

Opening Remarks at the American Bar Association 2018 Section of International Law Investment Arbitration & Trans-Pacific Transactions Conference

Attorney-General Lucien Wong S.C.

Singapore, 10 May 2018

Mr Steven Richman
Chair, American Bar Association Section of International Law

Distinguished Guests, Colleagues, Friends, Ladies and Gentlemen

1. I am happy to see all of you in Singapore at this conference. It has been a pretty warm week, and I just met a new friend from Miami who said that he felt very much at home!
2. Let me begin by bidding all of you a warm welcome to sunny Singapore.
3. Unlike the US, the world's largest economy bounded by two great oceans, Singapore is a tiny island-state—and I must stress that we are an “island-state” because we are not only an island but an independent State—with hardly any natural resources. People have said that the only resource we have are our people. Because of this, we have had to plug ourselves into major trade networks so as to ensure our relevance in the world economy, and of course, our survival.
4. With that backdrop, you can understand why Singapore is a staunch proponent of free trade and the protection and promotion of investments. Without that, you may not even have picked Singapore as a conference venue! We firmly believe that the rules-based reduction of tariff and non-tariff barriers to trade under international trade law will lead to improvements in national development, livelihoods and domestic innovation. I do not mean just for Singapore alone, but all countries. I know your President has been rattling his sabre on tariffs, and I do not know where we will end up, but I hope we do not end up somewhere too drastic. We also believe that facilitative and balanced rules under international investment law are crucial to enabling the free flow of investments both into and out of Singapore. Singapore is often reported as the largest investor in Indonesia, but these investments are actually made by companies

incorporated in Singapore, not necessarily with Singapore funds. Singapore currently implements 22 bilateral and regional FTAs, including five ASEAN (“Association of Southeast Asian Nations”) and ASEAN-plus-one FTAs. In addition, we also implement 40 bilateral investment treaties. The vast majority of these agreements—especially those that entered into force from the 1980s onwards—provide for the resolution of investors’ claims against Singapore by reference to arbitration by the International Centre for Settlement of Investment Disputes (“ICSID”) or arbitration in accordance with the UNCITRAL (“United Nations Commission on International Trade Law”) Rules on Arbitration.

5. Our commitment to free trade and the promotion of investment is exemplified by our signing of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”). As you know, the agreement was signed on 8 March 2018, concluded among the remaining 11 TPP partners after the US unfortunately withdrew from the TPP (“Trans-Pacific Partnership”) under President Trump. Like the TPP, the CPTPP is important for Singapore, as it allows our businesses free market access to Canada and Mexico, with whom Singapore does not yet have existing FTAs. We believe that the significance of the CPTPP lies in its promotion of greater trade liberalisation, regional economic integration, positive contribution to the economic growth prospects of its member countries, and the creation of new opportunities for workers, businesses, consumers and families. The high standards and business-facilitative trade rules embodied by the CPTPP are borne out of our concerns about protectionism, and are aimed at maintaining open markets and raising living standards. We also hope that the CPTPP will help to strengthen the rules-based international trading and investment system.

6. In that vein, just like in Singapore’s modern BITs (“Bilateral Investment Treaties”) and FTAs, Singapore is committed to an investor-state dispute settlement mechanism under the CPTPP. For those of you who are familiar with the treaty, you will know that the text of the Investment Chapter of this treaty remains unchanged from its incarnation under the previous TPP. However, certain provisions concerning the scope of the investor-state dispute settlement mechanism have been temporarily

suspended under the CPTPP. These provisions, which have been temporarily suspended, are those permitting investment claims in relation to investment contracts between an investor and the Government, or investment approvals by the Government, otherwise known as “investment agreements” and “investment authorisations” respectively under the TPP. Thus, under the current CPTPP, private investors who enter into an investment agreement with the Singapore Government will not be able to avail themselves of the CPTPP investor-state dispute settlement procedures, but can submit claims against Singapore in respect of covered investments to arbitration under the ICSID Convention or the UNCITRAL Arbitration Rules or any other arbitral institution or arbitral rules agreed between the investor and the Singapore Government.

7. Certainly, we realise that each of these agreements—not just the CPTPP, but all the other BITs and FTAs—represents Singapore’s exposure to investment arbitration claims. I know that today and tomorrow you will be discussing how to prevent investment treaty disputes and to improve States’ readiness for such disputes. So far, Singapore has been spared investment claims made against us, but like I told my colleagues at the International Affairs Division, we have to be prepared for claims to be made against us in the future, and put our money where our mouth is. This morning, instead of focusing on the risks, allow me to say a few words about the opportunities such investment treaties represent.

Opportunities for legal work in the region

8. I began by describing Singapore as a small island-state. I should add that small though we may be, we are situated close to, if not at, the heart of Asia, the world’s centre of economic gravity. According to the Asian Development Bank’s calculations, Asia accounted for nearly two-thirds of global growth in 2016. This growth includes not only that in Northeast Asia, which of course comprises Japan and South Korea, but today, you cannot ignore China. Certainly, I cannot talk about growth in Asia without looking to Southeast Asia, which has 600 million people and a US\$2.4 trillion GDP.

9. Future projected growth in Asia will hasten the shift of the global economic centre of gravity to Asia, particularly in China. In China, the Belt and Road Initiative

("BRI"), which the Chinese Government is actively pursuing, will present more opportunity for growth, particularly in the infrastructure sector. To date, over US\$1 trillion have been committed to thousands of BRI projects. Over the longer term, some estimates place cumulative investment in BRI projects at US\$4 – 8 trillion. For my friends from India, the Modi Government's economic policies are expected to lay the foundations for greater growth. Please tell Mr Modi not to wait too long. My founding Prime Minister once said that Asia is like an aeroplane with two engines: China and India. But that aeroplane seems to be flying with one engine, and at an angle at the moment. Closer to home, in ASEAN, the ASEAN Economic Community—like an ASEAN common market if you like—is also expected to generate more growth for this region. Within the next 30 years, the Asia-Pacific region is projected to account for more than 50% of global GDP.

10. With economic growth, we can expect growth in legal activity. When the economic centre of gravity shifts, we can expect a similar shift in the centre of gravity for legal activities. For instance, burgeoning infrastructure projects spurred by the Belt and Road Initiative need financing and structuring. Those of you who are familiar with infrastructure projects will be familiar with the delays and variations common in such projects. These contracts will generate disputes. All this will translate to more legal work, especially in dispute resolution. In February, President Xi announced the setting up of three international courts in Beijing, Xi'An and Shenzhen, all to prepare for disputes arising out of the BRI.

Singapore's aspirations and efforts

11. And Singapore aspires to be at the heart of all these legal activities. I used to be Chairman of MPA ("Maritime Port Authority"), and I could see that apart from Singapore's physical port—to which we owe much of our success—we also run brokerage, banking and insurance services, *etc*, for shipping. You can do all these activities in Singapore, without having to go to London! Today, we are home to more than 4,000 regional headquarters of multinational corporations. This could be attributed to our open economy and our reputation for being pro-business. In the World Bank's

ranking in 2017, Singapore was the 2nd easiest place to do business in the world. We also have the most extensive network of trade agreements in Asia.

12. We want to be a legal hub in Singapore. We currently enjoy, if I may say so, a well-deserved reputation for having a neutral, stable, pro-arbitration legal system that delivers high quality jurisprudence. This perhaps accounts for Singapore's popularity as a seat of arbitration in this region. Just this morning, I read the Queen Mary White & Case survey, which placed Singapore as the third most popular seat of arbitration, behind only London and Paris. This means that we have overtaken Hong Kong, as the most popular seat in Asia.

13. Singapore is like a hamster running on a treadmill. We cannot stop running, because once we stop running, we may fall off the treadmill. Thus, we do not rest on our laurels. We know we can do more, and we can do better. In that spirit, the Singapore Government has been proactively reviewing legislation to ensure that it is up-to-date and supports businesses. Last year, Singapore put in place a framework for third-party funding for international arbitration, partly in response to feedback that there was demand for such funding, particularly in international arbitration cases. In fact, Minlaw ("Ministry of Law") is already asking for feedback on how Singapore can improve on this new law.

14. As another example of Singapore's efforts, in December 2016, the SIAC ("Singapore International Arbitration Centre") launched its investment arbitration rules. These new rules are designed to reflect the special features and concerns arising in arbitration proceedings involving States, State entities and intergovernmental organisations. Some of the key highlights of these rules include: strict timelines on challenges to arbitrators with a built-in discretion for the arbitration to proceed despite such challenges; provisions for submissions by non-disputing parties and to enable the Tribunal to order the disclosure of third-party funding arrangements and to take such funding into account in apportioning costs. We also have provisions relating to the discretionary publication of key information relating to the dispute. That is something SIAC has done to stay ahead of the competition. In 2017, SIAC set a new record for the

highest number of new case filings and administered cases, having received 452 new cases from parties hailing from 58 countries in six continents. SIAC's caseload has increased by more than five times in the last decade. I do not think there has been any case administered under the new investment arbitration rules, but no doubt, SIAC hopes that SIAC-administered investment arbitration cases will contribute to the growth in its caseload in time to come.

15. Singapore is an open economy. Although the SIAC was set up by the Singapore Government, the Government does not just prefer SIAC. Singapore also invests greatly in institutions so as to better serve the needs of businesses and the dispute resolution community in general. Last year, the ICC ("International Chamber of Commerce") Court was the first international arbitral institution to set up a physical case management team and office in Singapore, right in this very building. This reflects Singapore's position as the leading seat for ICC arbitrations in Asia for the last seven years, and also represents the ICC Court's vote of confidence in Asia, where opportunities abound, and in Singapore, where most of ICC's cases in Asia are seated.

16. Following close on the ICC's heels, the PCA ("Permanent Court of Arbitration") also set up a staffed office here in Singapore to administer PCA hearings held in Singapore and Asia. The Singapore office is the PCA's first office in Asia, and only the second outside its headquarters in The Hague.

17. Both the ICC and PCA staffed offices will be housed in the building next door (that is next to this building which is Maxwell Chambers) when this major investment in dispute resolution institutions and facilities by the Singapore Government is ready for business. You would have noticed the construction works next door when you approached this building. For those who are not familiar with Maxwell Chambers, where we are right now, this is the world's first integrated dispute resolution complex set up in 2010. Since then, the number of hearings conducted at Maxwell Chambers (and some of you may have conducted hearings here), the number of dispute resolution institutions housed here and the number of practitioners from all over the world who have set up shop here have caused Maxwell Chambers to be fully utilised, and in fact,

have outgrown Maxwell Chambers' capacity. The Singapore Government is spending money to expand Maxwell Chambers to the building next to it, to be renamed "Maxwell Chambers Suites". The new building will add over 120,000 square feet of floor space to Maxwell Chambers, thereby tripling its current size. At Maxwell Chambers Suites, there will be four floors of premium modern offices to cater to dispute resolutions, arbitration chambers, arbitration institutions, law firms, and other law practitioners and service providers. That will leave Maxwell Chambers to be dedicated fully to hearing facilities.

18. For those of you who did not know this, the building next door used to house the Traffic Police. It brings back memories of my paying my traffic fines there. That name was later named the "Red Dot Traffic Building". Many years ago, a former Indonesian President once looked at a map and asked where Singapore was: "Is it this little red dot?" That is how far we have come, for a little red dot to be relevant to the world economy today.

19. I trust that with these short opening remarks, I have managed to explain why free trade and the protection and promotion of investments are important to Singapore, and why Singapore believes strongly in the rule of law and the use of rules-based dispute settlement mechanisms.

20. Thank you very much, and I wish you all an enjoyable and excellent conference.

LUCIEN WONG
ATTORNEY-GENERAL
