The SICC, Mediation and the Singapore Convention: Practical consequences for clients and advisers

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The SICC, the SIMC and the Singapore Convention widen the choice that parties face when they draft a dispute resolution clause. Arbitration at SIAC remains the default for most cross-border contracts in Asia, because the New York Convention offers the widest enforcement network. The SICC becomes attractive where an appeal is desired, where several contracts and parties must be brought into one proceeding, where a published judgment has value as precedent or where the counterparties are in states bound by the Hague Choice of Court Convention. Mediation fits disputes in which the parties want to preserve a relationship, which is often the case between banks and their long-standing clients or within family groups.

The choice also depends on where the assets lie. A judgment of the SICC is enforceable without difficulty in Singapore and under treaty in Europe and the United Kingdom. Enforcement in China, India or Indonesia still depends on

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reciprocity and on the attitude of the local courts. Wealth structures with assets in several jurisdictions should therefore be reviewed with the enforcement map in mind. Chapter E.IV discusses the trust and holding structures through which such assets are often held.

Financial institutions have particular reasons to look at the court. Disputes over derivatives, syndicated loans and structured products often turn on questions of construction that recur across many contracts. A published judgment of the SICC, delivered by a bench that may include former leaders of the English and Australian judiciaries, can settle such a question for an entire market, which a confidential award cannot. The right of appeal protects a bank against an aberrant first-instance decision on a standard clause. Where confidentiality matters more, as in disputes over the conduct of a private client relationship, arbitration or mediation remain the better instruments. Family offices and trustees face a different balance. Disputes within a family or between beneficiaries and trustees are often better resolved by mediation, because the parties will continue to share assets, companies and reputations after the dispute has ended. The SIMC protocols allow such a mediation to be embedded in a formal procedure from the outset, so that a settlement can immediately be given the force of an award or a court order.

- Choose deliberately between SIAC arbitration, the SICC and court litigation, in light of the need for appeal, joinder of third parties, confidentiality and the place of the assets.
- If the SICC is chosen, use an exclusive and written jurisdiction agreement, so that the Hague Choice of Court Convention applies and the court's jurisdiction is beyond argument.
- Check whether the case is likely to be offshore before relying on foreign counsel to lead the case.
- Consider whether the parties wish to exclude or limit the right of appeal and record that choice expressly.
- For Singapore-seated arbitrations, consider adding the SICC model clause for proceedings under the International Arbitration Act 1994.

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- Add an Arb-Med-Arb or Lit-Med-Lit clause where mediation is realistic, so that a settlement can be recorded as a consent award or court order.
- Where a free-standing mediated settlement may have to be enforced abroad, state expressly that the Singapore Convention on Mediation applies, and check whether the enforcing state is a party and what reservations it has made.
- Map the counterparty's assets and check the available enforcement route in each jurisdiction: Hague Convention, REFJA, memorandum of guidance or general law.
- Keep the clause consistent with mandatory rules on consumer protection and regulatory complaint schemes where private clients are involved.

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