chan Yat Chun v Sng Jin Chye* [2016] SGHCR 4, para. 11.

164 O. 1, r. 11(2) SICC Rules.

165 Section 18D(1) SCJA.

166 Section 18D(1), (2), 18K(1)(a), 18L SCJA.

167 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 6.

168 *Chong/Yip* (no. 34), para. 2.33.

excessively restricted or abused, there is significantly less flexibility by default, with the possibility of extending it in specific cases. In other words, rather than a procedural vacuum which the parties and the arbitral tribunal may fill with excessive rules and decisions, the SICC Rules provide a wealth of express provisions that can be applied and adjusted flexibly within the bounds of procedural principles and the needs of the case, primarily by the court and to a lesser extent by the parties.

bb) Language of the Proceedings

The less flexible nature of proceedings under the SICC Rules compared to arbitration is particularly evident in terms of language. Unlike in arbitration, where there may be more flexibility, the language of the tribunal in the SICC is English. Documents and witness statements in a foreign language must be properly translated[169] and, if necessary, interpreted.[170]

There are historical, legal, and practical reasons why English is the sole language of proceedings in the Supreme Court. Singapore's legal system, influenced by its colonial past, is based on English law.[171] Under Sections 58 and 59(1)(i) of the Evidence Act 1893, the general law of evidence,[172] Singapore's courts must take judicial notice of the meaning of English words without additional evidence. Consequently, only individuals who speak English are appointed as judges, including those at the SICC.[173] This requirement also extends to the admission of foreign lawyers and legal experts to the SICC.[174] Despite this, the SICC has the discretion to order a language other than English for the proceedings, at least for submissions and hearings. It would also be possible at a general legislative level to abandon the current language regime of the SICC Rules to allow languages other than English for the proceedings, given that the Supreme Court of Judicature Act 1969 does not specify a language for proceedings and Article 153A(2) of Singapore's Constitution provides that no person shall be prevented from using any language. If the SICC Rules were adjusted to permit any language spoken by the judges for submissions and hearings, alongside English for the judgment, it would not match the flexibility of arbitration, where parties can appoint arbitrators based on the languages they speak. However, it would represent a step towards greater flexibility.

169 O. 1, r. 7, O. 13, r. 7(1) SICC Rules.

170 O. 9, r. 4(4) in conjunction with Appendix A, Form 16 SICC Rules.

171 *Chong/Yip* (no. 34), para. 2.17; *Phang*, The Reception of English Law, in: Tan (ed.), Essays in Singapore Legal History, 2005, 7.

172 O. 13, r. 15(1) SICC Rules.

173 *Reyes* (no. 45), pp. 71, 76.

174 No. 4(1), (2), 12A(1) Legal Profession (Representation in Singapore International Commercial Court) Rules 2014.

cc) Amendment or Supplementation of Claim or Defence

Unlike arbitration, parties do not need to agree to amend or supplement their claims or defences during proceedings under the SICC Rules. Each party can request an amendment based on new circumstances but cannot request a supplement. The court decides whether to allow an amendment.[175] The procedure for making the application is otherwise strictly defined.[176]

It would be possible to reconcile the lower flexibility under the SICC Rules with the greater freedom in arbitration, which allows parties to amend and supplement their claims or defences without restriction, as long as it complies with mandatory law, either through a court order in specific cases or through general regulations. While the flexibility in arbitration varies with each case, it often leads to practical issues such as overly cautious tribunal conduct, higher costs, and longer proceedings, which can outweigh its benefits. In this respect, this point clearly illustrates the legislature's intention to ensure greater accountability and transparency in SICC proceedings compared to commercial arbitrations.[177] The goal is to promote the principles of speedy and efficient administration of justice and practicability by avoiding protracted processes common in many arbitrations. Proceedings under the SICC Rules are designed to prevent parties from making unfettered and time-consuming amendments or additions. The court should not need to spend time on determining whether an amendment is timely or adequately justified. Instead, parties are encouraged to submit their applications thoughtfully from the start. However, allowing amendments based on new circumstances aligns with another procedural principle: fairness.

dd) Written Proceedings

In contrast to arbitration, the SICC Rules place the decision on the extent of written proceedings with the court, not the parties.[178] The relative strictness of the SICC Rules, where the tribunal may consider but is not bound by party agreements on procedure, reflects the principles of speed, efficiency, and practicability. Unlike international arbitration, which is often criticised for being poorly managed, expensive, and lengthy,[179] the court, rather than the parties and their lawyers, should decide whether the proceedings are oral or written. Given this approach, it is legally possible but unlikely that the SICC Rules will adopt the flexibility of arbitration.

175 O. 16, r. 3 SICC Rules.

176 O. 1, r. 6 SICC Rules.

177 *Chong/Yip* (no. 34), para. 2.33.

178 O. 8, O. 20, r. 10(1) SICC Rules.

179 *Robbins*, The Efficiency Apex: Rethinking the Approach to Procedure in International Commercial Arbitration, Indian J. Arb. L. 11 (2023), 38.

ee) Hearing Through Video and Audio Transmission

The SICC Rules mention the use of video and audio transmission for trials and hearings[180] but do not specifically regulate or prohibit it. The court's general power to conduct proceedings allows for this method.[181] Unlike in arbitration, parties cannot agree to video and audio hearings on their own. For reasons of speed, efficiency, and practicality, the court makes the final decision on this matter. While it would be possible to align the SICC Rules with the flexibility seen in arbitration regarding video and audio hearings, such changes are unlikely to be pursued until best practices in arbitration are established. On the other hand, the SICC Rules expressly permit the hearing of witnesses abroad via video and audio transmission.[182] However, this is not automatically allowed but requires court authorisation. This necessity stems not from considerations of speed, efficiency, and practicality, but from the sovereign nature of judicial action, which will be addressed in the discussion of privacy and the SICC (III 2 f)).

ff) Active Judicial Management of Proceedings

The SICC Rules stipulate a more active judicial management of proceedings compared to civil proceedings under the Rules of Court 2021, but such management is still less active or substantial than the procedural laws found in many continental European civil procedure codes. Judicial management occurs during the case management conference,[183] which requires full preparation and follow-up by the parties.[184] Forms 16 to 20 for this purpose[185] already span more than fifteen A4 pages before completion; the final case management bundle, once completed and supplemented, can be significantly larger. This approach aims to be more comprehensive than flexible.

The other venue for judicial management is the oral hearing. Unlike civil law systems, such as in Sections 136(3), 139, and 278 ZPO,[186] the SICC Rules do not explicitly require the court to manage the oral hearing actively, either on its own initiative or by party agreement. According to the SICC Rules, the court can only issue orders that encourage or facilitate the parties in seeking an amicable settlement.[187] This approach contrasts with the more flexible arbitration procedures,

180 Appendix A, Form 16, 19, 20, 26, 28 SICC Rules.

181 O. 1, r. 11, O. r. 5(1), (2) SICC Rules.

182 O. 13, r. 14(1) SICC Rules.

183 O. 9 SICC Rules.

184 O. 9, r. 3 SICC Rules.

185 O. 9, r. 4(4) in conjunction with Appendix A, Form 16 to 20 SICC Rules.

186 *Fritsche*, in: MünchKomm ZPO, 6th ed, 2020, § 136, para. 4, § 139, para. 1; *Prütting*, in: MünchKomm ZPO, 6th ed, 2020, § 278, para. 14.

187 O. 9, r. 5 SICC Rules.

where parties can agree on the active and substantive management of proceedings by the arbitral tribunal. In some cases, the law even grants the tribunal the power to conduct conciliation hearings.[188]

The court's power to manage the proceedings actively and substantially is implicit and almost concealed in the SICC Rules.[189] This is primarily due to the historical view of Anglo-Saxon court proceedings, which extends to Singaporean court proceedings, as adversarial.[190] In this model, the judge is seen as an attentive listener, with the lawyers largely directing the course of the proceedings.[191] Despite the initial cultural unfamiliarity with this concept in Singapore,[192] it remains prevalent[193] due to Singapore's colonial history, during which many lawyers were trained in England,[194] and local lawyers continue to be educated in English and English procedural law.[195] Given the adversarial nature of the system, an active role for the judge is typically considered appropriate only in a formal sense, especially if mandated by law. Therefore, a *substantive* active role for the judge is not inherently suited to this procedural framework.[196] Given the deep-rooted nature of this principle among Singaporean lawyers, particularly litigators, judges, and judicial officers, it is understandable that Singapore's international arbitration law explicitly grants the arbitral tribunal the power to adopt inquisitorial processes under Section 12(3) IAA. This is despite the tribunal's general authority to determine procedural rules under other provisions of the same law.[197] This clarification was deemed necessary because inquisitorial processes, including the active management of substantive proceedings, are seen as unusual compared to adversarial proceedings and are sometimes outright rejected.[198]

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188 See *Dahm*, On the Powers of Courts and Arbitral Tribunals in the Amicable Settlement of Disputes by the Parties: A Look at Singapore and Selected Other Countries, SchiedsVZ 2023, 270.

189 O. 1, r. 11, 20, r. 5(1), (2), (3) SICC Rules.

190 On that point *Jacob*, The Fabric of English Civil Justice, 1987, pp. 5–8.

191 *Zweigert/Kötz* (no. 92), pp. 267–268; *Jacob* (no. 190), pp. 9–15.

192 *Gu*, Arbitration in Comparative Perspective, in: Moscati/Palmer/Roberts (eds.), Comparative Dispute Resolution, 2020, p. 311; *Roberge/Quek Anderson*, Judicial Mediation: From Debates to Renewal, Cardozo J. Conflict Resol. 19 (2018), 613, 621; *Rajah*, Arbitr. Int. 33 (2017), 17, 21–22.

193 *V Nithia v Buthmanaban s/o Vaithilingam and another* [2015] SGCA 56, para. 34; *Susilawati v American Express Bank Ltd* [2009] SGCA 8, para. 36; *Ng Chee Tiong Tony v Public Prosecutor* [2007] SGHC 217, para. 13.

194 *Abdullah* (no. 11), p. 193.

195 *Chong/Yip* (no. 34), para. 2.09.

196 *Kehrberger*, Die Materialisierung des Zivilprozessrechts, 2019, p. 253.

197 Section 3(1) IAA in conjunction with Article 18 UNCITRAL Model Law 1985.

198 *Sornarajah*, The Adoption of the UNCITRAL Model Law on Arbitration in Singapore, Y.B. Int'l Fin. & Econ. L. 1 (1996), 249, 259.

On the other hand, the deep roots of the adversarial procedure in Singapore suggest that the flexibility of the SICC Rules will remain behind that of arbitral procedures until the SICC Rules include a provision akin to Section 12(3) IAA. While arbitration proceedings are more flexible than SICC proceedings regarding the active and substantive management of cases, this comparison is limited to the *express* provisions of the SICC Rules. It does not imply that all SICC proceedings must be adversarial or that active and substantive management is impossible. Instead, in the absence of a statutory prohibition and considering the need for flexibility, it is for the court alone to determine whether, and to what extent, an inquisitorial approach and active management of proceedings will be implemented in a particular case.

gg) Expedited or Summary Proceedings

The SICC Rules do not include a general expedited procedure with specific special rules; summary procedures are only available in specific situations, such as when the claim is inconclusive[199] or the defendant's arguments are irrelevant.[200] The court can issue a summary decision on an interpleader application[201] and order an early hearing instead of deciding on a protective order application.[202] Additionally, the court may, either on its own or at a party's request, order an expedited appeal.[203] However, there is no provision for parties to agree on expedited or summary proceedings. This limits procedural flexibility in SICC proceedings compared to arbitration, although this could be addressed by introducing appropriate rules.

The absence of explicit provisions for expedited or summary proceedings in the SICC Rules, aside from the specific cases mentioned, does not indicate that the legislator has ignored the need for speed and efficiency. Rather, it reflects a procedural principle that all proceedings should be conducted as efficiently as possible, allowing the court to largely bypass the express provisions in the SICC Rules. Given this context, the legislator's choice not to explicitly regulate expedited and, with exceptions, summary proceedings appears deliberate, and the introduction of such rules seems unlikely for now.

hh) Rules of Evidence

Instead of relying solely on their own rules of evidence, which are largely based on the IBA Rules on the Taking of Evidence in International Arbitration,[204] the SICC

199 O. 20, r. 5(3) SICC Rules.

200 O. 16, r. 6(1), (2), (3) SICC Rules.

201 O. 11, r. 1 SICC Rules.

202 O. 18, r. 8 SICC Rules.

203 O. 21, r. 7 SICC Rules.

204 *Grohmann* (no. 1), p. 209; *Hertog* (no. 1), p. 113; *Teh/Yeo/Seow*, SAcLJ 28 (2016), 692, para. 20; on the IBA Rules *Nettlau/O'Dell/Hackstein*, An Examination of the 2020 Revision of the IBA Rules of Evidence, SchiedsVZ 2021, 315.

Rules also allow for the use of evidence rules from foreign law or other sources.[205] This flexibility, similar to that in arbitration proceedings, enables parties in SICC proceedings to apply other sets of rules such as the IBA Rules of Evidence or the Prague Rules (Rules for the Efficient Conduct of International Arbitral Proceedings),[206] as well as evidence laws like Sections 130 no. 5, 355 to 455 ZPO. Agreements on evidence in a narrower sense are also permissible.

However, there is less flexibility in adopting alternative rules of evidence under the SICC Rules than in arbitration, where the rules of evidence may be applied by agreement[207] or, in the absence of agreement, by decision of the arbitral tribunal.[208] Under the SICC Rules, parties must not only agree to exclude Singaporean evidence rules but also formally request the application of alternative evidence rules, which the tribunal must then grant.[209] If the parties cannot reach an agreement, the court cannot establish binding procedural rules, including evidence rules, as an arbitral tribunal can.[210] This limitation arises from the provision that the court cannot override the lack of consent regarding procedural rules that require party agreement. Consequently, the court must apply the evidence rules stipulated by the SICC Rules,[211] even if these rules are less practical than alternative options for the specific proceedings.[212]

This relative inflexibility of the SICC Rules results from a compromise between the goals of speed, efficiency, and practicality. Arbitration has faced criticism for complicating many proceedings, leading to increased costs and longer durations, partly because many arbitral tribunals do not consistently use their procedural flexibility to benefit the proceedings and the parties. The rules of evidence in the SICC Rules, which are not infinitely flexible, serve as a counterproposal: alternative evidence rules can be adopted if agreed upon and requested, but in the absence of such agreement, the court should not impose supposedly better rules. This is because requiring the parties to familiarise themselves with new rules could extend the overall duration of the proceedings. It is therefore unlikely that this approach will be revised to allow for greater flexibility in the near future, despite its legal possibility.

205 Section 18K SCJA, O. 13, r. 15(1) SICC Rules.

206 On that point *Rombach/Shalbanava*, The Prague Rules: A New Era of Procedure in Arbitration or Much Ado about Nothing?, SchiedsVZ 2019, 53.

207 Section 1042(3) ZPO, Section 23(1), 28(1) Arbitration Act 2001 (AA), or Section 15A, 3(1) IAA in conjunction with Article 19(1) UNCITRAL Model Law 1985.

208 Section 1042(4) ZPO, Section 23(2), (3) AA, or Section 3(1) IAA in conjunction with Article 19(2) UNCITRAL Model Law 1985.

209 O. 13, r. 15(1), (2) SICC Rules.

210 *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 201.

211 *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 201.

212 O. 1, r. 3(1) SICC Rules.

However, the relationship between the pathway to alternative evidence rules prescribed by the SICC Rules and the rules of evidence and burden of proof inherent in some substantive rights, such as those in German law, remains unclear. In arbitration proceedings, agreeing to German substantive law typically implies that the arbitral tribunal must apply the associated rules of evidence and burden of proof, unless the parties explicitly indicate otherwise. Examples include Sections 280(1) and 319(1) German Civil Code (*Bürgerliches Gesetzbuch*, BGB) or Section 1(2) German Commercial Code (*Handelsgesetzbuch*, HGB). In contrast, the SICC Rules require more steps: in addition to agreeing on alternative evidence rules, parties must also agree to exclude the relevant Singaporean evidence rules, apply for a different rule of evidence, and have the court grant this application.

The first requirement – an agreement not to apply Singapore's rules of evidence – is often satisfied, at least implicitly, by the choice of a substantive law with its own rules of evidence. The application for a different rule of evidence, which must be made in the prescribed form – summons and written witness statement[213] – cannot be avoided by simply choosing another law. In the absence of such a request, if the court does not apply the evidence rules agreed upon by the parties, there will be an inconsistency between the agreed-upon law of evidence and the evidence rules under the SICC Rules.

In such a case, if German law is agreed upon, does the statutory presumption of fault under Section 280(1) BGB apply, according to which the debtor must show and prove that he is not responsible for the breach of duty? Or does O. 12, r. 1 SICC Rules apply irrespective of the agreement of German law, according to which each party must make available to the other parties from the outset all documents in its possession or under its control on which it relies? The better answer respects both the private autonomous decision of the parties and the SICC Rules.

In principle, even in SICC proceedings, choosing substantive law should cover the rules of pleading and evidence that come with that law, unless the parties clearly indicate otherwise. If the application of a non-Singaporean law of evidence might fail due to a missing formal request from a party, the court should, for the sake of a fair trial, use its procedural flexibility, suspend the requirement for a formal request and look for the request in any informal declarations or actions of the parties. If such a request is likely present, the court can then order the use of the agreed law of evidence. Of course, to make this decision in line with the parties' agreement, the court needs to be aware that the chosen substantive law includes its own rules of evidence and burden of proof.

ii) Decision-Making and Duty to Give Reasons for Judgment

Unlike in arbitration, the multi-judge court's[214] decision-making process is not influenced by the parties' agreement, nor is it affected by whether the court must

213 O. 1, r. 6 SICC Rules.

214 Section 18H(3) SCJA, O. 1, r. 10 SICC Rules.

provide sufficient reasons for its decisions in law and fact.[215] The court's broad discretion to organise the proceedings flexibly does not change this, as it applies only to the SICC Rules and not to statutory provisions and established court decisions. Allowing decisions to vary based on different agreements between parties, such as voting majorities or veto rights, would undermine the legality of judicial decisions and hinder the development of the law. Such variations would also detract from the comprehensibility and transparency of court decisions. These issues are less significant in arbitration,[216] and as long as the SICC remains a state court, this limited flexibility compared to arbitration is unlikely to change.

jj) Cost

Unlike in arbitration, the court, not the parties, makes the final decision on costs or their determination in SICC proceedings.[217] The court can consider any cost agreement between the parties as one factor in assessing reasonableness but must do so without affecting the principle that the prevailing party is entitled to recover its costs.[218]

The fact that parties before the SICC can only supplement, but not replace, the losing party's basic obligation to bear costs through their own agreement significantly limits the flexibility of the SICC procedure compared to arbitration. Commonly used agreements in international arbitration, like the so-called American Rule – where each party covers its own costs and a proportionate share of the costs of the arbitral tribunal and, if applicable, the administering institution[219] – are therefore, if not excluded, at least subject to final review by the court. One could argue that this rule helps prevent disproportionate outcomes from cost agreements, especially when such agreements are made before the proceedings begin and do not consider the outcome or actual legal costs. Viewed this way, the rule acts as a corrective measure, to be applied by the court only when a generally preferable cost agreement results in disproportionate consequences. However, considering the wording of the provision, which generally entitles the successful party to reimbursement of incurred costs and places any cost agreement as a subordinate factor, this result must be achieved with the understanding that the SICC Rules are largely guidelines.

215 *PP v Bong Sim Swan, Suzanna* [2020] SGCA 82, para. 32; *Ten Leu Jiun Jeanne-Marie v National University of Singapore* [2015] SGCA 41, para. 40; *Mervin Singh and another v Public Prosecutor* [2013] SGCA 20, para. 37; *Thong Ah Fat v Public Prosecutor* [2011] SGCA 65, para. 15–46; on that point *Ho*, The Judicial Duty to Give Reasons, Legal Studies 20 (2000), 42.

216 *Raeschke-Kessler*, SchiedsVZ 2023, 158, 159; *Rajah*, Arbitr. Int. 33 (2017), 17, 24, 27; *Kaufmann-Kohler*, Arbitr. Int. 23 (2007), 357, 375.

217 O. 22, r. 2 SICC Rules.

218 O. 22, r. 3 SICC Rules.

219 *Bartsch*, Third-Party Funding – A New Player in the Field of Cost Allocation, SchiedsVZ 2021, 12, 14; *Lachmann* (no. 88), para. 1995.

The court retains wide discretion in conducting proceedings, even if this discretion contradicts the explicit wording of the SICC Rules.

To justify this rule, it has been argued that Singaporean lawyers are often not directly instructed in disputes before the SICC. Instead, they are typically sub-instructed as co-counsel by international law firms outside Singapore or by foreign lawyers or law firms admitted to the SICC or otherwise in Singapore.[220] Therefore, the fact that the SICC Rules do not solely rely on a cost agreement between the parties to determine who bears the legal costs and to what extent relates to the division of work between lawyers from different jurisdictions, similar to international arbitration. Indeed, while the SICC is willing to order the reimbursement of foreign legal costs to the winning party in cases with a significant Singapore connection,[221] it requires an explanation of why engaging a foreign lawyer was necessary.[222]

However, limiting the effect of cost agreements does not actually reduce the costs of litigation, including lawyers' fees. Instead, it merely reallocates the costs differently from what the parties had agreed. This seems more like a regulatory or, more precisely, a protectionist measure favouring the domestic legal profession. If the real aim is to reduce legal costs, it seems more effective to create an incentive to limit the number of lawyers involved in international proceedings. This could be achieved by liberalising the rules of admission to the SICC. Similar to arbitration, parties would then be able to be represented solely by the lawyer and law firm of their choice, without needing to instruct and pay for additional local lawyers and firms. Since this consideration relates more to the requirement for lawyers to be admitted to the SICC than to legal costs, it will be discussed in more detail at the appropriate point (III 2 e)).

kk) Time Limits for Appeal

Under the Supreme Court of Judicature Act 1969, parties may waive their right to appeal against decisions of the SICC by agreement.[223] However, if the appeal is not waived, the time limits specified in the SICC Rules apply to the appeal,[224] unless the court decides otherwise in its discretion. Unlike the time limits for applications to set aside arbitral awards, the time limits for appeals cannot be altered by agreement between the parties.

220 *Teh*, Costs Recovery in the SICC: A Different Regime, 2018, p. 3 https://tinyurl.com/3svkeesj (retrieved on 15 July 2025).

221 See *Sheila Kazzaz v Standard Chartered Bank* [2020] SGHC(I) 19, para. 9–12.

222 See *Kiri Industries Ltd v Senda International Capital Ltd* [2021] SGHC(I) 16, para. 99; on that point, see *Seow*, Recoverability of Foreign Lawyer Costs in the Singapore International Commercial Court, SAcLJ 35 (2023), 86, para. 27.

223 Section 29(a) SCJA in conjunction with no. 3(1) Fourth Schedule.

224 O. 21, r. 4 SICC Rules.

There is a qualitative difference between an appeal under the SICC Rules, which advances the case to the next instance, and an application to set aside an arbitral award under the UNCITRAL Model Law or the New York Convention system. An appeal involves reassessing the facts or the law, or both, with the aim of reviewing and possibly overturning an erroneous decision, benefiting both the parties and the public, and contributing to legal unity and development.[225] In contrast, an application to set aside an arbitral award is solely concerned with cassation,[226] and only in the interest of the parties. Comparing the flexibility of these procedures is therefore like comparing apples and oranges. Nevertheless, a quantitative comparison between an appeal under the SICC Rules and an application to set aside an arbitral award is possible. Generally, this comparison favours the arbitral procedure, as the time limits for appeals under the SICC Rules can only be extended by the court, not by the parties. The court's discretion in specific cases does not change this fundamental limitation. While the court may extend the appeal period beyond what is specified in the SICC Rules, it also has the authority to shorten it.

d) Interest and Compound Interest and the SICC

Regarding interest and compound interest, both arbitration and SICC proceedings offer similar advantages, with a slight edge for arbitration. Under the SICC Rules, interest is awarded unless the parties agree otherwise,[227] much like in arbitration. The minor, perhaps academic, disadvantage in the SICC procedure arises from the court's broad discretion,[228] which allows it to decide against awarding interest based on equity, expedition, expediency, or cost considerations. However, this discretion must be exercised while considering all procedural principles, including due process, fairness, impartiality, and compatibility with international commerce.[229]

e) Compulsory Legal Representation and the SICC

In proceedings under the SICC Rules, the requirement for lawyers is a notable disadvantage compared to arbitration, where there is more freedom in this regard. For entities that can sue or be sued – essentially the primary clientele of the SICC[230] – lawyers are largely mandatory. This requirement extends to both the necessity of appointing a lawyer and the choice of which lawyer to appoint, including the qualifications they must hold.

225 See Section 49(2) SCJA.

226 *Münch* in: MünchKomm ZPO (no. 88), § 1059, para. 84.

227 Section 18(2) SCJA in conjunction with no. 6 First Schedule, O. 20, r. 14(1) SICC Rules.

228 O. 1, r. 3(1)(a), (b) SICC Rules.

229 O. 1, r. 3(1)(c), (d) SICC Rules.

230 O. 3, r. 9(1) SICC Rules.

aa) Principle and Exceptions

The SICC Rules allow only a few exceptions to the general requirement for entities with the capacity to sue or be sued to have legal representation, specifically for certain corporations and associations.[231] Additionally, the court may, exercising its broad discretion in organising proceedings, choose to waive the obligation for a party to be represented by a lawyer in individual cases.

bb) Admission Requirement

Only Singapore advocates and solicitors, as well as foreign lawyers registered with the SICC, are authorised to act in proceedings under the SICC Rules, and even then only within the confines of their professional regulations. To summarise: A domestic lawyer in a local law firm can make submissions on the law and present facts in all SICC proceedings and any related appeal proceedings.[232] A foreign lawyer with full registration may act in an advisory capacity, represent a party, and make submissions on the law and facts in relevant proceedings before the SICC and the Court of Appeal,[233] though they need court permission to plead the facts[234] and can only submit on Singapore law in offshore cases.[235] The same applies to a local lawyer working in a foreign law firm.[236] A foreign lawyer with restricted registration may only submit on foreign law in relevant SICC and Court of Appeal proceedings with court permission and provide out-of-court advice.[237]

This intricate web of rules and exceptions, which the court cannot apply flexibly in individual cases as they are not provisions of the SICC Rules, seems designed to both uphold and advance Singapore law. However, it is evident that this system also serves to shield Singapore lawyers and law firms from foreign competition in Singapore-related proceedings.[238] This appears to reflect a degree of protectionism for local legal professionals at the procedural level (III 2 c) jj)). Concurrently, there is an effort to encourage foreign lawyers and law firms to recommend the SICC as a venue to their clients, especially for offshore cases.[239] This balancing act[240] has

231 O. 3, r. 9(2) SICC Rules.

232 Section 29(1), 140(1), 155(1) LPA.

233 Section 36O(1) LPA.

234 Section 36P(1) LPA.

235 Section 36P(1A)(a) LPA.

236 No. 14(1a) Legal Profession (Regulated Individuals) Rules 2015 (LPRIR).

237 Section 36P(2) LPA.

238 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 13; *Yip*, Erasmus Law Rev. 12 (2019), 82, 90; *Landbrecht*, ASA Bulletin 34 (2016), 112, 123.

239 *Yip*, Erasmus Law Rev. 12 (2019), 82, 90.

240 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 13; *Landbrecht*, ASA Bulletin 34 (2016), 112, 123.

resulted in relatively few instances of foreign lawyers acting as legal representatives in SICC proceedings to date.[241]

This situation is reminiscent of the arbitration law in Singapore before the revision of Section 35 Legal Profession Act 1966 in 2004.[242] Prior to this change, legal representation by a lawyer was mandatory for arbitrations under Singapore law, and foreign lawyers could only represent a party in conjunction with a local advocate and solicitor.[243] Since the revision, parties have been free to choose any representative for their arbitration, whether a local or foreign lawyer, or none at all.[244] Before this liberalisation, the number of arbitrations handled annually by the Singapore International Arbitration Centre stagnated or grew only moderately.[245] However, a decade after opening the market to foreign lawyers and advisers, the number of arbitrations had nearly quadrupled,[246] likely due to the increased accessibility and competition.

There will be no such extensive abolition of the SICC's admission regime, primarily because, unlike an arbitral tribunal, the court is tasked with developing the law as part of the Supreme Court (III 2 g)). Domestic lawyers play a role in this process as officers of the Supreme Court,[247] at least to the extent that they are permitted to make submissions on Singapore law before the SICC. However, there is a strong case for expanding the number of officers by liberalising the SICC admission regime. This would allow local advocates and solicitors working in foreign law firms, as well as foreign lawyers, to make submissions in SICC proceedings without restriction. Specifically, this would mean permitting them to plead the facts and make submissions on Singapore law in cases with a substantial connection to Singapore, without needing court permission. For local advocates and solicitors in foreign law firms, this change would simply remove a restriction on their role as officers of the Supreme Court.

On one hand, allowing full involvement of both local and foreign lawyers in presenting facts and Singapore law would foster an exchange of knowledge and enhance competition, in line with *Southwell* (I 1 a)). On the other hand, it would

241 See *Perry, Tamar v Esculier, Jacques Henri Georges* [2023] SGCA(I) 2; *Perry, Tamar v Esculier, Jacques Henri Georges* [2021] SGCA(I) 5; *AKRO Group DMCC v Discovery Drilling Pte Ltd* [2019] SGHC(I) 08; *Teras Offshore Pte Ltd v Teras Cargo Transport (America) LLC* [2017] SGHC(I) 04.

242 Legal Profession (Amendment) Bill (Bill No. 17/2004).

243 *Polkinghorne*, More Changes in Singapore: Appearance Rights of Foreign Counsel, J. Int. Arbitr. 22 (2005), 75.

244 Section 35 LPA.

245 SIAC Annual Report, 2010, p. 3, https://tinyurl.com/yc4vzuhz (retrieved on 15 July 2025).

246 SIAC Annual Report, 2015, p. 12, https://tinyurl.com/yc64yuv8 (retrieved on 15 July 2025).

247 Section 82(1)(a) LPA.

support the goal of international dissemination and development of Singapore law (I 1 b)).[248] Most importantly, addressing this issue could lead to an increase in truly international cases before the SICC, similar to the rise in cases at the Singapore International Arbitration Centre following the liberalisation of arbitration law in the 1990s. The court would become more attractive to foreign parties, who could then be represented by lawyers or law firms they trust,[249] even in cases not classified as offshore.

Any fundamental objections to the role of foreign lawyers in the development of Singapore law seem unconvincing, particularly given that Singapore law is also administered at the SICC by International Judges who are not selected based on their expertise in Singapore law. A more significant objection, especially concerning International Judges, is that meaningful participation by lawyers in the dissemination and development of Singapore law requires a deep understanding of that law. The admission of foreign lawyers who are less familiar with Singapore law might not contribute effectively to a comprehensive legal argument in court. Given that there are 1,410 foreign lawyers currently admitted in Singapore (as of 15 July 2025),[250] it is statistically unlikely that all have a thorough knowledge of Singapore law. This objection could be addressed by admitting only those foreign lawyers who have achieved a high level of qualification in Singapore law[251] and are thus authorised to practise in certain areas of it:[252] namely, foreign practitioners under Section 36B Legal Profession Act 1966. However, limiting admission to these practitioners, currently numbering only 49 (as of 15 July 2025), would only marginally increase the pool of eligible foreign lawyers.

f) Privacy and the SICC

In contrast to arbitration, SICC proceedings are not exclusively private because the SICC, unlike an arbitral tribunal, operates as a state institution and may act in a sovereign capacity. This sovereign role can create challenges that do not arise in a purely private context, especially when dealing with cross-border procedural acts that affect another state's sovereignty.

If an action in SICC proceedings needs to extend beyond Singapore's borders, where it is considered an exercise of sovereignty, the consent or acquiescence of the foreign state, or even its legal assistance, might be required.[253] The court's broad discretion to organise proceedings flexibly does not extend to overriding the sover-

248 *Tan/Grundy*, SAL Prac 2022, para. 54.

249 *Lachmann* (no. 88), para. 161.

250 See the official directory of lawyers in Singapore at https://eservices.mlaw.gov.sg/lsra/search-lawyer-or-law-firm/ (retrieved on 15 July 2025).

251 Section 35B(2)(a) LPA.

252 No. 5(1)(c) LPRIR.

253 *Linke/Hau* (no. 3), para. 8.19.

eignty of another state on its own territory, beyond the limits of Singapore law. This limitation is particularly relevant for service of process and the taking of evidence abroad, which can encounter significant difficulties and delays due to their sovereign nature in the context of court proceedings.[254]

aa) Service of Process Abroad

As long as states view foreign service of court proceedings as impacting their sovereign interests, serving documents in SICC proceedings is not as straightforward as informal direct service in arbitration proceedings. In this regard, SICC proceedings face a disadvantage compared to arbitration proceedings.

In proceedings under the SICC Rules, service abroad is governed by relevant special rules, such as mutual assistance agreements or international treaties.[255] Since these are not part of the SICC Rules, the court cannot apply the procedure flexibly to the aspects of the proceedings that remain within Singapore.

The continued reliance on special rules for service abroad, based on international conventions, underscores a key point: the tension between state sovereignty, the right to justice for the serving party, the addressee's right to be heard, and procedural economy[256] is still primarily resolved in favour of state sovereignty. While this might be seen as outdated,[257] it remains a reality for the SICC.

Even though the responsibility for service of process in Singaporean court proceedings is largely left to the parties[258] and its sovereign character is questionable, the Singapore legislature does not ignore the globally accepted view that states see service of process from abroad as affecting their sovereign interests. In fact, Singapore's recent accession to the long-standing Hague Service Convention[259] indicates that the Singapore legislature continues to consider this perspective relevant and anticipates its significance for the foreseeable future.

bb) Taking of Evidence Abroad

Consequently, the same applies to the taking of evidence abroad as it does to service abroad. If a foreign state views the taking of evidence in court proceedings as an act of sovereignty, then obtaining evidence in that state under the SICC Rules is not as straightforward as the informal evidence gathering in arbitration, putting the SICC at a disadvantage.

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254 *Harms/Macher* (no. 96), § 7, para. 39.

255 O. 5, r. 8, 8A, 9 SICC Rules.

256 *Linke/Hau* (no. 3), para. 8.20.

257 In detail *Schack* (no. 93), para. 716.

258 O. 5 SICC Rules.

259 Ministry of Law, Singapore Accedes to the Service Convention, 17 May 2023, https://tinyurl.com/2p944hb5 (retrieved on 15 July 2025).

Since all evidence in proceedings under the SICC Rules involves witness evidence,[260] this pertains to the examination of a witness located abroad. For on-site questioning, the SICC Rules primarily address the admissibility of such questioning under the relevant foreign law.[261] They also outline the procedure for seeking permission from the foreign state to conduct the questioning[262] and, if permission is granted, conducting the questioning in accordance with that state's law.[263]

The same considerations apply to the examination of a witness abroad via video and audio transmission. This method, apart from being legally admissible in the foreign state, also requires that the foreign state does not object to the examination of the witness on its territory in Singaporean court proceedings.[264] Fundamental criticisms of an excessive interpretation of sovereignty in evidence-taking, such as those raised in Germany,[265] are not addressed in Singaporean procedural law. This criticism is even more pertinent in the context of SICC proceedings, which exclusively recognise witness evidence. Applied to the SICC, the objections are as follows.

The examination of a witness via video and audio transmission, whether during the trial or in a preliminary hearing, does not constitute a trial or hearing conducted abroad. The trial or hearing remains in the country,[266] that is, Singapore. The court's domestic action in civil proceedings through video and audio transmission has no direct effect abroad if the court simply requests witnesses to cooperate voluntarily[267] and avoids imposing sanctions. This scenario is unlikely to be practically significant.[268]

If a foreign witness is not subject to Singapore jurisdiction because they are not a Singaporean citizen, any request for information from the SICC would be considered a sovereign request with direct effect abroad.[269] However, in SICC proceedings, this issue is mitigated as witness evidence must always be provided in written form,[270] with oral examination being only supplementary.[271] Nevertheless, it is understandable that the SICC Rules not only consider the law of the foreign

260 O. 13, r. 1(1), r. 2(1) SICC Rules.

261 O. 13, r. 13(3)(a), (b) SICC Rules.

262 O. 13, r. 13(4), (5) SICC Rules.

263 O. 13, r. 13(7) SICC Rules.

264 O. 13, r. 14(1) SICC Rules.

265 See *Windau*, Grenzüberschreitende Verhandlung und Beweisaufnahme im Wege der Bild- und Tonübertragung, jM 2021, 178; *Windau*, Die Verhandlung im Wege der Bild- und Tonübertragung, NJW 2020, 2753; *Schack* (no. 93), para. 859.

266 *Windau*, jM 2021, 178, 179.

267 *Schack* (no. 93), para. 859.

268 *Windau*, jM 2021, 178, 179.

269 *Windau*, jM 2021, 178, 179.

270 O. 13, r. 1(1), 2(1) SICC Rules.

271 *Windau*, NJW 2020, 2753, para. 22.

state but also require that the foreign state does not object to the witness being heard on its territory in Singapore court proceedings. While the SICC aims for procedural efficiency, it operates within the framework of the administration of justice. This means it must accommodate, when necessary, the rules of evidence applicable abroad and the official stance of the foreign state to ensure smooth proceedings.

g) Party Publicity, Confidentiality and the SICC

Publicity and confidentiality are both possible in SICC proceedings, though to a lesser extent than in arbitration, due to the SICC's status as a state court. Consequently, the parties' interest in non-publicity and confidentiality is not as fully considered in SICC proceedings as it is in arbitration. This represents a disadvantage for the SICC.

The SICC Rules allow for non-publicity and secrecy of proceedings,[272] confidentiality and sealing of documents,[273] and even criminal sanctions for breaches of relevant court orders.[274] However, unlike in arbitration, the nature and extent of these confidentiality measures cannot be set simply by agreement between the parties. Instead, it is the court that makes the final decision and can impose conditions. Thus, a party seeking confidentiality cannot guarantee that their preferred measures will be implemented.[275] Any confidentiality agreement between the parties is just one factor in the court's assessment, alongside considerations such as whether the case is offshore.[276]

One reason for the court's authority to make the final decision is that, unlike an arbitral tribunal, the SICC, as a state court, retains all judicial functions and duties, including the legal and precedential impact of its decisions in a common law system. This impact assumes that at least the key facts and the decision in a dispute are published. While anonymity in publication may be possible, complete secrecy and confidentiality are not.[277]

Another reason why non-publicity and confidentiality, as in arbitration, are not fully achievable is the need for public scrutiny of state courts and their democratic legitimacy.[278] Publicity is considered 'the very soul of justice'[279] and 'the keenest spur to exertion and the surest of all guards against improbability'.[280] Essentially,

272 O. 16, r. 9(1) SICC Rules.

273 O. 19, r. 7 SICC Rules.

274 Section 4(1)(a) Administration of Justice (Protection) Act 2016.

275 *Reichert/Groh*, NZG 2023, 1007, 1011.

276 O. 16, r. 9(2) SICC Rules.

277 *Godwin/Ramsay/Webster*, Melb. J. Int. Law 18 (2017), 1, 22; *Teh/Yeo/Seow*, SAcLJ 28 (2016), 692, para. 49.

278 *Bookman*, Va. J. Int. Law 61 (2021), 161, 210.

279 *Bentham*, The Works of Jeremy Bentham, 1843, p. 316.

280 *Bentham* (no. 279), p. 316.

the fact *that* disputes and negotiations occur in courts cannot be completely hidden.[281] While public scrutiny may be less critical for the SICC in offshore cases than in cases based in Singapore, and thus a higher degree of secrecy might be acceptable in the former,[282] closed and confidential proceedings fundamentally challenge the SICC's identity as a court that derives its powers and legitimacy from the state.[283]

Additionally, the international aspect of SICC proceedings means that a judgment may need to be recognised or enforced abroad. In this context, the SICC must assess whether the non-public and confidential nature of the proceedings could conflict with international public policy, potentially hindering recognition and enforcement abroad.[284] If the SICC determines that this is the case, it may need to prioritise the ability to enforce its judgment over a party's interest in maintaining secrecy and confidentiality during the proceedings.

h) International Recognisability and Enforceability and the SICC

Although the situation has improved in recent years, international recognition and enforceability of SICC judgments remain less homogeneous and certain compared to international arbitral awards.[285] Some aspects of the SICC procedure may even complicate international recognition and enforceability.

aa) Advantage of the New York Convention

Where the SICC's jurisdiction is based on an exclusive choice of court agreement rather than a transfer to the SICC,[286] its final judgments will be recognised and enforced in Contracting States to the Hague Choice of Court Convention, including the European Union and the United Kingdom. Additionally, SICC judgments are recognised and enforced reciprocally in certain Commonwealth countries and in Hong Kong.[287] Otherwise, in common law jurisdictions, SICC judgments may be recognised and enforced according to the general principles of debt enforcement

281 *Reichert/Groh*, NZG 2023, 1007, 1011.

282 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 15; *Godwin/Ramsay/Webster*, Melb. J. Int. Law 18 (2017), 1, 34.

283 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 21.

284 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 21.

285 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 16; *Grohmann* (no. 1), p. 159; *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 205, 212.

286 Section 18J SCJA.

287 The Reciprocal Enforcement of Foreign Judgments Act 1959 in conjunction with the Reciprocal Enforcement of Foreign Judgments (United Kingdom and the Commonwealth) Order 2023 and the Reciprocal Enforcement of Foreign Judgments (Hong Kong Special Administrative Region of the People's Republic of China) Order.

in those jurisdictions.[288] In civil law jurisdictions, recognition and enforcement are governed by the applicable local laws.[289] These legal mechanisms enable the recognition and enforcement of Singapore court judgments, including those of the SICC, in more jurisdictions than ever before. However, the number of jurisdictions where SICC judgments are recognised and enforced remains significantly smaller compared to the Contracting States of the New York Convention, which ensure the recognition and enforcement of international arbitral awards.

A party wishing to get a SICC judgment recognised or enforced in a foreign country will not be blocked by the fact that the legal mechanism is narrower than the New York Convention. However, deciding where a judgment or arbitral award will need to be recognised and enforced later can be unclear, especially when deciding whether to resolve a potential dispute in court or through arbitration before the contract is finalised. Additionally, recognising and enforcing court judgments today is more confusing compared to the New York Convention, with different countries having different rules.[290] For instance, the need for a recognition procedure (*exequatur*) often comes before declaring the judgment enforceable.[291]

bb) Recognition and Enforcement of Judgments without the Consent of Third Parties

In addition, intrinsic factors might prevent international recognition and enforceability of SICC decisions, especially if a decision involves a party that has not agreed to the SICC's jurisdiction.[292] The ability to involve third parties in SICC proceedings without their consent is an advantage over arbitration. However, this feature also creates a problem for the international recognition and enforceability of SICC decisions. Under the Hague Choice of Court Convention, other countries must refuse to recognise or enforce a SICC judgment against a third party who was brought into the proceedings against their will, as that party did not consent to the SICC's jurisdiction.[293] The same principle applies to recognising or enforcing SICC judgments based on reciprocity between Singapore and other Commonwealth countries or Hong Kong, or on common law principles. These principles generally require either the third party's consent or at least a territorial connection to the court's jurisdiction.[294] Such a territorial connection might not always be present for a third party outside Singapore.

288 On the action of debt under the common law of Singapore, see *Chong/Yip* (no. 34), para. 5.05.

289 For example, Section 328, 722, 723 ZPO.

290 *Walker* (no. 150), pp. 115, 148.

291 On that point *Linke/Hau* (no. 3), para. 12.4.

292 O. 10, r. 5(1) SICC Rules.

293 *Yeo* (no. 70), para. 06.097; *Stamboulakis/Crook*, Erasmus Law Rev. 12 (2019), 98, 103.

294 *Stamboulakis/Crook*, Erasmus Law Rev. 12 (2019), 98, 105, 107.

Moreover, reciprocity agreements and both common and civil law principles[295] require the international jurisdiction of the issuing court rather than its national jurisdiction. Therefore, it is crucial to determine whether the SICC had jurisdiction according to the law of the foreign court where recognition or enforcement is sought. If the SICC issues a judgment in favour of a third party who has neither consented to its jurisdiction nor has a territorial connection to Singapore, such as a Singaporean citizen, it seems unlikely that a foreign court would recognise the SICC's international jurisdiction.[296]

Even if a foreign court acknowledges the SICC's international jurisdiction, it might still refuse to recognise or enforce the judgment if doing so conflicts with that country's public policy. This could occur if, for example, the court fees at the SICC are higher than those at the court of recognition or enforcement, or if the SICC proceedings were conducted in a language unfamiliar to the third party[297] or even in camera.[298]

Against this background, it has been suggested that parties should include SICC jurisdiction clauses in their contracts with third parties from the outset, whether in upstream or downstream agreements, to establish SICC jurisdiction over those third parties.[299] However, despite this recommendation from an International Judge of the SICC, such clauses are likely to be relatively rare. Therefore, it makes sense for the SICC Rules to instruct the court to consider the international and commercial nature of a third party when deciding whether to include it in the proceedings.[300] This instruction suggests that the SICC should be very cautious about involving third parties from abroad in proceedings against their will.[301] There have been questions about whether the court publishes decisions in such cases,[302] but not publishing to conceal a third party's involuntary involvement would contradict the principle of public proceedings[303] and its underlying reasons. Consistent with this, the Court of Appeal has highlighted that deviations from the principle of publicity are exceptional.[304]

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295 For example, Sections 328(1) no. 1, 723(2) sentence 2 ZPO.

296 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 18; *Bookman*, Va. J. Int. Law 61 (2021), 161, 208; *Stamboulakis/Crook*, Erasmus Law Rev. 12 (2019), 98, 109.

297 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 18.

298 *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 21.

299 *Reyes*, Recognition and Enforcement of Interlocutory and Final Judgments of the Singapore International Commercial Court, J. Int. Comp. Law 2 (2015), 337, 357.

300 O. 10, r. 5(3) SICC Rules.

301 *Stamboulakis/Crook*, Erasmus Law Rev. 12 (2019), 98, 109.

302 *Bookman*, Va. J. Int. Law 61 (2021), 161, 206.

303 O. 20, r. 1(1) SICC Rules.

304 *The Republic of India v Deutsche Telekom AG* [2023] SGCA(I) 4, para. 24.

i) External Conditions of SICC Proceedings

Although the SICC offers a more favourable framework compared to many other civil courts, especially those outside Singapore, it still operates as a state court with all the inherent characteristics. As a result, it does not provide the same level of comfort that private arbitration can offer. The parties, including the judge, become acquainted during the case management conference,[305] which the court can organise actively.[306] Additionally, the parties should jointly prepare the case management bundle and plan,[307] which encourages interaction and presents opportunities for settlement.

Unlike in some countries, such as Germany, where hearings might be brief and spread over several short sessions, the SICC conducts all-day hearings, often lasting several days, with the court focusing solely on the specific case. Although the SICC lacks separate breakout rooms for exploratory discussions and other meetings outside the courtroom and does not offer the amenities of an arbitration institution, its infrastructure mirrors that of the Supreme Court of Singapore. This includes up-to-date technical facilities, such as the electronic document filing system eLitigation,[308] the provision of verbatim or same-day transcripts,[309] large single-screen monitors, touch screens, and tele- and videoconferencing platforms.[310]

The more flexible procedure in the SICC compared to many traditional court proceedings helps the parties come closer together. However, it is unlikely to match the degree of proximity achieved in arbitration. Despite its relative informality, the SICC procedure remains more formal than arbitration. This formality is partly due to the lack of privacy, as SICC proceedings are closely tied to the courthouse and its customs,[311] even though they are intended to be private. Additionally, the strong 'state' atmosphere in the Supreme Court of Singapore, including armed police officers, entry controls, and security measures, contributes to this formality.

3. Matter of Opinion: Appeal Procedure in SICC Proceedings

Whether it is seen as an advantage or a disadvantage, both SICC and international arbitration are equal in terms of appeals. In international arbitration, there is generally no appeal procedure, although it can sometimes be agreed. In contrast, SICC provides for an appeal procedure, although the parties may waive it by agreement.

305 O. 9 SICC Rules.

306 *Teh/Yeo/Seow*, SAcLJ 28 (2016), 692, para. 50.

307 O. 9, r. 4 SICC Rules.

308 O. 27, r. 9(1) SICC Rules.

309 O. 20, r. 9 SICC Rules.

310 *Teh/Yeo/Seow*, SAcLJ 28 (2016), 692, para. 57.

311 O. 20, r. 5 SICC Rules.

SICC proceedings share with arbitrations under the Arbitration Act 2001 the feature that an appeal to a court is available unless the parties explicitly waive this right in writing. This sets SICC proceedings apart from most international arbitrations. In those cases, an appeal to a court generally requires party agreement, if it is permissible under the law of the place of arbitration. Additionally, an arbitral award can typically only be reviewed by a court for specific purposes: to be set aside, for recognition, or for a declaration of enforceability.

4. Disadvantages of Arbitration over SICC Proceedings

If the reasons against arbitration also applied to SICC proceedings, the SICC would not be an attractive alternative to arbitration for disputing parties. However, it shows that the reasons against arbitration are not predominantly applicable to SICC proceedings, meaning that SICC proceedings do not experience the same typical weaknesses as arbitration.

a) Non-arbitrable Disputes and the SICC

The inherent disadvantage of the arbitral system, where certain disputes are non-arbitrable due to the state's claim of jurisdictional monopoly, does not affect the SICC as a state court.[312] While the SICC primarily handles disputes of an international and commercial nature,[313] non-international or non-commercial aspects may be included during the proceedings.[314] This distinction is not about arbitrability, which relates to the subject matter of the dispute, but rather about jurisdiction, which pertains to the SICC's role as a specialised commercial court.

b) Counterclaim and Inclusion of Third Parties and the SICC

Unlike arbitration, where consolidation of multiple disputes and the involvement of third parties generally requires their consent, the SICC provides for such consolidation by law, even without third-party consent, making it less problematic.

SICC proceedings are less reliant on the principles of consensus and private autonomy than arbitration. This is evident in the counter-claim procedure, which is mandated by law regardless of party agreement,[315] in the ability to determine another person's liability through interpleader,[316] and in the basic obligation for third parties to produce documents.[317] Additionally, the law allows for the joining of third

312 Section 18A SCJA.

313 Section 18D(1) SCJA, O. 2, r. 1 SICC Rules.

314 Section 18D(3), (4) SCJA.

315 O. 10, r. 1(1) SICC Rules.

316 O. 11, r. 1 SICC Rules.

317 O. 12, r. 2(1), (2) SICC Rules.

parties to a dispute even against their will. This can pose challenges, particularly when a non-consenting third party or its assets are located abroad, necessitating the SICC to exercise caution in including such third parties. Indeed, the published case law of the SICC has not yet recorded any decisions involving a third party who was included without their consent.

c) Issuance and Enforceability of Interim Orders and the SICC

Interim orders of the SICC are generally as enforceable as those of an arbitral tribunal, particularly within Singapore.

aa) In Singapore

Just as protective orders issued by arbitral tribunals are enforceable if the tribunal is seated domestically, protective orders from a Singapore-seated arbitration are enforceable in Singapore, subject to an enforcement order, similar to those of the SICC.[318] In this regard, SICC protective measures are somewhat more favourable than those of a Singapore arbitral tribunal, as they do not require an enforcement order.

bb) Abroad

On the one hand, a foreign arbitral tribunal's order is generally enforceable only if it qualifies as an arbitral award under the New York Convention, which is rarely the case. On the other hand, the enforceability of an SICC decision outside Singapore is guaranteed only in the relatively few countries covered by the Reciprocal Enforcement of Foreign Judgments Act 1959 (REFJA), which includes SICC orders.[319] Furthermore, international enforcement law traditionally requires local recognition of a formally final decision by the recognising court through an enforcement order, as stipulated under the Choice of Court Agreements Act 2015 in Singapore[320] or corresponding common law[321] and civil law rules.[322] However, legal protection orders, including those from the SICC, do not carry legal force in the main proceedings.[323] According to Article 4(1) Convention of 30 June 2005 on Choice of Court Agreements, no legal effect is required for interim measures, which are expressly excluded.

318 O. 18 SICC Rules.

319 Section 2(1) REFJA.

320 Section 2(1), 13(1) Choice of Court Agreements Act 2016.

321 *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] SGCA 18, para. 12.

322 For example, Sections 722(1), 723(2) ZPO.

323 *Linke/Hau* (no. 3), para. 14.3; *Gottwald* in: MünchKomm ZPO, 6th ed, 2020, § 722, para. 27.

d) Unpredictability of the Decision and the SICC

Structurally, it is easier for the parties to anticipate the decision in SICC proceedings than in arbitration proceedings.

aa) Decision According to Law

One reason for this is that, unlike an arbitral tribunal, the SICC does not decide on the basis of equity, *ex aequo et bono* or other considerations, but on the basis of law,[324] even if, in the case of Singapore law, this partly includes English equity.[325]

bb) Precedent and Judgment Practice

Another reason is that the SICC is bound by the formal precedential effect of decisions from the higher court, specifically the Court of Appeal,[326] with judgments of significant legal importance being or likely to be published.[327] Additionally, the SICC's status as a specialised court adds predictability, as it may have a well established adjudication practice on particular issues,[328] unlike an arbitral tribunal.

cc) Exception: Request to a Foreign Court for a Decision or Opinion

However, the predictability of a final decision by the SICC can be significantly undermined if the court orders that a question of foreign law or its application be referred to a foreign court for a decision[329] or opinion.[330] The procedural, substantive, and practical uncertainties involved in such a referral are likely to make it difficult for the parties to anticipate the final decision by the SICC.

e) Over-formalisation and the SICC

Compared to the procedural rules of conventional arbitration, the SICC Rules are more formalised. However, this structural disadvantage is intentional and is designed to be counterbalanced by the court's broad powers to manage proceedings flexibly in individual cases, thus significantly reducing complexity.

Regarding the degree of formalisation in SICC proceedings, there has been (ironically) some debate about whether courts are truly the solution to the judiciali-

324 O. 1, r. 3(1) SICC Rules.

325 Section 3(1) Application of English Law Act 1993.

326 Article 94(1) Constitution.

327 O. 16, r. 9(10) SICC Rules.

328 *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 210.

329 O. 15 SICC Rules.

330 O. 15A SICC Rules.

sation or over-formalisation of arbitral proceedings.[331] However, this question is misplaced. The issue of judicialisation in arbitration, which pertains to inefficient conduct of proceedings, is not a concern for the SICC[332] but rather a matter of location policy (I 1 b)). Neither the SICC nor any other court is responsible for addressing the disadvantages of arbitration, just as arbitral tribunals are not responsible for the problems of the courts. However, institutions can benefit from the mistakes and weaknesses of others; arbitration has done so for many years (I 2). Similarly, the SICC now benefits from addressing a weakness of arbitration in terms of judicialisation.

aa) Judicial Nature and Natural Legalism of Court Proceedings

It would be cliché to criticise the SICC for being formalistic and legalistic in principle. It cannot be claimed that SICC proceedings are less judicial – meaning less like traditional court proceedings – than arbitral proceedings, because the SICC is inherently a judicial body. In essence, the SICC is indeed legalistic. Its organisation, offices, and procedures are grounded in formal and substantive law, specifically the Supreme Court of Judicature Act 1969 and the Singapore International Commercial Court Rules 2021.

bb) Exceptionally High Degree of Regulation at the SICC

However, the degree of statutory regulation in the SICC is indeed very extensive. This is evident not only in the highly regulated nature of the legal professions involved in the SICC, compared to Singapore's arbitration and mediation laws,[333] but also in the SICC procedure itself. The procedure is marked by detailed forms and strict formal requirements,[334] and specific rules regarding dress and conduct.[335] These examples demonstrate that SICC proceedings are inherently more formal than arbitration proceedings. This basic assumption is reinforced by the court's significant authority to penalise procedural violations, including the possibility of dismissing a claim with costs. Nevertheless, the SICC is not only empowered to impose severe penalties for even minor infringements but can also be lenient. It has the discretion to allow procedural steps that were missed or not correctly followed and to decide with flexibility on the application or non-application of specific provisions of the SICC Rules, all in the interest of a fair, expeditious, and efficient procedure. This flexibility is a notable advantage of SICC proceedings over arbitration.

331 *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 208.

332 Conceding this implicitly *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 208.

333 Sections 35, 35B LPA.

334 O. 1, r. 9(1) SICC Rules.

335 O. 20, r. 5 SICC Rules.

cc) Case-by-Case Adjustment of the Complexity of the Proceedings by the Judge

The advantage of the SICC procedure over arbitration in terms of judicialisation or over-formalisation is qualitative. The SICC Rules' extreme regulatory density, combined with the court's substantial power to apply these rules flexibly, offers a viable alternative to arbitration. This approach addresses the criticism that many counsel and arbitral tribunals fail to leverage procedural flexibility to benefit the parties or ensure the swift and efficient administration of justice. By analogy, the SICC aims to be more like a poultry farmer with a broad set of tools, rather than a fox in charge of the henhouse.

Of course, this advantage is only realised if SICC judges actively use their procedural tools and are not influenced by similar incentives that lead some counsel and arbitrators to act in self-serving ways in arbitration proceedings. This concern raises questions about having an International Judge who is compensated on a time and material basis, whether as a single judge or as the chairman of a multi-judge bench. While legally possible,[336] restricting International Judges' activities in this manner contradicts the SICC's core concept (I 1 b)) and is therefore not anticipated. Consequently, effective oversight by the Chief Justice or the Registrar is crucial.[337]

f) High Costs and the SICC

A cost comparison between SICC proceedings and international arbitration generally favours the SICC. However, the basis for such a comparison involves many uncertainties.

Assuming that legal fees in international arbitration are comparable to those in SICC proceedings,[338] these costs would effectively cancel each other out in a direct comparison. The same applies to expenses for experts, interpreters, translators, as well as travel, subsistence, and accommodation, leaving only litigation costs as the basis for comparison. Yet, making a reliable comparison between the actual costs of international arbitration and SICC proceedings is challenging.

On one hand, the costs of arbitration proceedings are not publicly disclosed due to the private and confidential nature of arbitration. It is generally assumed that ad hoc arbitration tends to be more expensive than arbitration under institutional rules, as ad hoc arbitration requires the parties or the tribunal to agree on or determine the details. However, this does not provide specific figures. Institutions such as the International Chamber of Commerce, the German Arbitration Institute, or the Singapore International Arbitration Centre do not publish detailed or average cost figures for their proceedings. Similarly, actual fees in SICC proceedings are not

336 Article 95(8), (9) Constitution.

337 O. 1, r. 13(2) SICC Rules.

338 *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 208.

publicly available, and cannot be inferred from published decisions, as SICC fees are largely independent of the amount in dispute.[339]

On the other hand, international arbitration practices are continually evolving, and the SICC is still relatively new, meaning that any older studies with empirically determined costs, even if available, would not be particularly relevant.

aa) Relatively Low Court Fees at the SICC

Although court fees at the SICC are higher than those in many courts outside Singapore, the overall cost of litigation at the SICC tends to be moderate compared to international arbitration, assuming a standard number of hearing days.[340] This is primarily because the SICC is subsidised by the Singapore government.[341] Unlike in arbitration, where parties must cover the full costs of judges, including the International Judges, the Registrar, the courtroom, and other infrastructure,[342] these costs are covered by lower court fees in the SICC. However, this cost comparison may not always favour the SICC. Arbitration's procedural flexibility can potentially result in cost savings if parties actively manage the proceedings to be more efficient. For example, parties might agree on virtual hearings or active case management or select more cost-effective lawyers and arbitrators. In such scenarios, arbitration could potentially be as cost-effective or even more so than SICC proceedings, depending on how the parties leverage the flexibility of arbitration.

bb) Exception: Request to a Foreign Court for a Decision or Opinion

Exceptionally, SICC proceedings may turn out to be more expensive than arbitral proceedings if the SICC decides to refer a question of foreign law or its application to a foreign court for a decision[343] or opinion.[344] This process involves parallel or interlocutory proceedings abroad, whose costs are not specifically addressed in the SICC Rules or in the memoranda of understanding between the SICC and foreign courts. These memoranda do not cover the costs associated with such referrals, leaving them as general legal expenses. Such a referral introduces significant legal and practical uncertainties and carries the risk of escalating costs. Against this background and considering the simpler and less costly alternatives for determining foreign law – such as using an international judge who is familiar

339 O. 26, r. 3, 4 SICC Rules.

340 *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 203.

341 *Bell*, Contemp. Asia Arbitr. J. 11 (2018), 193, 203.

342 *Walker*, Int. J. of Arb. Med. & Disp. Man. 85 (2019), 2, 20.

343 O. 15 SICC Rules.

344 O. 15A SICC Rules.

with the law[345] or through submissions[346] – it is unlikely that referring questions to a foreign court will occur frequently, if at all.[347]

g) High Expenditure of Time and the SICC

Comparing the actual duration of international arbitration proceedings with those before the SICC generally shows a preference for the SICC, though making this comparison is not without its challenges. While the length of arbitration proceedings is usually private and confidential, several arbitration institutions have shared anonymised average durations. According to these figures, international arbitration with a sole arbitrator typically takes between 10.3 and 15 months,[348] whereas proceedings with a three-member tribunal usually last between 11.7 and 19 months.[349]

aa) Relatively Short Proceedings at the SICC

In contrast, there is no publicly available information on the average duration of SICC proceedings. Although it might be possible to estimate this by looking at the procedural history of some published SICC judgments and calculating an average, this approach would likely be misleading and not suitable for comparison with the duration of international arbitration proceedings. This is because not all published SICC judgments include the start date of the proceedings, and such an average would not account for cases that conclude without a published judgment. However, the duration of proceedings from the early days of the SICC is known, as each new case drew public interest at the time. Analysis of this data reveals that the average duration of proceedings in the SICC was relatively short in those early years. While it is uncertain how this compares to current practices, these early observations provide insight into the SICC's initial commitment to conducting proceedings swiftly and efficiently, a commitment the court continues to uphold.

In the first SICC case,[350] the hearing concluded six days ahead of schedule,[351] and the court issued its decision in under six months, just over a year after the case was

345 O. 1, r. 13(2) SICC Rules.

346 *Chong/Yip* (no. 34), para. 6.50.

347 *Chong/Yip* (no. 34), para. 6.49.

348 *Jankovic*, Die Dauer des Schiedsverfahrens, 2022 https://tinyurl.com/yc6sv9rd (retrieved on 15 July 2025).

349 *Jankovic* (no. 348).

350 See *BCBC Singapore Pte Ltd v PT Bayan Resources TBK* [2016] SGHC(I) 1.

351 *LeBherz/Walker*, The Singapore International Commercial Court – Two Years On, 2017, https://tinyurl.com/2ucfyfd8 (retrieved on 15 July 2025); *Teh/Yeo/Seow*, SAcLJ 28 (2016), 692, para. 8.

referred by the High Court.[352] In the second case,[353] the judge provided reasons for his decision fifteen days after the hearing.[354] In another case, the SICC delivered a 222-page judgment fourteen months after the case was referred and just four months following the hearing.[355] Subsequent SICC judgments were issued within one to three months after the hearing.[356]

The annual settlement rate, which represents the percentage of cases settled relative to those received in the same year, is available for the Supreme Court as a whole but not specifically for the SICC. This rate has consistently exceeded 90 per cent since 2015, with some years showing figures above 100 per cent.[357] While the lack of a backlog at the Supreme Court does not directly reflect the duration of individual SICC proceedings, it does indirectly suggest that cases across the Supreme Court, including those handled by the SICC, are processed swiftly.

While exact figures for the duration of SICC proceedings are not available, it can be estimated that SICC cases are generally resolved somewhat faster than international arbitration cases. Given that the parameters – parties, lawyers, and other participants – are similar in both settings, the quicker resolution of SICC cases is likely because the judges are not overburdened, allowing them to focus fully on each case.[358] Additionally, the SICC adheres to principles of speed and efficiency,[359] which are not hindered by the parties or their lawyers. However, this does not mean that SICC proceedings are always faster. If parties, lawyers, and arbitral tribunals are proactive in ensuring efficiency, arbitration proceedings could potentially be completed more quickly than those before the SICC.

bb) Exception: Request to a Foreign Court for a Decision or Opinion

Exceptionally, SICC proceedings may take longer than arbitration if the SICC decides to refer a question of foreign law or its application to a foreign court for a

352 *LeBherz/Walker* (no. 351).

353 See *Teras Offshore Pte Ltd v Teras Cargo Transport (America) LLC* [2016] SGHC(I) 02.

354 *LeBherz/Walker* (no. 351).

355 *LeBherz/Walker* (no. 351).

356 *LeBherz/Walker* (no. 351).

357 Supreme Court Singapore Annual Report 2022, p. 33, https://tinyurl.com/yc52eke3 (retrieved on 15 July 2025); Supreme Court Singapore Annual Report 2021, p. 38, https://tinyurl.com/mu5cafuk (retrieved on 15 July 2025); Supreme Court Singapore Annual Report 2020, p. 62, https://tinyurl.com/3en86hr8 (retrieved on 15 July 2025); Supreme Court Singapore Annual Report 2019, p. 58, https://tinyurl.com/2ww685yy (retrieved on 15 July 2025); Supreme Court Singapore Annual Report 2018, p. 48, https://tinyurl.com/nhfzk6f5 (retrieved on 15 July 2025); Supreme Court Singapore Annual Report 2017, p. 54, https://tinyurl.com/3peks6pk (retrieved on 15 July 2025); Supreme Court Singapore Annual Report 2016, p. 46, https://tinyurl.com/5n7sjt8x (retrieved on 15 July 2025).

358 *Walker*, Int. J. of Arb. Med. & Disp. Man. 85 (2019), 2, 16.

359 O. 1, r. 3(1) SICC Rules.

decision[360] or opinion.[361] This would involve parallel or interlocutory proceedings abroad, leading to both legal and practical uncertainties, as well as a risk of significant delays. Given the simpler alternatives for establishing foreign law – such as using an International Judge knowledgeable in that area[362] or submissions[363] – the likelihood of frequently pursuing this route is low.[364]

h) Partiality and the SICC

A comparison of the actual (im)partiality of arbitrators and SICC judges is challenging due to a lack of data. Structurally, however, the comparison tends to favour the SICC. It has been argued that judges in international commercial courts are less likely to face conflicts of interest compared to arbitrators.[365] The principle of impartiality, central to this view, is grounded in the procedural principle of the same name.[366] However, impartiality can be challenged by factors such as a judge's independence and freedom from prejudice, state interests, future professional activities, or known connections to the case. The key question now is whether issues of partiality among SICC judges have actually occurred in practice.

Officially and publicly, there is no evidence of SICC judges acting partial. The SICC's decision records do not show any applications for a judge's recusal due to partiality. The SICC did not respond to an enquiry[367] about whether such applications or recusals have been made, and there have been no media reports on this issue. Unlike the discussion around arbitrator partiality, the impartiality of SICC judges has not been explored in the literature. While this does not guarantee that no SICC judge has ever breached impartiality or that no party has challenged a SICC judge on these grounds, it does indicate that the issue of impartiality among SICC judges has not been regarded as a problem.

IV. Summary

Established in 2015, the SICC is a specialised court designed to enhance Singapore's role as a legal services hub amidst increasing cross-border trade, particularly in Asia. It provides an alternative to international arbitration for the resolution of commer-

360 O. 15 SICC Rules.

361 O. 15A SICC Rules.

362 O. 1, r. 13(2) SICC Rules.

363 Section 18L SCJA.

364 *Chong/Yip* (no. 34), para. 6.49.

365 See *Antonopoulou*, J. Int. Disput. Settl. 14 (2023), 12.

366 O. 1, r. 3(1) SICC Rules.

367 E-mail from the author to the SICC dated 5 July 2023.

cial disputes. As such, it is an instructive example for the establishment of commercial courts in Germany.

While the SICC lacks some of the advantages of arbitration, such as the free choice of arbitrators, it addresses several of its disadvantages, making it a suitable choice for some, but not all, parties. A key factor is the degree of procedural flexibility: arbitration typically gives the parties more control, while the SICC maintains greater judicial oversight in the management of the proceedings. As such, the SICC is an option worth considering for parties who find the disadvantages of arbitration particularly challenging.

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Professor Dr. Christoph Althammer, Regensburg
Professor Dr. Alexander Bruns, LL.M. (Duke Univ.), Freiburg
Professor Dr. Dres. h. c. Dieter Leipold, Freiburg
Professor Dr. Dr. h. c. Astrid Stadler, Konstanz
Professor Dr. Dres. h. c. Rolf Stürner, Freiburg

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