Recent Developments in Respect of the Singapore International Commercial Court

August 11, 2016

The Singapore International Commercial Court (SICC) commenced operation in January 2015 and in the last couple of months we have seen the first decisions starting to come out of the Court. Not surprisingly, the decisions have been delivered swiftly, which is one of the selling points for the court. The two final decisions that have been delivered were both handed down within a few months of the hearing, despite the fact that they dealt with complex issues and that they are lengthy judgments.[1]

**Guidance on what will be considered an “offshore case”**

The rules applicable to the SICC make provision for cases to be deemed as “offshore,” and where that is the case, foreign lawyers are permitted to appear before the SICC. In order for a case to be considered “offshore,” there must be no substantial connection to Singapore. In a recent interlocutory decision, Mr. Justice Eder (one of the International Judges appointed to the SICC) ruled on an application for a determination that the case in question was an “offshore case”. The case related to claims arising from natural gas projects in Australia, and there were contracts in question that were governed by Singapore law. On the application of the Defendant, Mr. Justice Eder found that the case had no substantial connection to Singapore and was therefore an offshore case.

In his decision, Mr. Justice Eder made the following observations:

- The fact that a case may have connections to places other than Singapore will not be sufficient to deem it an offshore case, as the definition requires that there be a substantial connection to Singapore; which is where Singapore law
- The Convention, if it is more widely adopted, will simplify the enforcement of court decisions in foreign jurisdictions in a similar way to the New York Convention in respect of arbitral awards.
- The definition includes the concept of a substantial connection; which is where Singapore law is not the applicable law and where the only connection to Singapore is
- Another important development for the SICC was the ratification by Singapore, which may have little or no bearing on the underlying issues.
- In the last couple of months we have seen the first decisions starting to come out of the Court. Not surprisingly, the decisions have been delivered swiftly, which is one of the selling points for the court.
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- The definition includes the concept of a substantial connection, but there is no guidance as to what will be substantial, only an indication of what will not be a substantial connection; which is where Singapore law is not the applicable law and where the only connection to Singapore is the submission by the parties to the jurisdiction of the SICC. That was not applicable in this case because there were contracts governed by Singapore law.

The SICC Practice Direction does provide some guidance as to what a substantial connection might be by providing a list of factors which will not, by themselves, constitute a substantial connection. Those factors are:

- witnesses being located in Singapore;
- documents relevant to the dispute being located in Singapore;
- funds connected to the dispute passing through Singapore;
- a party to the dispute having assets in Singapore that are not the subject of the dispute; and
- where one of the parties is a Singapore company or has Singapore shareholders.[3]

In reaching his decision, Mr. Justice Eder indicated that while the existence of one of the factors listed in the Practice Direction was not sufficient to constitute a substantial connection, he was prepared to assume that more than one of those factors was at least capable of justifying a conclusion that there was a substantial connection. However, notwithstanding the fact that the Plaintiff was able to establish that all of the factors listed were present to some extent, he still decided that the case had no substantial connection to Singapore because although the factors were present, they had little or no relevance to the claim itself. His rationale for the decision was that the issues at the “heart” of the case, namely whether work had been undertaken in respect of projects in Australia, had no substantial connection to Singapore.

The decision suggests that the Court will take a practical approach to whether there is a substantial connection to Singapore by considering the underlying issues at stake in a case rather than relying on connections to Singapore, which may have little or no bearing on the underlying issues. It will be interesting to see if other judges take a similar approach when being asked to make a determination as to whether cases are offshore cases.

**Ratification of the Hague Convention**

Another important development for the SICC was the ratification by Singapore on 2 June 2016 of the Hague Convention on Choice of Court Agreements (Convention). The Convention, if it is more widely adopted, will simplify the enforcement of court decisions in foreign jurisdictions in a similar way to the New York Convention in respect of arbitral awards. We discussed the Convention in an earlier article (click here). The Convention will come into force in Singapore on 1 October 2016. As enforcement of the
SICC’s decisions is one of the main drawbacks for parties when compared with arbitration or litigation in domestic courts, it was an important step for the development of the SICC that Singapore ratify the Convention. Although it is not yet widely in force, given the role the SICC is hoping to play in international litigation, it was imperative that Singapore ratify the Convention so that decisions of the Court can be easily enforced in the event that more countries ratify the Convention.


[2] Teras Offshore Pte Ltd v Teras Cargo Transport (America) LLC [2016] SGHC(I)02

[3] see paragraph 29(3) of the SICC Practice Direction

This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Denis Brock, an O’Melveny partner licensed to practice law in Hong Kong (Solicitor-Advocate), England & Wales (Solicitor-Advocate), Australia, New Zealand and New York, Amanda Beattie, an O’Melveny Counsel licensed to practice law in Hong Kong and New South Wales, Australia, contributed to the content of this newsletter. The views expressed in this newsletter are the views of the authors except as otherwise noted.