7-2018

The impact of the Singapore International Commercial Court and Hague Convention on choice of court agreements on Singapore's private international law

Wei Yao, Kenny CHNG
Singapore Management University, kennychng@smu.edu.sg

Citation

CHNG, Wei Yao, Kenny. The impact of the Singapore International Commercial Court and Hague Convention on choice of court agreements on Singapore's private international law. (2018). *Civil Justice Quarterly*. 37, (1), 124-147.
Available at: https://ink.library.smu.edu.sg/sol_research/3260

C.J.Q. 2018, 37(1), 124-147

Civil Justice Quarterly
2018

The impact of the Singapore International Commercial Court and Hague Convention on Choice of Court Agreements on Singapore's private international law

Kenny Chng [1]

Subject: Conflict of laws
Other Related Subject: International law. Legal systems.

Keywords: Allocation of jurisdiction; Comparative law; Court rules; Dubai; International law; Jurisdiction clauses; Singapore;

Legislation:

Convention on Choice of Court Agreements 2005

Choice of Court Agreements Act 2016 (Singapore)s.2, s.3

Supreme Court of Judicature Act 2007 (Singapore)s.18F

Rules of Court 1996 (Singapore)Ord.110

Cases:

Spiliada Maritime Corp v Cansulex Ltd (The Spiliada) [1987] A.C. 460; Financial Times, November 25, 1986 (HL)

Voth v Manildra Flour Mills Pty Ltd [1992] I.L.Pr. 205 (HC (Aus))

IM Skaugen SE v MAN Diesel & Turbo SE [2016] SGHCR 6 (HC (Sing))

*124 Abstract

*The advent of the Singapore International Commercial Court (*SICC*) and the enactment of the* Hague Convention on Choice of Court Agreements 2005 *(the Hague Convention) in Singapore presents an intriguing case study of the issues raised by the co-mingling of the rules of an international convention, jurisdictional rules for an international commercial court, and traditional common law jurisdictional principles within the private international law and procedural rules of a single national jurisdiction. This article highlights several key issues raised by the interaction between the* SICC, Hague Convention*, and common law jurisdictional rules, and proposes solutions to streamline these three sets of rules into a coherent and principled body of law. In addition, this article examines the experience of the Dubai International Financial Centre Court to elucidate lessons for the development of the* SICC*'s jurisdictional rules.*

I. Introduction

The Singapore International Commercial Court (SICC), in conjunction with the Hague Convention on Choice of Court Agreements 2005 [1] (the Hague Convention), represents a quantum leap forward for Singapore's development into an internationally-recognised commercial litigation hub. Together, they present a transformative vision for the development of

Singapore's legal industry, in recognition of the increasingly transnational nature of commercial disputes in this globalised age. With its international bench and flexible rules on foreign law, foreign representation and evidence, the SICC aims to be a forum of choice for transnational litigation in the region and beyond. The Hague Convention, enacted ***125** as Singapore law through the Choice of Court Agreements Act[2] (CCAA), gives teeth to the SICC's judgments by maximizing their enforceability across jurisdictions around the world. Together, the SICC and the Hague Convention have the potential to be a game-changer in transnational commercial litigation.

The advent of these initiatives marks a major milestone in the development of Singapore's private international law as well. As a result of these recent changes, Singapore has become an intriguing case study of how three disparate sets of jurisdictional rules, each with a very different genesis and purpose, can co-exist within a single national jurisdiction. At present, due to the relative youth of these institutions, the relationship between the SICC's, Hague Convention's, and common law's jurisdictional rules remains to be clarified by a body of case law. This article aims to identify possible points of tension in the interaction between these three sets of jurisdictional rules, and suggest solutions to harmonise these rules into a coherent and principled body of law. The lessons learnt from Singapore's experience may be of value to other jurisdictions considering similar legal developments in the future. For clarity of analysis, this article classifies the impact of the SICC and the Hague Convention on Singapore law into three distinct categories, which will be discussed in turn: jurisdiction agreements, exercise of jurisdiction in the Singapore High Court, and exercise of jurisdiction in the SICC. Finally, this article will conduct a comparative study of the Dubai International Financial Centre Court's (DIFCC) jurisdictional rules to determine if the DIFCC's experience as an international commercial court holds any lessons for the SICC's private international law rules. For the avoidance of doubt, all references to the High Court in this article refer to the Singapore High Court excluding the SICC.

II. The SICC and the Hague Convention

The SICC was officially established as a division of the Singapore High Court[3] on 5 January 2015.[4] The key objectives undergirding the establishment of the SICC were to expand Singapore's legal industry, encourage the usage of Singapore law in transnational commercial disputes, profile Singapore as a premier forum for commercial litigation,[5] and spearhead the development of international commercial law by harmonising commercial law and practices across traditional common law and civil law boundaries.[6] The SICC has jurisdiction over two main categories of cases: first, cases which are "international and commercial in nature" and where ***126** parties have a written jurisdiction agreement in favour of the SICC[7]; second, cases which are deemed "appropriate" for a transfer from the High Court to the SICC.[8] The following are some of the SICC's unique features: the SICC may choose not to apply Singapore evidential rules,[9] may allow counsel to argue points of foreign law based on submissions,[10] allows registered foreign lawyers to appear before it,[11] and has a distinctly international bench.[12]

The Hague Convention seeks to do for litigation what the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 [13] did for international arbitration. It promotes a scheme for the mutual enforcement of choice of court agreements across the Convention's signatories, ensuring the reciprocal recognition and enforcement of judgments handed down by the chosen courts. At the time of writing, the signatories to the Hague Convention include the Member States of the EU, Mexico, Singapore, Ukraine, and the US. Singapore signed the Convention on 25 March 2015, and to give effect to the Convention, the Singapore Parliament enacted the CCAA on 14 April 2016.[14] In tandem with the SICC, the CCAA will be an important boost to Singapore's efforts to become a desirable litigation destination, as commercial parties will be much more inclined to select the SICC as a dispute resolution venue if the SICC's judgments are widely enforceable across jurisdictions around the world.

III. Jurisdiction agreements

Moving on to the substantive legal issues, the first area to be discussed is the law relating to the characterisation and effect of jurisdiction agreements. Where the parties in a dispute have a jurisdiction agreement in the contract governing their relationship, this agreement can be characterised as either exclusive or non-exclusive. An exclusive jurisdiction agreement has both prorogation and derogation functions, i.e. it contains an agreement between the parties to submit to the chosen court, as well as a promise *not* to commence proceedings in any other non-chosen courts.[15] A non-exclusive jurisdiction agreement generally only has a prorogation function, i.e. it contains an agreement to submit to the chosen court without expressly disallowing the parties from commencing proceedings in non-chosen courts.[16] The characterisation of a jurisdiction

agreement as exclusive or non-exclusive is of considerable practical importance—it influences the ***127** subsequent applicable legal approach for the exercise of jurisdiction across the common law, SICC rules, and CCAA rules.

As a preliminary step before a jurisdiction agreement can be characterised, the law governing its interpretation needs to be determined. Under the common law, the characterisation of a jurisdiction agreement is an issue of interpretation, which as a matter of contractual construction, is generally governed by the proper law of the contract.[17] Notably, it has been highlighted that the trend towards the separability of the jurisdiction agreement may lead to a conclusion in an appropriate case that the parties intended the law of the chosen court to govern the agreement, rather than the proper law of the contract.[18] This is arguably the position under the CCAA, which provides that the issue of the validity of a jurisdiction agreement is determined by the law of the chosen court.[19] Although not expressly addressed by the wording of the CCAA, it is arguable that the same connecting factor would apply to issues of interpretation as well.[20] On another view, the interpretation of a jurisdiction agreement where the CCAA is concerned rests in the provisions of the Hague Convention and thus the CCAA as a self-contained interpretive regime.[21] This view is supported by the intent of the Hague Convention's framers in characterising art.3 as a "deeming" provision, rather than a presumption, in order to avoid potential entanglements with differing evidentiary rules relating to presumptions.[22] A detailed discussion of this issue is beyond the scope of the present article, and will be properly left for another occasion.

Assuming that Singapore law applies to interpret the jurisdiction agreement,[23] there are three possible approaches that can be taken to its characterisation. First, s.18F of the Supreme Court of Judicature Act[24] (SCJA) provides that choice of SICC agreements are presumed to be exclusive unless there is express provision to the contrary. Second, under s.3(2) of the CCAA, a choice of court agreement is deemed to be exclusive as long as the requirements of the CCAA are met, unless there is express provision otherwise.[25] Notably, unilaterally exclusive choice of court agreements under the common law will be characterised as non-exclusive under the Hague Convention and the CCAA, because the Hague Convention requires mutual exclusivity for an agreement to be considered as exclusive.[26] Third, ***128** under the common law, the classification of each clause as exclusive or non-exclusive is an exercise in contractual construction, whether it is exclusive or non-exclusive on its face.[27]

For clarity of analysis, it will be useful to draw a distinction between choice of SICC agreements and choice of High Court or foreign court agreements. Where there is a choice of SICC agreement, the two approaches which could be used to interpret the jurisdiction agreement are s.18F of the SCJA and s.3(2) of the CCAA. The effect of these provisions is that there is considerable uniformity in the approach to the characterisation of choice of SICC agreements. Where there is a choice of the SICC, there is no practical difference whether the CCAA or the SCJA is applied to characterise the jurisdiction agreement, since both approaches are effectively the same.

Matters are more complex where a choice of High Court or foreign court agreement is involved. In such situations, the two possible approaches that can be taken are the common law's and the CCAA's. On one level, the approaches are easy to distinguish—the CCAA's approach applies when it is applicable to the dispute,[28] and the common law's approach applies in all other situations. On closer examination, the boundaries between the two approaches are not so clear. The CCAA is primarily concerned with jurisdiction agreements in the contexts of the exercise of jurisdiction, stay of proceedings in favour of another contracting state, and the recognition of foreign judgments. However, jurisdiction agreements which fall under the CCAA can be relevant in contexts which are not directly CCAA-related; for instance, the grant of anti-suit injunctions.[29] In such situations, should the agreement be interpreted under the CCAA where the purposes of the CCAA are engaged, and under the common law for such non-CCAA purposes? Alternatively, the agreement could always be interpreted under the CCAA's approach as long as the agreement falls under the scope of the CCAA. It has been argued that the latter approach would mean that the CCAA would have additional "side-effects on the common law in areas outside of its scope".[30] Nevertheless, it is suggested that in such situations, having the same court apply two different characterisations of the same clause depending on the context of the application creates uncertainty and may be contrary to the expectations of commercial parties. As long as the CCAA applies to the jurisdiction agreement in any sense, the CCAA's approach should be adopted even in contexts not expressly covered in the CCAA. Correlatively, on this view, the common law's approach should only apply where the CCAA has no application to the jurisdiction agreement at all.

Different legal effects follow upon the characterisation of a jurisdiction agreement as exclusive or non-exclusive under the respective approaches. When the jurisdiction agreement is characterised as exclusive, there are substantial ***129** commonalities in its effect on the court's exercise of jurisdiction among the three sets of rules. In general, where a party

commences proceedings in breach of an exclusive jurisdiction agreement, under all three approaches, the Singapore courts will be very inclined to uphold the agreement in order to protect the parties' bargain, although there remain minor differences between the three approaches with respect to the exact circumstances under which the Singapore courts will allow a breach of the agreement.[31]

In contrast, there is a major divergence between the common law, SICC, and Hague Convention approaches with respect to the legal effect of a jurisdiction agreement characterised as non-exclusive under their respective approaches. Under the common law, the court would conduct a contractual analysis of the non-exclusive jurisdiction agreement to determine the promissory content of the agreement, which will in turn influence whether a party's conduct amounts to a breach of the agreement.[32] If there is a breach of the agreement, the applicable approach is akin to that taken for exclusive jurisdiction agreements. If not, the court applies the Spiliada Maritime Corp v Cansulex Ltd[33] approach to decide whether it should exercise jurisdiction over the case, or grant an anti-suit injunction to restrain foreign proceedings.[34] Some cases have suggested that a "modified Spiliada approach" would apply in such situations, where factors which should have been foreseeable at the time of contracting should not be taken into account in the forum non conveniens analysis.[35] The exact influence of the non-exclusive jurisdiction agreement depends on the circumstances.[36] The Singapore Court of Appeal has held that in certain situations, the non-exclusive jurisdiction clause may have such a strong impact on the natural forum and vexatious conduct analysis that its practical effect can be similar to that of an exclusive jurisdiction clause.[37] In contrast, the SICC does not distinguish between exclusive and non-exclusive SICC jurisdiction agreements for the purpose of an application for a stay of proceedings.[38] However, this distinction may still be relevant for the purposes of ***130** the grant of an anti-suit injunction.[39] Under the Hague Convention, if a clause is characterised as a non-exclusive jurisdiction agreement, the Hague Convention will not be applicable to the dispute.[40]

As a final note on the issue of jurisdiction agreements, in addition to the characterisation of jurisdiction agreements as exclusive or non-exclusive, the CCAA also contains statutory presumptions which apply to the interpretation of jurisdiction agreements. Section 2(2) of the CCAA provides that an exclusive choice of High Court agreement is deemed to encompass the SICC as well, unless a contrary intention is proven.[41] The practical impact of deeming the agreement a choice of the SICC would be to create grounds for the SICC to assume original jurisdiction over the case, or alternatively, if proceedings have already been commenced in the High Court, to potentially form a stronger argument that the proceedings are "more appropriate" to be heard in the SICC pursuant to Ord.110 rr.12(3B)(a)(ii) and 12(4)(a)(iii).[42] However, it remains possible for the same effect to be achieved even if this provision is not engaged. For instance, consider the scenario of an international and commercial dispute, fitting neatly within the subject matter jurisdiction of the SICC, and with the contract between the litigating parties containing a choice of the High Court without expressly excluding the SICC. If the CCAA applies to this case, the combined effect of s.2(2) and s.3(2) will be to deem the agreement an exclusive choice of SICC agreement. If the CCAA does not apply, for instance, where the choice of High Court agreement is unilaterally exclusive, the common law approach will be applied to conduct an analysis of parties' intentions to determine the contractual content of the clause. If this contractual analysis yields the conclusion that the choice of the High Court encompasses the SICC as well, then arguably, s.18F of the SCJA will be engaged to characterise the agreement as an exclusive one, leading to the same conclusion as if the CCAA was applicable.

IV. Exercise of jurisdiction in the High Court

The second area of law impacted by the advent of the SICC and the CCAA is the law regarding the High Court's exercise of jurisdiction. One of the key legal issues to be resolved in this regard is whether and how the High Court's test for the exercise of its jurisdiction should be influenced by the existence of the SICC.

A. Influence of the SICC on the High Court's exercise of jurisdiction

The common law approach to the exercise of jurisdiction in Singapore is well established.[43] Briefly, Singapore law is aligned with the House of Lords decision in Spiliada: the overarching inquiry in determining whether the court should exercise its jurisdiction or grant a stay of proceedings involves a search for the ***131** most appropriate forum where "the case may be tried more suitably for the interests of all parties and the ends of justice"[44]; that is, the natural forum for the dispute at hand.

At the first stage of the Spiliada analysis, the court will consider factors such as the parties' personal connections, the

dispute's connections to events and transactions, governing law, other proceedings, and shape of the litigation to determine which is the most appropriate forum to hear the dispute.[45] If a defendant successfully proves at this stage that a foreign court is the more appropriate forum to hear the dispute, the court will ordinarily grant a stay of proceedings, unless the plaintiff can successfully prove that the case should still be heard in the forum because of the interests of justice. This is the second stage of the Spiliada analysis, and factors which the court will consider at this stage include the presence of a time bar, whether parties' choice of law will be given effect by the foreign court, and any other factors that go towards showing that a stay of proceedings will result in a denial of substantial justice to the plaintiff.[46] Where a case involves service out of jurisdiction, the burden of proof is reversed; the plaintiff bears the burden of proving that the forum is the most appropriate forum to justify service out of jurisdiction in the first place. At the inter partes stage, the defendant may either seek to set aside service of the writ or apply for a stay of proceedings, although the most strategic option would be the former, in order to take advantage of the allocation of burden of proof.[47]

The issue of whether the existence of the SICC should influence the natural forum test as applied in the High Court was considered by the Singapore High Court in the case of IM Skaugen SE v MAN Diesel & Turbo SE.[48] In summary, the Assistant Registrar in IM Skaugen held that the existence of the SICC has a direct influence on the analysis of the natural forum factors, and should thus be taken into account in the natural forum calculus. For instance, the ability of foreign counsel to directly submit on foreign law in the SICC may reduce the inconvenience of arguing points of foreign law.[49]

It is suggested that the possibility of a transfer to the SICC should indeed influence the High Court's application of the Spiliada test. There are several justifications one can offer for this view. First, excluding the SICC from the Spiliada calculus would mean that the assessment of Singapore's appropriateness as a forum would not reflect key characteristics of the legal system in Singapore. For instance, the SICC can serve as a one-stop forum where several different issues with different applicable foreign laws can be argued more conveniently than in a regular domestic court; a fact which may lean towards allowing the suit to proceed in Singapore in order to prevent fragmentation of litigation. Second, the Singapore High Court in Accent Delight International Ltd v Bouvier, Yves Charles Edgar ***132** [50] signalled a willingness to take the SICC into account in the Spiliada test by considering the unique characteristics of the SICC at the stage when the High Court was determining whether to exercise jurisdiction over the case. Finally, at the level of legal policy, taking the SICC into account in the Spiliada test would facilitate the SICC's policy objective of being a leading forum for transnational dispute resolution in Asia and beyond[51] by maximising the number of cases over which the SICC can assume jurisdiction. If the SICC is taken into account in the Spiliada test, cases that may otherwise be heard in foreign forums may be found appropriate for the SICC to hear, thus maximising the reach of the SICC.

If the possibility of a transfer to the SICC can influence the Spiliada test, can it also influence the "strong cause" test where there is a jurisdiction agreement between the parties? At the common law, where the parties have contractually chosen a court in which to bring their dispute, the party seeking to commence proceedings in a non-chosen court will only be able to do so if he can demonstrate "strong cause" amounting to exceptional circumstance for the court to hear the case.[52] In principle, there are no reasons to suggest why the possibility of a transfer should not influence the "strong cause" test. The SICC's distinctive procedural features could neutralise any advantages of pursuing foreign proceedings, which may potentially make it more difficult to make a case for "strong cause" in the face of a Singapore jurisdiction agreement[53] and easier to do so in the face of a foreign jurisdiction agreement. Nevertheless, it may be argued that it would be an affront to party autonomy to allow "strong cause" to be made out in the face of a foreign jurisdiction agreement in favour of a potential transfer to the SICC.[54] However, the Rules of Court do not preclude this possibility: there is no provision which expressly prevents the High Court from transferring cases to the SICC where there is an express choice of a foreign court. In fact, the High Court has the power to order a transfer on its own motion even if one party contests the transfer.[55] It is useful to note that this issue remains a live one even where the CCAA's jurisdictional approach applies instead of the "strong cause" test, to the extent that the considerations under the CCAA's approach overlap with the "strong cause" ones.

Notably, the Assistant Registrar in IM Skaugen further opined that since the High Court should take the SICC into account in the natural forum calculus only if the case would be subsequently transferred to the SICC, the better approach might be for the High Court to apply the SICC's private international law rules at this stage to determine whether the *High Court* itself should exercise international jurisdiction. This would ensure that the High Court does not unduly take the SICC into account when the case is not suitable for transfer in any case. However, the ***133** suggestion that the SICC's private international law rules should apply in a case where the High Court is hearing a case prima facie amenable to a transfer to the SICC effectively places the question of internal allocation of jurisdiction prior to the question of whether the High Court should exercise

international jurisdiction to hear the case in the first place. This is conceptually problematic. The High Court's rules of international jurisdiction are premised on a delicate balance of principle, policy and international comity,[56] a balance which is especially important in view of its status as a court of general civil jurisdiction. Rules of international jurisdiction intended for a specialist court with jurisdiction only in certain restricted situations would be unlikely to be able to strike the same delicate balance as effectively.

It is suggested that a better solution would be for the High Court to apply its own test for international jurisdiction regardless whether a case is prima facie amenable to a transfer to the SICC. If faced with such a case, the High Court should consider the possibility of a transfer to the SICC as part of its Spiliada analysis, and accordingly, should make an assessment as to whether the case is indeed appropriate for a transfer to the SICC. If it is, *and* if the Spiliada analysis leads to a conclusion that Singapore is the natural forum, the High Court will exercise international jurisdiction over the case, and then order it to be transferred to the SICC, if appropriate. On this analysis, the question of international jurisdiction remains conceptually distinct from the question of internal allocation of jurisdiction, while at the same time ensuring that the SICC is not unduly taken into account to modify jurisdictional rules in a case that eventually turns out to be inappropriate for a transfer.

B. Influence of the Hague Convention on the High Court's exercise of jurisdiction

The enactment of the Hague Convention through the CCAA has a direct impact on the Singapore High Court's exercise of jurisdiction as well. Where the CCAA applies to a case with an exclusive choice of Singapore court clause,[57] the Singapore High Court must exercise jurisdiction over the case unless the jurisdiction agreement is null and void under Singapore law.[58] Conversely, if the choice of court clause designates a foreign contracting state, the Singapore High Court must decline to exercise jurisdiction unless a limited variety of exceptional circumstances are proven.[59]

Where one party breaches a choice of court clause designating a foreign contracting state by suing in Singapore, it may be argued that the common law "strong cause" test is sufficient to give effect to the purposes of the CCAA, and that there is no need for a distinct Hague Convention approach to determine if the High Court should grant a stay of proceedings. In support of this proposition, it may be said that the "strong cause" test lends sufficient weight to the choice of court clause by giving effect to it unless exceptional circumstances can be proven, ***134** and that the "strong cause" test can be modified to take into account the CCAA's prescriptions of the exceptional circumstances that would warrant the High Court exercising jurisdiction despite the choice of a foreign court. This would appear to have the advantage of legal simplicity, as the High Court would then be able to apply the "strong cause" test across CCAA and non-CCAA cases. However, it is suggested that this would be a mere veneer of simplicity, as this modified "strong cause" test would be substantially different from the common law version.[60] The considerations involved in demonstrating exceptional circumstances under the common law "strong cause" approach are similar to the factors examined under the Spiliada test.[61] In contrast, the circumstances under which the High Court should still hear the case notwithstanding the choice of a foreign contracting state are narrowly and exhaustively defined in ss.12(1)(a)-(e) of the CCAA. Although there may be a degree of overlap in the considerations under the "strong cause" test and the circumstances prescribed under the CCAA,[62] it is nonetheless suggested that legal clarity would favour acknowledging that a distinct and unique test should be applicable where a dispute falls under the CCAA's scope.

Different considerations should apply in the symmetrical situation where one party breaches a choice of Singapore court clause by suing in a foreign contracting state, and the innocent party applies for an anti-suit injunction from the Singapore High Court against the party in breach. There are three possible views one can take to this issue. The first is to ignore the Hague Convention context in which the application has arisen, since the Hague Convention does not govern interim measures of protection, which should be taken to include anti-suit injunctions.[63] On this view, the High Court should apply Singapore's law on anti-suit injunctions simpliciter. However, it is suggested that since the grant of an anti-suit injunction will overlap closely with the functions of the Hague Convention and will indeed have a direct impact on the effectiveness of the jurisdiction agreement, the better view is that the High Court should take the Convention into account in its analysis. Thus, the second view is that the Hague Convention's strong presumption in favour of a chosen contracting state exercising jurisdiction should be buttressed by an equally robust legal framework in the contexts of stay of proceedings and anti-suit injunction applications. On this view, the High Court should grant anti-suit injunctions almost as a matter of course in such situations. This view would be in line with the fundamental purpose of the Convention as stated in its preamble; that is, to ensure the effectiveness of choice of court agreements.[64] The third view is that it should be borne in mind that the Hague Convention allows a non-chosen ***135** court to assume jurisdiction in specific situations.[65] Thus, granting an anti-suit injunction against proceedings in a non-chosen court that the Hague Convention has allowed to assume jurisdiction over

proceedings would actually be inconsistent with the framework of the Hague Convention. It is suggested that the third view best gives effect to the purposes of the Hague Convention. As such, in determining whether to grant an anti-suit injunction in such situations, the High Court should have regard to the specific circumstances surrounding the proceedings in the non-chosen court in order to remain faithful to the framework of the Convention.

The introduction of the SICC into the picture presents additional legal issues. Where a choice of Singapore court clause specifically designates the High Court to the exclusion of the SICC, but the essence of the dispute is international and commercial and eminently suitable for a transfer to the SICC, can the High Court transfer the case to the SICC, even if a party objects to the transfer? This is a matter of internal allocation of jurisdiction, engaging Ord.110 r.12 of the Rules of Court. If the parties have clearly chosen the High Court to the exclusion of the SICC in their jurisdiction agreement, s.2(2) of the CCAA is not engaged. Following recent amendments to the Rules of Court, the relevance of parties' consent now depends on whether the CCAA governs the agreement. If so, the new Ord.110 r.12(3B) is applicable, which provides that consent from the parties must be obtained before a transfer to the SICC.[66] If not, then Ord.110 r.12(4) is applicable, which allows transfers to the SICC on the High Court's motion in the absence of parties' consent. In this situation, it may be argued that the parties' choice of the High Court to the exclusion of the SICC would make the case not "more appropriate" for a transfer to the SICC in accordance with Ord.110 r.12(4)(a)(iii),[67] as this would run counter to the principle of party autonomy. However, the persuasiveness of the principle of party autonomy in such situations is considerably muted in view of the fact that the rule itself expressly provides for a transfer of proceedings by the High Court even in the absence of consent. Thus, lack of consent in itself is unlikely to be able to make a case not "more appropriate" for transfer.

V. Exercise of jurisdiction in the SICC

The third area of law to be discussed is the law regarding the exercise of jurisdiction in the SICC.

The rules governing the SICC's jurisdiction are set out in Ord.110 of the Rules of Court.[68] Order 110 r.7 addresses the existence of jurisdiction: it states that the SICC has jurisdiction to hear a case if the case is of an international and commercial nature, the parties have submitted to the SICC under a written jurisdiction agreement, and the parties do not seek relief connected to a prerogative order.[69] Order 110 r.8 goes toward the exercise of jurisdiction: the SICC may decline to assume jurisdiction if it is "not appropriate" for the SICC to hear the case.[70] The reference to "appropriateness" is repeated in Ord.110 r.12(3B) and 12(4) in the context of ***136** the requirements for a transfer of proceedings from the High Court to the SICC. One of the requirements for a case to be transferred to the SICC, common to both Ord.110 r.12(3B) and 12(4), is that the High Court must consider that the case is "more appropriate" to be heard in the SICC.

A. The applicable approach for the exercise of the SICC's international jurisdiction

The High Court in IM Skaugen suggested that the applicable approach for the exercise of the SICC's international jurisdiction under Ord.110 r.8 should be the Australian "clearly inappropriate forum" test set out in Voth.[71] This was because the Assistant Registrar was of the opinion that the wording of the rule closely matched the focus of the Voth inquiry. Although these comments were merely obiter dicta, since the issue before the High Court in IM Skaugen was a transfer of proceedings from the High Court to the SICC, the High Court's decision in this case remains useful as the only case thus far discussing the principles governing the SICC's exercise of jurisdiction.

It is suggested that there are strong arguments weighing against the application of the common law jurisdictional approaches, that is, the Voth test, the Spiliada test, and the "strong cause" test, for the purposes of Ord.110 r.8. Focusing on the Voth and Spiliada tests first, one would observe that these tests are principally focused on foreign connections.[72] This inclination of the two tests does not sit well with Ord.110 r.8(2), which provides that foreign connections alone cannot be determinative in the SICC's decision to decline to exercise jurisdiction. Although foreign connections can be part of the decisional matrix, provided that they are not the sole consideration, the wording of the rule suggests that tests which inherently involve a heavy focus on foreign connections may not be aligned with the rule's legislative intent. Also, the common law approaches are unlikely to comport well with the policy objectives of the SICC. Since the raison d'être of the SICC is to draw as many complex international commercial cases to Singapore as possible,[73] it stands to reason that the SICC should decline jurisdiction only on very narrow grounds.[74] However, neither the Spiliada nor Voth approach would be able to serve this purpose well, since they are tests formulated for the purposes of courts exercising general civil jurisdiction, and accordingly

allow the courts to decline to exercise jurisdiction in a wide variety of situations where the interests of justice or international comity require.[75] On the other hand, since the SICC is a specialist court with jurisdiction only in certain restricted situations, a different approach to the exercise of jurisdiction is justifiable to give stronger effect to the SICC's policy objectives. ***137**

A stronger argument may be made for the application of the common law "strong cause" test for the purposes of Ord.110 r.8, since it would lead to a strong inclination for the SICC to exercise jurisdiction, thus sitting better with the policy objectives of the SICC. However, the factors considered in the "strong cause" test are also principally focused on foreign connections.[76] Therefore, the same arguments which apply to the Spiliada and Voth tests to limit their applicability to the SICC for this reason also apply to the "strong cause" test. It may be argued that the "strong cause" test can be modified in application to suit the SICC's purposes more effectively, for instance, by placing a heavy emphasis on the existence of the jurisdiction agreement and reducing its focus on foreign connections.[77] However, it is suggested that legal clarity would favour the recognition that a unique jurisdictional approach is required for the purposes of the SICC.

In light of the preceding arguments, what then should be the applicable approach to the exercise of the SICC's international jurisdiction? The starting point to determine the applicable approach for the exercise of the SICC's jurisdiction is Ord.110 r.8(1). To recapitulate, this rule provides that the SICC may decline to assume jurisdiction if it is "not appropriate" for the action to be heard in the SICC. It is suggested that Ord.110 r.8(3), which provides that the court must have regard to its international and commercial character in exercising its discretion under r.8(1), provides a guide to the inclination one should take in interpreting the "not appropriate" test. Since all cases which come before the SICC necessarily have to be international and commercial for the SICC to have jurisdiction in the first place, Ord.110 r.8(3) could be construed as a suggestion that the starting point for the "not appropriate" test is that every case is an appropriate one.[78]

However, in determining "appropriateness" pursuant to Ord.110 r.8, the requirement that a case is international and commercial in nature should not be the *sole* one. Indeed, it has been argued that if this requirement was intended to be the sole consideration, the rule could simply have provided as much by including the requirement of "international and commercial nature" in the same subsection as the test of "appropriateness", rather than making the rules unnecessarily convoluted by separating the two concepts into different subsections.[79] In addition, if the operative test under Ord.110 r.8 consisted solely of this requirement, it would effectively mean that the SICC has no test for international jurisdiction; the only issue that matters for the purposes of the SICC's jurisdiction would be subject matter jurisdiction.

What should these other grounds of declining jurisdiction comprise, then? It is expected that their content will become clearer as cases come to the SICC for decision. Preliminarily, one may offer the suggestion that the exceptional circumstances under which the SICC should decline to exercise jurisdiction can be broadly categorised into three groups: public policy, non-justiciability, and ***138** natural justice. The ground of public policy would capture cases which are international and commercial on the surface but not so in substance, a possibility envisaged by the High Court in IM Skaugen.[80] This category of cases would include cases which are ostensibly international and commercial but are fundamentally disputes relating to family law or employment law, or which turn on questions of constitutional validity. The ground of non-justiciability would cover cases which involve questions about the validity of foreign administrative action or any other matters which could potentially have an impact on foreign governments or legal systems. Although Ord.110 r.8(2) provides that the SICC must not decline jurisdiction solely on the basis of the existence of foreign connections in themselves, it may be argued that in certain situations, such connections give rise to a compelling policy concern not to interfere with an issue that clearly should be heard in another jurisdiction. As for the ground of natural justice, this could cover cases where there is a demonstrated high risk of conflicting judgments from different jurisdictions,[81] and where the exercise of jurisdiction over the proceedings would lead to significant inconvenience and expense to the litigants involved.

Although the common law jurisdictional approaches also incorporate concerns in these three categories, there are major differences in both degree and kind between the SICC's jurisdictional approach and the common law's approach. As a matter of *degree*, the SICC should decline jurisdiction only in the face of clear and convincing evidence that one of these principles would be incontrovertibly contravened if the SICC exercises jurisdiction over the case. As for the difference in *kind*, the focus of the SICC's inquiry should not be a comparison between the appropriateness of different jurisdictions, but rather, a consideration of whether the strong presumption for the SICC to exercise jurisdiction as long as there is a nexus of jurisdiction can be rebutted by any compelling factors. In this regard, as mandated by Ord.110 r.8(2), a preponderance of connections to foreign jurisdictions in themselves would be insufficient to displace this presumption if they do not go towards proving the manifest inappropriateness of the SICC hearing the proceedings.

It is suggested that it would not be inconsistent with the broader policy objective of having narrow grounds to decline jurisdiction for the SICC to retain the discretion to stay proceedings in such exceptional circumstances. The availability of such discretion is a recognition of the sometimes-conflicting policy considerations that the SICC will have to balance[82]; for example, the overarching policy imperative to promote Singapore as a forum of choice in international commercial litigation, alongside the duty to ensure the "coordinated, coherent and orderly resolution of transnational commercial litigation across national borders"[83] as an international commercial court. ***139**

B. The applicable approach for a transfer of proceedings to the SICC

The Assistant Registrar in IM Skaugen also discussed the applicable approach governing a transfer of proceedings to the SICC under Ord.110 r.12(4). Under Ord.110 r.12(4), the High Court may transfer cases to the SICC either on its own motion or with the consent of all parties, provided that the case is "more appropriate" to be heard in the SICC.[84] With respect to the "more appropriate" requirement, the Assistant Registrar held that the operative requirement for a case to be transferred to the SICC pursuant to Ord.110 r.12(4) is whether the case is "in substance both international and commercial in nature",[85] filtering out cases which are superficially international and commercial but are actually not so in substance. The same "more appropriate" test also features in the new Ord.110 r.12(3B). Thus, the Assistant Registrar's discussion of the "more appropriate" test in Ord.110 r.12(4) should be applicable in the Ord.110 r.12(3B) context as well.

As a preliminary observation, in contrast to the applicable approach for the High Court's exercise of international jurisdiction, a determination as to whether the High Court should transfer proceedings to the SICC should engage different considerations. This would be a matter of internal allocation of jurisdiction, governed by Ord.110 r.12, instead of international jurisdiction, governed by Ord.110 r.8. The issue of subject matter appropriateness is a key consideration in this context. Also, the issue of judicial efficiency would become an additional consideration: in view of the potential hassle and delay involved in transferring a case from the High Court to the SICC, such a transfer should have to be justified by proving that hearing the case in the SICC instead would deliver a significant advantage to the judicial process or the litigants.

The approach applied by the High Court in IM Skaugen, i.e. a case would be "more appropriate" for transfer from the High Court to the SICC if it is "in substance both international and commercial in nature",[86] accords well with the framework of the Rules of Court and gives effect to the importance of subject matter appropriateness in the internal allocation of jurisdiction. However, this criterion should not be the sole factor determining whether a case is "more appropriate" for a transfer pursuant to Ord.110 r.12(3B)(a)(ii) or 12(4)(a)(iii). Instead, the question of the appropriateness of a transfer should engage a balancing exercise weighing the tangible benefits a transfer to the SICC would bring to the dispute resolution process and to the litigants involved against the inconvenience and delay of effecting such a transfer. For example, where the proceedings have already reached a relatively advanced stage, a transfer would cause "substantial delay to the resolution of the dispute",[87] and this should be a weighty consideration for the High Court in determining the appropriateness of a transfer. In contrast, where a transfer to the SICC can level out the advantages a foreign forum has over the High Court, as was the case in Accent Delight, this would arguably make a ***140** persuasive case for a transfer to the SICC, in order to keep the proceedings within Singapore's jurisdiction and promote the policy objectives of the SICC.

C. Influence of the Hague Convention on SICC's exercise of jurisdiction

The provisions of the CCAA introduce another level of complexity to the rules governing the SICC's exercise of jurisdiction. As mentioned earlier in this article, under s.11(1) of the CCAA, where the SICC is chosen in a jurisdiction agreement, the SICC must exercise jurisdiction unless the jurisdiction agreement is null and void under Singapore law.[88] However, under Ord.110 r.8, the SICC may decline to exercise jurisdiction if it is not appropriate for the SICC to hear the case, for instance, if the case is not international and commercial in nature.

In light of these provisions, what should the SICC do in a case where there is an exclusive jurisdiction agreement in favour of the SICC to the exclusion of the High Court, but where the substance of the case is not international and commercial in nature? In such a situation, the SICC does not have jurisdiction over the case, and is obliged to transfer the case to the High Court under Ord.110 r.10(3)(a), provided the High Court has jurisdiction over the case. However, Ord.110 r.10(3)(a)(ii) requires parties to consent to the transfer. If parties object to the transfer, the SICC must dismiss or stay the proceedings, or

make any other order it sees fit.[89] Could "any other order it sees fit" encompass an order to transfer the case to the High Court under Ord.110 r.12(3) even in the absence of parties' consent? One interpretation is that it should not, since such a reading of Ord.110 r.10(3)(b) would contradict the requirement of parties' consent for a transfer in Ord.110 r.10(3)(a). Another interpretation is that the requirement of parties' consent for a transfer is intended to safeguard the enforceability of the judgment, as art.8(5) of the Hague Convention provides that "recognition or enforcement of the judgment may be refused against a party who objected to the transfer in a timely manner in the State of origin",[90] rather than to restrict the court's power to effect such transfers. On this view, the absence of consent does not tie the court's hands but merely has a negative impact on the enforceability of the subsequent judgment following a non-consensual transfer. Notably, this issue has been settled by the latest amendment to the Rules of Court. Under the new Ord.110 r.10(3B), it is specifically stated that Ord.110 r.10(3)(b) does not enable the High Court to make an order for a transfer. Thus, the Rules of Court have expressly opted in favour of the first interpretation suggested above.

D. Joinder of third parties in the SICC

The principles governing the SICC's exercise of jurisdiction over third parties to proceedings also deserve consideration. Under the common law, the principles governing the court's exercise of jurisdiction over third parties are identical to the regular principles for the exercise of the court's jurisdiction. A third party can ***141** challenge the court's exercise of jurisdiction by applying for a stay of proceedings on the ground of forum non conveniens.[91] If there is a jurisdiction agreement governing the dispute in relation to the third party, the court will apply the "strong cause" test to determine if it should exercise jurisdiction over the dispute.[92] The ensuing discussion will focus on the scenario where there is no jurisdiction agreement applicable to the third party.

What is the applicable approach for the SICC's exercise of jurisdiction over third parties in such situations? Order 110 r.9 governs the SICC's exercise of jurisdiction over third parties, and provides that the SICC can exercise jurisdiction over a third party if the case is "appropriate"[93] to be heard by the SICC. If the third party is not within Singapore, a preliminary question arises as to the relationship between this "appropriate" test and the "proper" case requirement for service out of jurisdiction under Ord.11 r.2(2).[94] Under the common law, the "proper" case requirement is met if the Spiliada calculus points to Singapore as the natural forum. Does the "appropriate" test supersede the "proper" case requirement, or do both requirements remain applicable? It is suggested that the better view is that the "proper" case requirement remains valid, as the structure of Ord.110 r.9 suggests that the question of "appropriateness", provided for in Ord.110 r.9(1)(b)(ii), is distinct from the requirement that the procedures for joining the third party are complied with, which is mentioned in Ord.110 r.9(1)(a). On this view, the "proper" case requirement should be complied with as a prerequisite before the question of "appropriateness" is considered. As such, since the "proper" case requirement invokes the Spiliada calculus, the test of "appropriateness" under Ord.110 r.9(1)(b)(ii) should be distinct from the natural forum approach for it to have any meaningful content.

In light of the preceding discussion, there are two possible interpretations of this rule. The first interpretation of Ord.110 r.9 is that it applies the same test for the exercise of the SICC's jurisdiction for both regular and joinder cases, i.e. the SICC must have regard to the international and commercial nature of the dispute,[95] and in determining whether to exercise jurisdiction, cannot rely solely on foreign connections. This interpretation is supported by Ord.110 r.9(3), which as mentioned above, echoes Ord.110 r.8(3). This interpretation is also supported by the common law model, which applies the same test for the exercise of jurisdiction in both joinder and regular cases. The advantage of this interpretation is consistency with the rules for the exercise of the SICC's jurisdiction between both joinder and regular cases.

The second interpretation of Ord.110 r.9 is that it is a unique test, largely similar to the test for regular cases in the SICC but differing in that it allows foreign ***142** connections solely to determine whether the SICC should exercise jurisdiction.[96] This interpretation is supported by the absence of a provision equivalent to Ord.110 r.8(2) in Ord.110 r.9.[97] If the requirements in r.8 were intended to apply equally in r.9, it is difficult to see why they were not simply included in r.9 itself. There is also a principled basis for drawing such a distinction between the applicable approaches in joinder and regular cases; since the SICC can exercise original jurisdiction over third parties to join them to proceedings even in the absence of a choice of the SICC agreement governing their dispute, it stands to reason that a higher threshold ought to apply for the exercise of jurisdiction over third parties. It is suggested that this interpretation of Ord.110 r.9 should be preferred, as it best accords with the tenor of the rules and does justice to the interests of third parties.

E. Anti-suit injunctions in the SICC

Given that the SICC is a division of the Singapore High Court, with all its attendant powers,[98] the SICC presumably also has the power to grant injunctive relief in the form of anti-suit injunctions. Anti-suit injunctions are an important remedy in transnational litigation and the law relating to the grant of anti-suit injunctions is a significant category of private international law. As such, it is worthwhile to discuss how the advent of the SICC will impact the law on anti-suit injunctions.

Under the common law, there are three main categories of cases justifying the grant of anti-suit injunctions. The first category is where the defendant has acted in a vexatious, oppressive or unconscionable manner in his commencement of proceedings in a foreign court.[99] To determine whether an anti-suit injunction should be granted in this category of cases, the Singapore courts will consider the vexation and oppression of the foreign proceedings to the plaintiffs and injustice to the defendant if he is deprived of advantages in the foreign forum.[100] What amounts to vexatious, oppressive or unconscionable conduct cannot be and should not be defined exhaustively; rather, it depends on the facts of each case.[101] As a recognition of the importance of international comity in the law of anti-suit injunctions, a prerequisite for the court to award an anti-suit injunction in such situations is that it must be the natural forum for the dispute.[102] This requirement is intended to mitigate the implicit interference in the proceedings of a foreign ***143** jurisdiction[103] by allowing an anti-suit injunction only if the forum has "a sufficient interest in, or connection with, the matter in question".[104]

The second category is where the court acts to prevent the breach of an agreement by granting an anti-suit injunction. This generally refers to jurisdiction agreements, although settlement agreements, choice of law agreements, and arbitration agreements can arguably justify the grant of an anti-suit injunction as well.[105] The applicable approach at common law diverges depending on whether the clause is classified as a non-exclusive or exclusive jurisdiction clause. Where the effect of the jurisdiction clause is exclusive, proceedings commenced in a non-chosen forum will amount to a breach of the agreement. In both Singapore and English law, where there is an exclusive jurisdiction clause, and there is a claim falling within its scope being pursued in a non-chosen forum, the court will ordinarily grant an anti-suit injunction unless the party in breach can show strong reasons for being allowed to continue the proceedings in the non-chosen forum.[106] Where the effect of the jurisdiction clause is non-exclusive, the legal analysis will be substantially the same as in the first category of cases. However, the existence of a non-exclusive jurisdiction clause can remain significant as a factor in a natural forum analysis, and also to determine if the foreign proceedings were brought in a vexatious, oppressive or unconscionable manner.[107]

The third category of cases warranting the grant of an anti-suit injunction is founded upon the court's inherent jurisdiction to prevent its own processes from being used unjustly and to protect the integrity of its own processes. For present purposes, the first two categories will be the focus of discussion.

With the common law background thus set out, we move to a discussion of the applicable approach for the grant of anti-suit injunctions in the SICC. There are three distinct scenarios in which the SICC may grant anti-suit injunctions. The first scenario may arise if a case is transferred to the SICC from the High Court in the absence of a Singapore jurisdiction agreement, and one of the parties subsequently commences proceedings in a foreign court. In this situation, the SICC should presumably apply the common law vexatious and oppressive conduct test, since Ord.110 does not set out a specific test that should govern the grant of anti-suit injunctions from the SICC. In any case, the principles in Ord.110 governing the exercise of the SICC's jurisdiction are manifestly unsuitable in the context of anti-suit injunctions; the jurisprudential basis for the grant of an anti-suit injunction in such situations is grounded in the personal equity generated by the conduct of ***144** the defendant,[108] and it is difficult to see how any test for the grant of an anti-suit injunction based on the SICC's principles for the exercise of its jurisdiction will accord with this conceptual basis for anti-suit injunctions.

Under the common law vexatious and oppressive conduct test, a prerequisite for the grant of the anti-suit injunction is that the forum must be the natural forum for the dispute. This requirement may present additional issues in the context of the SICC. What if the SICC is not the natural forum under the Spiliada test? It is suggested that the scale of this problem depends on the test of international jurisdiction applied by the High Court before the transfer of proceedings to the SICC. If the High Court takes the SICC into account in its application of the Spiliada test to determine whether to exercise its own international jurisdiction, as argued for in this article, then this problem dissipates, since the Spiliada test would have required Singapore to be the natural forum for the High Court to exercise jurisdiction in the first place. However, if the High Court applies the SICC's own test of international jurisdiction to determine whether the High Court itself should hear the case, as suggested by the High Court in IM Skaugen, then this issue will become a real problem. The SICC may be faced with a peculiar situation

where it has validly exercised jurisdiction over a case subsequent to a transfer from the High Court, but is unable to grant anti-suit injunctions in support of its own proceedings because Singapore is not the natural forum under the Spiliada test. This issue underscores the importance of maintaining a conceptual separation between international jurisdiction and internal allocation of jurisdiction, and lends further support to this article's argument in section IV.A that the High Court should apply its own rules of international jurisdiction even when faced with a case prima facie manifestly suitable for a transfer to the SICC.

The second scenario arises when one party sues in a contracting state of the Hague Convention, in breach of a choice of SICC jurisdiction agreement. In an ideal situation, the foreign contracting state would suspend or dismiss proceedings unless one of the limited exceptions provided under art.6 of the Hague Convention is proven. This would render anti-suit injunctions unnecessary. However, if this mechanism is not adhered to, anti-suit injunctions remain a useful tool. Should the innocent party decide to apply for an anti-suit injunction in the SICC, what approach should the SICC take to determine whether to grant the anti-suit injunction? In such a situation, it is suggested that the test for the grant of an anti-suit injunction should be aligned with the jurisdictional regime of the Hague Convention. As argued in section IV.B of this article, this means that the SICC should have close regard to the circumstances surrounding the proceedings in the non-chosen foreign court: on one hand, anti-suit injunctions should be granted to reinforce the jurisdiction mandated by the Hague Convention, but on the other hand, in specific situations where the Hague Convention has allowed a non-chosen court to assume jurisdiction, anti-suit injunctions should not be granted to prejudice such foreign proceedings which are expressly permitted under the Hague Convention.

The third scenario occurs when one party sues in a non-contracting state, in breach of a choice of SICC jurisdiction agreement. In this situation, to determine ***145** whether to grant an anti-suit injunction, the SICC should apply the common law "strong cause" test, in the absence of specific rules governing the grant of anti-suit injunctions in the SICC. Notably, out of the three scenarios considered here, this scenario would warrant the most liberal rules for the grant of anti-suit injunctions: first, parties have explicitly chosen the SICC, and the law has demonstrated a strong inclination towards protecting the parties' contractual bargain; second, the Hague Convention does not present any constraints here, since it will not be available for the defendant to argue that they are being permitted by the Hague Convention to sue in the non-chosen foreign court.

As a final point on this subject, it is useful to bear in mind that there may be practical limitations for the usefulness of anti-suit injunctions from international commercial courts. As the SICC may hear disputes between parties with limited or no physical connections to Singapore, a party in breach of an SICC jurisdiction agreement may potentially proceed in foreign jurisdictions with impunity even in the face of an SICC anti-suit injunction and being held in contempt of court in Singapore.[109] It has been suggested that this issue is less relevant where the international commercial court is situated in an international financial centre or transportation hub, as the SICC is, since being held in contempt of court in such jurisdictions may be a major inconvenience to business operations.[110]

IV. A comparative perspective—the Dubai International Financial Centre courts

The SICC is sometimes compared with the Dubai International Financial Centre courts, in view of their numerous similarities: a focus on international commercial litigation,[111] a bench comprising leading international jurists,[112] and flexible rules of representation for foreign lawyers.[113] The DIFCC was originally established to serve as the main dispute resolution forum for the Dubai International Financial Centre (DIFC), a specially-designated financial centre within the Emirate of Dubai in the UAE. However, since 2011, the DIFCC's reach has broadened to include disputes where parties have agreed to litigate in the DIFCC, even if their dispute has no other connections to the DIFCC.[114] This final section of the article will conduct a brief survey of the DIFCC's jurisdictional rules and case law, in order to determine if the DIFCC's experiences hold any lessons for the development of the SICC's rules.

There are two main avenues through which the DIFCC can have jurisdiction over a dispute. The first avenue is where the dispute is connected to the DIFC ***146** through one of the gateways set out in art.5(A)(1)(a)-(e) of the Dubai Judicial Authority Law.[115] The second avenue is where the parties agree to submit their disputes to the DIFCC, whether before or after the dispute arises.[116] This avenue grants the DIFCC jurisdiction even over cases which have no other connection to the DIFC. There are no unique statutory principles governing the exercise of the DIFCC's jurisdiction, unlike in the SICC. Instead, the DIFCC applies English common law principles for this purpose. As such, in the DIFCC, the common law Spiliada test

applies to govern the court's exercise of jurisdiction,[117] and where there is a jurisdiction agreement, the DIFCC applies the "strong cause" test.[118] One exception to this rule is that the natural forum calculus does not apply where the contest is between the DIFCC and a different court in the UAE.[119] This is because the Union Supreme Court of the UAE is vested with the authority to decide jurisdictional disputes between courts in the UAE, and the DIFCC has held that it should not appropriate that jurisdiction for itself.[120]

What lessons do the DIFCC's experience hold for the SICC's jurisdictional principles? As a preliminary observation, it is worth noting that most of the issues highlighted in this article to be ironed out with the SICC's exercise of jurisdiction stem from its interaction with existing common law rules and the Hague Convention. Since the DIFCC is independent of the Dubai legal system, and the UAE has not yet ratified the Hague Convention, the DIFCC does not face the same challenges of harmonising different sets of rules.

It may be argued that since the common law jurisdictional approaches have worked well for the DIFCC, the SICC should not be averse to applying the same approaches for its own jurisdiction. However, this overlooks the fact that one major difference between the SICC and the DIFCC is that the SICC possesses a statutory framework providing for *both* the existence and exercise of jurisdiction, while the DIFCC only has a statutory framework providing for the former. As has been argued in this article, the content of the SICC's statutory rules for the exercise of its jurisdiction militate against the application of the common law jurisdictional approaches to the SICC. In addition, another cogent difference between the SICC and the DIFCC is their contextual background. The DIFCC's original objective was to serve as the DIFC's main dispute resolution forum by hearing all civil and commercial matters arising from the DIFC.[121] As such, the DIFCC was more akin to a conventional domestic court exercising general civil jurisdiction than the SICC, and there was accordingly no policy requirement for the DIFCC to possess uniquely narrow grounds for it to decline jurisdiction. Even with the expansion of its jurisdiction in 2011, the common law jurisdictional approaches continue to suit the DIFCC's purposes well enough. In contrast, the SICC exists alongside the Singapore High Court within the *same* jurisdiction and exercises jurisdiction in parallel with it. As a result, strict boundaries regarding the SICC's nexus of ***147** jurisdiction are required in order to clearly delineate its zone of operation from that of the High Court's. Since the scope of cases over which the SICC *can* exercise jurisdiction is already limited, it stands to reason that the grounds under which the SICC should refuse to exercise jurisdiction be construed narrowly in order not to further restrict the SICC's reach.

VII. Conclusion

The introduction of both the SICC and the Hague Convention in quick succession in Singapore is a bold and game-changing step that sets Singapore firmly on the trajectory to become an international commercial dispute resolution hub in the region and beyond. The ambition and vision in advocating these remarkable initiatives is commendable, and the Singapore Government can surely be counted upon to have the will and resources to see these initiatives through to their eventual fruition. Aside from being a major milestone in the internationalisation of Singapore's legal industry, the advent of the SICC and the Hague Convention also represents the dawn of a new era in Singapore's private international law; three distinct sets of conflict of laws rules presently co-exist within the boundaries of a single national jurisdiction. It is hoped that this article will be a useful contribution to the clarification and harmonisation of Singapore's private international law in this new age, and that the issues pointed out in this article will be instructive for any other jurisdictions contemplating similar legal developments or facing similar legal challenges.

Kenny Chng

Footnotes

[1] Lecturer of Law, School of Law, Singapore Management University, Singapore. The author is grateful to Professor Yeo Tiong Min of the School of Law, Singapore Management University, for his very helpful comments and suggestions on an earlier draft. Any mistakes or omissions in this article are entirely the author's own.

[1] Hague Convention on Choice of Court Agreements 2005.

[2] Choice of Court Agreements Act (No.14 of 2016).

[3] Supreme Court of Judicature Act (Cap.322, 2007 Rev. Ed.) s.18A.

[4] *"Establishment of the SICC", Singapore International Commercial Court*, http://www.sicc.gov.sg/About.aspx?id=21 [Accessed 26 October 2017].

[5] *Singapore International Commercial Court Committee, Report of the Singapore International Commercial Court Committee (2013), paras 1, 5 and 6 (co-chairs: Ms Indranee Rajah SC and Mr V.K. Rajah SC)*. The SICC complements the work of the Singapore International Arbitration Centre and the Singapore International Mediation Centre to achieve these goals.

[6] Sundaresh Menon (Chief Justice of the Supreme Court of Singapore), "International Courts: Towards a Transnational System of Dispute Resolution", Opening Lecture for the DIFC Courts Lecture Series 2015 (19 January 2015), https://www.supremecourt.gov.sg/docs/default-source/default-document-library/media-room/opening-lecture---difc-lecture-series-2015.pdf, para.15; *Jan H. Dalhuisen, "The Case For An International Commercial Court" (6 May 2014), SSRN*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2433513 [Both accessed 26 October 2017], p.9.

[7] Supreme Court of Judicature Act s.18D, Rules of Court (Cap.322, R.5, 2014 Rev. Ed.) Ord.110 r.7. The definitions of "international" and "commercial" for the purpose of this section can be found in the Rules of Court Ord.110 r.1(2)(a) and r.1(2)(b) respectively.

[8] Supreme Court of Judicature Act s.18J, Rules of Court Ord.110 r.12.

[9] Supreme Court of Judicature Act s.18K.

[10] Supreme Court of Judicature Act s.18L.

[11] Supreme Court of Judicature Act s.18M.

[12] *"Judges", Singapore International Commercial Court*, http://www.sicc.gov.sg/Judges.aspx?id=30 [Accessed 26 October 2017].

[13] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

[14] Choice of Court Agreements Act (No.14 of 2016). See also Ministry of Law press release, "Singapore Ratifies Hague Convention on Choice of Court Agreements" (2 June 2016), Ministry of Law, https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/singapore-ratifies-hague-convention-on-choice-of-court-agreement.html [Accessed 26 October 2017].

[15] Yeo Tiong Min, "The Contractual Basis of the Enforcement of Exclusive and Non-Exclusive Choice of Court Agreements" (2005) 17 SAcLJ 306, paras 12–16.

[16] Yeo, "The Contractual Basis of the Enforcement of Exclusive and Non-Exclusive Choice of Court Agreements" (2005) 17 SAcLJ 306, paras 12–16.

[17] Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439.

[18] Yeo Tiong Min, "Hague Convention on Choice of Court Agreements 2005: A Singapore Perspective" (2015) 114 Journal of International Law and Diplomacy 50, 52–54; Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 452.

[19] Choice of Court Agreements Act (No.14 of 2016) ss.11 and 12.

[20] Yeo, "Hague Convention on Choice of Court Agreements 2005: A Singapore Perspective" (2015) 114 Journal of International Law and Diplomacy 50, 63.

[21] Mary Keyes and Brooke Adele Marshall, "Jurisdiction agreements: exclusive, optional and asymmetrical" (2015) 11(3) J. Priv. Int. L. 345, 351.

[22] *R. Brand and P. Herrup, The 2005 Hague Convention on Choice of Court Agreements: Commentary and Materials (Cambridge: Cambridge University Press, 2008), p.42*.

[23] Even if Singapore law does not apply to the jurisdiction agreement, it may be argued that Supreme Court of Judicature Act s.18F and Choice of Court Agreements Act (No.14 of 2016) s.3(2) apply as forum mandatory rules. See Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 452–454 for a more in-depth discussion of this issue. The author concludes that s.18F of the SCJA should not be a forum mandatory rule.

[24] Supreme Court of Judicature Act.

[25] Choice of Court Agreements Act (No.14 of 2016) s.3(2).

[26] *T. Hartley and M. Dogauchi, Explanatory Report (The Hague: HCCH Publications, 2005)*, http://www.hcch.net/index_en.php?act=publications.details&pid=3959&dtid=3 [Accessed 10 November 2017], paras 105–106; Yeo, "Hague Convention on Choice of Court Agreements 2005: A Singapore Perspective" (2015) 114 Journal of International Law and Diplomacy 50, 63. For a more detailed discussion of this issue, see Keyes and Marshall, "Jurisdiction agreements: exclusive, optional and asymmetrical" (2015) 11(3) J. Priv. Int. L. 345.

[27] Orchard Capital I Ltd v Ravindra Kumar Jhunjhunwala [2012] 2 SLR 519 at [24]; Yeo, "The Contractual Basis of the Enforcement of Exclusive and Non-Exclusive Choice of Court Agreements" (2005) 17 SAcLJ 306, 359.

[28] Choice of Court Agreements Act (No.14 of 2016) s.8.

[29] Yeo, "Hague Convention on Choice of Court Agreements 2005: A Singapore Perspective" (2015) 114 Journal of International Law and Diplomacy 50, 67.

[30] *Yeo Tiong Min, "International Litigation in Asia: Will the Hague Choice of Court Convention Make Any Difference?"*, http://www.jsil.jp/annual_documents/2013/1012224.pdf [Accessed 26 October 2017], para.15; also in Yeo, "Hague Convention on Choice of Court Agreements 2005: A Singapore Perspective" (2015) 114 Journal of International Law and Diplomacy 50, 67.

[31] Donohue v Armco Inc [2001] UKHL 64; [2002] 1 All E.R. 749 at [24]; The Eleftheria [1970] P. 94 at 99–100; Rory Butler and Baptiste Weijburg, "Do Anti-Suit Injunctions Still Have a Role to Play?—An English Law Perspective" (2011–2012) 24 USF Maritime Law Journal 257, 270–272; Daniel Tan, "No Dispute Amounting to Strong Cause; Strong Cause for Dispute?" (2001) 13 SAcLJ 428; The Jian He [2000] 1 SLR 8 at [33]; Vincent Leow, "Exclusively Here to Stay: The Applicable Principles to Granting a Stay on the Basis of an Exclusive Jurisdiction Clause" (2004) Sing. J.L.S. 569, 571, Yeo, "Hague Convention on Choice of Court Agreements 2005: A Singapore Perspective" (2015) 114 Journal of International Law and Diplomacy 50, 63–64, Christopher J.S. Knight, "Anti-Suit Injunctions and Non-Exclusive Jurisdiction Clauses" (2010) 69 C.L.J. 25, 26. The divergences between the three approaches will be explored in sections III and IV of this article.

[32] Yeo, "The Contractual Basis of the Enforcement of Exclusive and Non-Exclusive Choice of Court

Agreements" (2005) 17 SAcLJ 306; Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 443–444.

33 [1987] A.C. 460.

34 Yeo, "The Contractual Basis of the Enforcement of Exclusive and Non-Exclusive Choice of Court Agreements" (2005) 17 SAcLJ 306; Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 443–444.

35 British Aerospace Plc v Dee Howard Co [1993] 1 Lloyd's Rep. 368; Antec International Ltd v Biosafety USA Inc [2006] EWHC 47 (Comm); Qioptic Ltd v Teledyne Scientific & Imaging LLC [2011] EWHC 229 (Ch); Abdul Rashid bin Abdul Manaf v Hii Yii Ann [2014] SGHC 194.

36 Yeo, "The Contractual Basis of the Enforcement of Exclusive and Non-Exclusive Choice of Court Agreements" (2005) 17 SAcLJ 306, 356; Orchard Capital I Ltd v Ravindra Kumar Jhunjhunwala [2012] 2 SLR 519 at [30]. The context of the judgment is a natural forum analysis during a stay of proceedings exercise, but similar principles should apply to the anti-suit injunction context as well.

37 Orchard Capital I Ltd v Ravindra Kumar Jhunjhunwala [2012] 2 SLR 519 at [31].

38 Rules of Court Ord.110 r.8(2), read with the definition of "jurisdiction agreement" in Ord.110 r.1(1). See also Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 454.

39 See section V.E of this article for an elaboration of this issue.

40 Hague Convention art.1(1).

41 Choice of Court Agreements Act (No.14 of 2016) s.2(2).

42 With the recent legislative amendments to the Rules of Court, an additional practical impact of s 2(2) of the CCAA could be to provide a justification for a transfer of proceedings to the SICC pursuant to Ord.110 r.12(3B)(b), read with rr.12(4A) and 12(4B).

43 Zoom Communications Ltd v Broadcast Solutions Ltd [2014] 4 SLR 500; JIO Minerals FZC v Mineral Enterprises [2011] 1 SLR 391 (CA) at [38]-[44]; Rickshaw Investments Ltd v Nicolai Baron von Uexkull [2007] 1 SLR(R) 377 (CA); Brinkerhoff Maritime Drilling Corp v PT Airfast Services Indonesia [1992] 2 SLR(R) 345 (CA).

44 Spiliada Maritime Corporation v Cansulex Ltd [1987] A.C. 460 at 476C.

45 JIO Minerals FZC and others v Mineral Enterprises [2011] 1 SLR 391 (CA) at [42]; also Rickshaw Investments Ltd v Nicolai Baron von Uexkull [2007] 1 SLR(R) 377 (CA) at [15] and Good Earth Agricultural Co Ltd v Novus International Pte Ltd [2008] 2 SLR(R) 711 (CA) at [10].

46 *Halsbury's Laws of Singapore (LexisNexis, 2013), paras 75.096–75.100*; JIO Minerals FZC v Mineral Enterprises [2011] 1 SLR 391 (CA) at [44].

47 The defendant can make both arguments in the alternative without being construed as having submitted to the jurisdiction of the forum. See Zoom Communications Ltd v Broadcast Solutions Ltd [2014] 4 SLR 500 at [32]-[33].

48 [2016] SGHCR 6.

[49] IM Skaugen SE v MAN Diesel & Turbo SE [2016] SGHCR 6 at [24].

[50] [2016] SGHC 40.

[51] *Singapore International Commercial Court Committee, Report of the Singapore International Commercial Court Committee, para.10 (co-chairs: Ms Indranee Rajah SC and Mr V.K. Rajah SC)*.

[52] See *Halsbury's Laws of Singapore (2013), para.75.121*.

[53] It is already rather difficult for "strong cause" to be made out in such situations, since it is unlikely that the forum will take kindly to the argument that proceedings in the forum amount to a breach of natural justice. This situation also raises the question of whether the High Court can transfer the case to the SICC if there is an exclusive choice of the Singapore High Court. This issue will be discussed in section IV.B of this article.

[54] Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 446.

[55] Rules of Court Ord.110 r.12(4)(b)(ii). While the requirements under Ord.110 r.12(3B) are different in the sense that party consent is required for a transfer to be made, r.12(3B) is not applicable in this context in any case since it only applies where there is an exclusive choice of court agreement in favour of the Singapore High Court.

[56] *Yeo Tiong Min, "Staying Relevant: Exercise of Jurisdiction in the Age of the SICC", Eighth Yong Pung How Professorship of Law Lecture (13 May 2015), para.41*.

[57] Choice of Court Agreements Act (No.14 of 2016) s.8.

[58] Choice of Court Agreements Act (No.14 of 2016) s.11.

[59] Choice of Court Agreements Act (No.14 of 2016) s.12.

[60] *Hartley and Dogauchi, Explanatory Report (2005), para.194* suggests a very high standard to be met before the forum should hear the case in breach of the foreign jurisdiction agreement. See also Yeo, "Hague Convention on Choice of Court Agreements 2005: A Singapore Perspective" (2015) 114 Journal of International Law and Diplomacy 50, 64—although s.12(1)(d) may be construed as importing the common law "strong cause" test, this article cautions that the phrase in the Convention is intended to have an "autonomous" meaning, guided by interpretations of the phrase in other contracting states.

[61] *Halsbury's Laws of Singapore (2013), para.75.121*.

[62] In particular, s.12(1)(c) and (d) of the Choice of Court Agreements Act may be taken to incorporate considerations similar to those taken into account in the "strong cause" test.

[63] Hague Convention art.7. *Hartley and Dogauchi, Explanatory Report (2005), para.160* suggest that freezing injunctions are not affected by art.7 of the Hague Convention; thus, there is a good argument that art.7 applies equally to anti-suit injunctions. See also Petr Bríza, "Choice-Of-Court Agreements: Could the Hague Choice of Court Agreements Convention and the Reform of the Brussels I Regulation be the Way Out of the Gasser-Owusu Disillusion?" (2009) 5(3) J. Priv. Int. L. 537, 555.

[64] *Brand and Herrup, The 2005 Hague Convention on Choice of Court Agreements: Commentary and Materials (2008), pp.88–89*.

[65] Hague Convention art.6.

66 Rules of Court Ord.110 r.12(3B)(b).

67 Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439.

68 Rules of Court Ord.110.

69 Rules of Court Ord.110 r.7.

70 Rules of Court Ord.110 r.8.

71 Voth v Manildra Flour Mills Proprietary Ltd (1990) 171 C.L.R. 538, IM Skaugen SE v MAN Diesel & Turbo SE [2016] SGHCR 6 at [145].

72 *Yeo, "Staying Relevant: Exercise of Jurisdiction in the Age of the SICC", Eighth Yong Pung How Professorship of Law Lecture (13 May 2015), para.32*.

73 *Singapore International Commercial Court Committee, Report of the Singapore International Commercial Court Committee, paras 21(b) and 34 (co-chairs: Ms Indranee Rajah SC and Mr V.K. Rajah SC)*; Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 458.

74 *Yeo, "Staying Relevant: Exercise of Jurisdiction in the Age of the SICC", Eighth Yong Pung How Professorship of Law Lecture (13 May 2015), para.32*.

75 *Yeo, "Staying Relevant: Exercise of Jurisdiction in the Age of the SICC", Eighth Yong Pung How Professorship of Law Lecture (13 May 2015), para.50–51*.

76 *Halsbury's Laws of Singapore (2013), para.75.121*.

77 It has been argued that the common law test may still be applicable for the SICC's exercise of jurisdiction under Ord.110 r.8, if one reads Ord.110 r.8(2) as merely placing so much weight on the choice of SICC agreement that foreign connections become irrelevant in the SICC's calculus—see Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 457.

78 *Yeo, "Staying Relevant: Exercise of Jurisdiction in the Age of the SICC", Eighth Yong Pung How Professorship of Law Lecture (13 May 2015), para.34*.

79 Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 458.

80 IM Skaugen SE v MAN Diesel & Turbo SE [2016] SGHCR 6 at [112]. The High Court in IM Skaugen made this observation in the context of Ord.110 r.12, but it remains instructive in this context nonetheless.

81 See Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 458 for an argument that the SICC should decline to exercise jurisdiction in such a situation.

82 Denise H. Wong, "The Rise of the International Commercial Court: What Is It and Will It Work?" (2014) 33 C.J.Q. 205, 223–224.

83 Wong, "The Rise of the International Commercial Court: What Is It and Will It Work?" (2014) 33 C.J.Q. 205, 224.

[84] Rules of Court Ord.110 r.12(4). Where parties are applying for a transfer to the SICC, the time bar periods in Ord.110 r.13 apply, i.e. 28 days after close of pleadings where proceedings are commenced by writ, and 28 days after service of originating summons where proceedings are commenced by originating summons.

[85] IM Skaugen SE v MAN Diesel & Turbo SE [2016] SGHCR 6 at [113].

[86] IM Skaugen SE v MAN Diesel & Turbo SE [2016] SGHCR 6 at [113].

[87] See Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 462. However, as the SICC becomes increasingly entrenched as a leading forum for international commercial litigation, such situations may become less frequent as transfers would likely be effected earlier in the High Court proceedings.

[88] Choice of Court Agreements Act (No.14 of 2016) s.11.

[89] Rules of Court Ord.110 r.10(3)(b).

[90] Hague Convention art.8(5), highlighted in Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 472.

[91] *Yeo, "Staying Relevant: Exercise of Jurisdiction in the Age of the SICC", Eighth Yong Pung How Professorship of Law Lecture (13 May 2015), para.44*.

[92] Donohue v Armco [2002] 1 All E.R. 749.

[93] Rules of Court Ord.110 r.9(b)(ii).

[94] For cases commenced in the SICC pursuant to an SICC jurisdiction agreement, leave for service out of jurisdiction under Ord.11 r.1 is not required: see Rules of Court Ord.110 r.6(2).

[95] As pointed out in Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 465, the Singapore International Commercial Court, User Guides—Note 1 (Jurisdiction), https://www.sicc.gov.sg/LegRulesPD.aspx?id=44 [Accessed 10 November 2017], state that there is no requirement that the claims against a party to be joined to the proceedings must be international and commercial. This author agrees with that article's argument that the requirement for an action to be "international and commercial in nature", as a legislative provision enacted in the SCJA, takes precedence over this note.

[96] Man Yip, "The Resolution of Disputes before the Singapore International Commercial Court" (2016) 65(2) I.C.L.Q. 439, 465–466; *Yeo, "Staying Relevant: Exercise of Jurisdiction in the Age of the SICC", Eighth Yong Pung How Professorship of Law Lecture (13 May 2015), para.45*.

[97] The omission of an equivalent to Ord.110 r.8(2) in Ord.110 r.9 is explained in the the Singapore International Commercial Court, User Guides—Note 1 (Jurisdiction), https://www.sicc.gov.sg/LegRulesPD.aspx?id=44 [Accessed 10 November 2017], para.9 as well.

[98] Supreme Court of Judicature Act s.18L.

[99] *Yeo Tiong Min, "The Effective Reach of In Personam Reasoning in Private International Law", Yong Pung How Professorship of Law Lecture (2009), para.16*; Clare Ambrose, "Can Anti-Suit Injunctions Survive European Community Law?" (2003) 52(2) I.C.L.Q. 401, 404.

[100] Société Nationale Industrielle Aerospatiale v Lee Kui Jak [1987] A.C. 871 at 896; Evergreen International

SA v Volkswagen Group Singapore Pte Ltd [2004] 2 SLR(R) 457 at [16]; John Reginald Stott Kirkham v Trane US Inc [2009] 4 SLR(R) 428 at [27].

101 Hong Hin Kay Albert v AAHG, LLC [2014] SGHC 206 at [48]; Société Nationale Industrielle Aerospatiale v Lee Kui Jak [1987] A.C. 871 at 893; CSR Ltd v Cigna Insurance Australia Ltd [1997] HCA 33.

102 *Yeo, "The Effective Reach of In Personam Reasoning in Private International Law", Yong Pung How Professorship of Law Lecture (2009), para.16*.

103 Commentators widely agree that anti-suit injunctions raise issues of international comity. See Trevor C. Hartley, "Comity and the Use of Anti-suit Injunctions in International Litigation" (1987) 35(3) American Journal of Comparative Law 487, 506; Justice Hugh Williams, "Anti-Suit Injunctions: Damp Squib or Another Shot in the Maritime Locker? Reflections on Turner v Grovit" (2006) 20 Australian and New Zealand Maritime Law Journal 4, 13; *Dicey and Morris on The Conflict of Laws, edited by Lawrence Collins, 13th edn (London: Sweet & Maxwell, 2000), p.386*.

104 Airbus Industrie GIE v Patel [1999] 1 A.C. 119 at 138.

105 Chng Wei Yao Kenny, "Breach of Agreement vs Vexatious, Oppressive and Unconscionable Conduct: Clarifying Their Relationship in the Law of Anti-Suit Injunctions" (2015) 27 SAcLJ 340, 344–349. With respect to arbitration agreements, see C v D [2007] EWCA Civ 1282 and *Adrian Briggs, The Conflict of Laws, 3rd edn (Oxford: Oxford University Press, 2013), p.132*.

106 Donohue v Armco Inc [2002] 1 All E.R. 749 at [24]; The Eleftheria [1970] P. 94 at 99–100; Butler and Weijburg, "Do Anti-Suit Injunctions Still Have a Role to Play?—An English Law Perspective" (2011–2012) 24 USF Maritime Law Journal 257, 270–272; Tan, "No Dispute Amounting to Strong Cause; Strong Cause for Dispute?" (2001) 13 SAcLJ 428; The Jian He [2000] 1 SLR 8 at [33]; Leow, "Exclusively Here to Stay: The Applicable Principles to Granting a Stay on the Basis of an Exclusive Jurisdiction Clause" (2004) Sing. J.L.S. 569, 571.

107 See the discussion of the impact of non-exclusive jurisdiction clauses in section III of this article. See also Knight, "Anti-Suit Injunctions and Non-Exclusive Jurisdiction Clauses" (2010) 69 C.L.J. 25, 26.

108 *Yeo, "The Effective Reach of In Personam Reasoning in Private International Law", Yong Pung How Professorship of Law Lecture (2009), para.16*; Chng, "Breach of Agreement vs Vexatious, Oppressive and Unconscionable Conduct: Clarifying Their Relationship in the Law of Anti-Suit Injunctions" (2015) 27 SAcLJ 340, 363–364.

109 *Menon, "International Courts: Towards a Transnational System of Dispute Resolution", Opening Lecture for the DIFC Courts Lecture Series 2015 (19 January 2015), para.60*; Wong, "The Rise of the International Commercial Court: What Is It and Will It Work?" (2014) 33 C.J.Q. 205, 225.

110 *Menon, "International Courts: Towards a Transnational System of Dispute Resolution", Opening Lecture for the DIFC Courts Lecture Series 2015 (19 January 2015), para.61*.

111 *Menon, "International Courts: Towards a Transnational System of Dispute Resolution", Opening Lecture for the DIFC Courts Lecture Series 2015 (19 January 2015), para.17*.

112 *"Judges", Singapore International Commercial Court*, http://www.sicc.gov.sg/Judges.aspx?id=30 [Accessed 26 October 2017]; *"Our Judges", DIFC Courts*, http://difccourts.ae/about-the-courts/courts-structure/judges/ [Accessed26 October 2017].

113 Legal Profession Act (Cap.161, 2009 Rev. Ed.) s.36P; DIFC Court (Interim Arrangements) (Order No.1 of 2005) art.12.

114 Dubai Law No.16 of 2011 "Amending Certain Provisions of Law No. 12 of 2004", amending Dubai Law No.12 of 2004 "Concerning Dubai International Financial Centre Courts". See art.5(A)(2) of Dubai Law No.12 of 2004 "Concerning Dubai International Financial Centre Courts".

115 Dubai Law No.12 of 2004 "Concerning Dubai International Financial Centre Courts".

116 Dubai Law No.12 of 2004 "Concerning Dubai International Financial Centre Courts" art.5(A)(2).

117 Corinth Pipeworks SA v Barclay's Bank Plc DIFCC CFI 024/2010 at [18]; Investment Group Private Ltd v Standard Chartered Bank DIFCC CA 004/2015 at [159].

118 Al Khorafi v Bank Sarasin-Alpen DIFCC CA 003/2011 at [114].

119 Allianz Risk Transfer AG Dubai Branch v Al Ain Ahlia Insurance Co PJSC DIFCC CFI 012/2012 at [61]-[62]; Meydan Group LLC v Banyan Tree Corporate PTE Ltd DIFCC CA 005/2014.

120 Investment Group Private Ltd v Standard Chartered Bank DIFCC CA 004/2015.

121 Jayanth K. Krishnan and Priya Purohit, "A Common Law Court in an Uncommon Environment: The DIFC Judiciary and Global Commercial Dispute Resolution" (2014) 25 American Review of International Arbitration 497.

C.J.Q. 2018, 37(1), 124-147