



## The Singapore International Commercial Court considers when witnesses may give evidence by video link

### I. Introduction

In *Bachmeer Capital Limited v Ong Chih Ching and others* [2018] SGHC(I) 1, the Singapore International Commercial Court (the “**SICC**”) had occasion to consider whether leave should be granted for two factual witnesses to give their oral evidence in SICC proceedings via video link from Shanghai. The decision of International Judge Sir Vivian Ramsey is of practical importance given the regularity with which cases before the SICC feature evidence of foreign witnesses.

The underlying proceedings arose from dispute involving parties from China, Singapore and Russia in the aftermath of a terminated joint venture to develop and promote the world's largest indoor ski slope and winter-themed integrated resort in Shanghai. The project was previously valued at RMB2.8 billion. Providence Law Asia LLC represented the Russian party in the Suit.

### II. The Decision

The Court considered Section 62A of the Evidence Act, which sets out the Court's discretion to allow evidence to be given by video link, and the application of the said provision by the Court of Appeal in *Sonica Industries Ltd v Fu Yu Manufacturing Ltd* [1999] 3 SLR (R) 119.

Following the requirements of Section 62A and the approach of the Court of Appeal, Vivian Ramsey IJ found that in considering whether to allow witnesses to give evidence by video link, the Court must have regard to

all the circumstances of the case.

As a preliminary point, the Court had to be satisfied that the administrative and technical facilities and arrangements made in Shanghai were of a sufficient quality. The Court then went on to consider:

- i. The reasons for the witnesses being unable to give evidence in Singapore;
- ii. Whether the evidence of the witnesses was relevant; and
- iii. Whether sufficient steps had been taken to secure their presence in Singapore.

Crucially, the Court had to assess where the balance of prejudices lies: a witness who is allowed to testify remotely may deprive the Court of a fuller assessment of the witness' demeanour; on the other hand, if the application to receive oral evidence via video link is dismissed, potentially relevant or material evidence may be excluded.

Applying the factors set out above, the Court declined the application in respect of a Singaporean factual witness, Mr Lee Chee Kiat (“**Mr Lee**”) who was working and residing in Shanghai but who had expressed inconvenience in having to travel to Singapore for the hearing. On the other hand, the Court allowed the application in respect of a Chinese national, Mr Yang Xiao Ming (“**Chairman Yang**”) whose passport had been held by Chinese authorities, and who had a pre-existing medical condition.

The Court observed that *courts and international tribunals still attach importance to being able to see and assess the demeanour of the witness as part of the assessment of the credibility of the witness' evidence*. This is particularly so where the evidence goes to a central issue. In light of this, the Court noted that inconvenience to travel alone is not sufficient, especially when considered against the fact that it is important that a witness give important evidence in person so that the proceedings are conducted fairly. This is especially so given that in most international cases witnesses are not always located in Singapore.

The Court granted the application in relation to Chairman Yang. The Court noted that whilst his medical condition, in itself, would have needed further evidence before it would have been sufficient to justify him giving evidence by video link, the fact that he was unable to obtain his passport and permission to travel to Singapore was in itself sufficient for the Court to grant leave.

The Court recognised that the party having to cross-examine Chairman Yang remotely would suffer from a degree of prejudice as compared to a situation where he was physically present before the Court. However, on balance, the Court found that the alternative, i.e. Chairman Yang not being able to testify at all, was unsatisfactory given that his evidence was crucial.

### III. Conclusion

Parties seeking to adduce oral evidence via video link must adequately satisfy the Court

with affidavit evidence setting out the reasons why a particular witness is unable to travel to Singapore to testify in person. Personal inconvenience or costs considerations per se is unlikely to be sufficient reason. Applicants would also do well to address the relevance and materiality of that witness' evidence, with a view to demonstrating the prejudice that would be suffered if such evidence is not allowed to be adduced via video link.

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