

## PAX MOOT 2022

### REQUESTS FOR CLARIFICATION

1. Considering the great importance of the Singapore Investment Bank and the legal importance of connecting factors in private international law, we would like to know where the Singapore Investment Bank has its headquarters and branches?

The Singapore Investment Banks's headquarters are in Singapore. The Bank has branches in Hong Kong and Dubai, with a representative office in Manila.

2. Considering the significance of the legal qualification of the contract, we would like to request more information about where and how (e.g. online or live, place, date, ...) the conclusion of the Credit Contract took place.

Mr. Smith went to the office of the Singapore Investment Bank to negotiate the terms of the credit. The Bank sent draft agreement via email and Mr. Smith returned the signed copy via DHL from London.

3. The case mentions that Mr. Smith filed a request for mediation to the ICC-ADR on 1 February 2021. Taking into account the delineation of the applicable sources, do we have to interpret the settlement agreement of 14 February as a result of that specific request, or should we consider that the ICC-ADR was not involved in the development of this agreement?

ICC-ADR facilitated the mediation.

4. On page five of the case, it is stated that Mr. Smith claims "the time for fulfilling the condition had not yet lapsed". Since the content of the settlement agreement is important to the compliance of the parties with the agreement, we would like to request information about the meaning of 'the time for fulfilling' and 'the condition'. More specific, what time limit was agreed for the fulfilment of which condition?

Under the settlement agreement, Mr. Smith should ensure funding from GEP by the 10<sup>th</sup> of March.

**Please keep in mind that the obligation of Mr. Smith was to ensure funding by GEP and not to receive funding by GEP by 10th of March. The case states that by 15th of March, Mr. Smith admitted that "he had not yet been able to secure the deal with GEP" while it remains controversial whether he ensured funding by this date and merely failed to provide a signed contract.**

5. In light of question five of the case regarding the recognition of the judgment on the subsidiary claim of the Singapore Investment Bank, we would like to know what (in terms of content) and in whose favor this judgment was decided?

The case before the ICCP is still pending. The Parties shall express their position on question 5 before the ICCP.

6. Is there a contract or some kind of other document or evidence that shows Mr. Smith's and the Bank's cooperation/negotiations?

**There is written evidence of Mr. Smith and the bank's cooperation.**

7. The above question also applies to the initial loan agreement, the payment of the first installment, as well as the other conditions agreed upon by the parties.

**The Bank keeps record of Mr. Smith's application for credit; AML full compliance report on Mr. Smith and the necessary approvals by the Bank's Management and Supervisory bodies.**

8. Did Mr. Smith sign the Loan Agreement with SIB in its main office (in Singapore) or in its branch office in another state (e.g. France or UK)?

**Mr. Smith signed the Loan agreement on paper and sent it via DHL from London.**

9. What exactly was in the settlement between Mr. Smith and SIB? Was there any formalistic flaw?

**No, there was no formalistic flaw.**

10. Where did the parties (Mr. Smith and the Singapore Bank) settle the agreement on 14th February 2021?

**In Singapore.**

11. Did the parties agree to a time limit for the GEP refunding?

**Yes, Mr. Smith needed to ensure funding from GEP by 10<sup>th</sup> of March.**

**Please keep in mind that the obligation of Mr. Smith was to ensure funding by GEP and not to receive funding by GEP by 10th of March. The case states that by 15th of March, Mr. Smith admitted that "he had not yet been able to secure the deal with GEP" while it remains controversial whether he ensured funding by this date and merely failed to provide a signed contract.**

12. Where was the case during the January and March 2021 period?

**After the expiration of the 30-day period of time upon services of the Order via Messenger and given the fact that no opposition was received by ICCP within this period of time, and taking into account an appropriate period of time to allow a statement to arrive, ICCP declared the European enforcement order enforceable using standard form G, as set out in Annex VII of the Regulation.**

13. Did Mr Smith discover the alleged deficiencies in service before or after the Order for Payment was declared enforceable on 30th March 2021?

**Mr. Smith was not sure that the document he received via Messenger was true and original.**

14. What does Mr Smith's job scope entail:

1. as a practicing solicitor in the UK;
2. as a practicing solicitor in Singapore; and

3. as the “bridge across the development canyon”?

Mr. Smith as a practicing solicitor handles the Projects & Energy and Projects & Infrastructure department. He has been ranked in Chambers Global 2019 and 2020 in both practice areas as an Eminent Practitioner for Singapore. Clients say that “*Mr. Smith is low-key but well respected. He is very efficient and commercial in finding solutions for clients.*”

15. When Mr Smith was dismissed from his law firm in London and had “no job” in June 2020, was he still:

1. a practicing solicitor in Singapore; and/or
2. involved in the specific field of work of development aid to NGOs in Asia?

Mr. Smith’s dismissal from the law firm is not related to his bar rights.

16. When arguing that the 2005 Hague Convention does not apply to the recognition of the judgement on the subsidiary claim, can we rely on the grounds for refusing relief contained in Article 9?

This is up to the parties to decide based on the facts of the case.

17. It was stated that “for many years his main focus was access to justice, but recently he has moved more into the area of clean and affordable energy”. How and when exactly did Mr Smith effect this transition from “access to justice” to “clean and affordable energy”? Was this before or after 2017 when he purchased the apartments in France?

Mr. Smith has been interested in clean and affordable energy since 2009.

18. Was the settlement agreement of 14 February 2021 resulted from mediation (that is in this case a process, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons, i.e., a "mediator") after Mr. Smith filed a request for mediation to the ICC-ADR on the 1 February 2021 or was it resulted by negotiations between the parties (Singapore Investment Bank and Mr. Smith) without the assistance of a mediator and where was this settlement signed?

The agreement resulted from ICC-ADR mediation.

19. Should Mr. Smith be considered a member of the bar association of Singapore such that the original credit contract can be considered to have been signed in the context of his professional activities conducted in Singapore, in a way that this may affect where his habitual residence is situated?

See answer to Q. 15.

20. Could we assume that the Singapore Investment Bank's Legal Team response by email to Mr. Smith after he crossed out in pen "competent court of Singapore" and wrote instead "International Commercial Courts of Paris (ICCP) shall have jurisdiction to resolve the case" is a means of effective communication to express their agreement of altering this specific clause and grant jurisdiction to the ICCP?

This is up to the parties to argue.

21. In the present context, should a boiler-plate clause be interpreted as being subject to change or should it be interpreted as a clause with terms that cannot be changed, even through implied agreement?

**This is up to the parties to argue.**

22. In the absence of a specific time limit within which Mr. Smith had to find an alternative source of finance under the settlement agreement of 14 February 2021, should this time limit be construed as referring to a "reasonable" amount of time?

**See Q. 11.**

23. Did Mr. Smith communicate via his professional or private e-mail address and did he present himself as a solicitor etc.?

**Mr. Smith sent all communication to the bank via DHL. The Bank though used Mr. Smith's email available for previous business dealings between the bank and Mr. Smith, namely: [j.smith@solicitor.uk](mailto:j.smith@solicitor.uk).**

24. Was Mr. Smith, on 28 January 2021, via Facebook sent the relevant forms (forms A – F) from the Regulation (EC) No 1896/2006 and the form stating that the addressee may refuse to accept the document if it is not written in a language which the addressee understands from Regulation (EC) No. 1393/2007?

**Yes.**

25. Did Mr. Smith use the entire loan to pay off the construction company, which converted the apartments into carbon-neutral multifunctional office space or did Mr. Smith use any part of the loan to purchase any goods in connection to the renovation e. g. buying the furniture for the office himself?

**Mr. Smith transferred the loan in full to the investment company. The company provided monthly reports on the progress of the work.**

26. In what legal capacity did the Singapore Investment Bank operate in the EU at the time of the conclusion of the Credit Contract (a branch, agency, person, any other legal capacity...)?

**This is up to the parties to decide based on the facts of the case.**

27. Was the address specified in the Credit Contract the actual and current address of Mr. Smith throughout the service procedure?

**Yes.**

28. Is there a link between the NGOs which rent apartments to Mr Smith and the NGOs who are clients of Mr Smith as a lawyer? Are they the same ones?

**Sometimes.**

29. Did Mr Smith agree in the loan agreement to be notified by electronic means of any issues relating to the loan? is there more factual informations available on whether he answered the text or not?

No.

30. When did the Singapore National bank file its subsidiary claim?

On 21<sup>st</sup> of April 2021.

31. Was there a time limit in the mediation agreement for Mr. Smith to secure a deal with the Green Energy Company?

See Q. 11.

32. Are the neighbors in London or Amsterdam?

In London.

33. Upon being notified by Mr Smith, did a mediator from the ICC-ADR or any other mediator help Mr Smith and the Singapore Investment Bank reach the settlement agreement and if they did so, what kind of evidence did they provide to Mr Smith and the Singapore Investment Bank?

A mediator participated in the process.

34. From which of his immovable property in Paris does Mr Smith receive or intend to receive any income?

Mr. Smith did not have a specific plan in this regard.

35. From which municipality did the notice of return, which the court received in the beginning of January 2021, come from?

London.

36. Which personal or business connections in- and outside the UK has Mr Smith had since his dismissal from the law firm in June 2020?

After his dismissal, Mr. Smith planned to work by himself and not in a corporate structure anymore.

37. In December 2020, when the court was unable to locate Mr Smith, did the court effect service by a method other than that described in Article 13 Regulation No 1896/2006, and is there a document complying with the requirements of Regulation No 1896/2006 for each of the attempts to serve Mr Smith at the addresses given in the case?

No.

38. Is the agreement signed on 14 February 2021 between Mr. Smith and the Singapore investment Bank about the new repayment schedule resulting from:

- a. conciliation or mediation in the case pending before the ICCP creating a European Order for Payment Procedure initiated by the Singapore Investment Bank on 25 October 2020;
- b. the mediation pending before the ICC-ADR initiated by Mr. Smith on 1 February 2021 to reschedule his debt;

- c. an amicably negotiation between Mr. Smith and the Singapore investment Bank outside of any institution.

See Q.18.

39. Is there a period foreseen in the agreement within which the refunding through GEP had to be obtained? And if so, what is this period?

See Q. 11.

40. Did the parties make a choice of law in the settlement agreement of 14 February 2021?

The parties chose the laws of Switzerland as completely neutral.

41. In case the answer to question 38 is not option a, was the ICCP aware of the agreement between the Bank and Mr. Smith at the time it was concluded?

No, ICCP was not aware of the agreement between the Bank and Mr. Smith.

42. Was Mr. Smith employed and acting as a solicitor when advising and assisting 'wealthy businesspeople' to invest profits in NGO's?

Yes, Mr. Smith was acting as a solicitor.

43. With the present request for clarifications the "Red Foxes" team would like to address the bench on the issue of the nature of the International Commercial Courts of Paris. In particular, it is requested whether the ICCP has the nature of an arbitral tribunal. The final decision of the arbitral tribunal would therefore be an arbitral award, following the rules of international arbitration.

This is up to the parties to argue.

44. With the following request for clarifications, the "Red Foxes" Team would like to address the bench on the issue regarding the amount of money requested by the Singapore Investment Bank in the European Order for Payment. In particular, it is requested whether the Bank claimed for the whole amount of the loan (deducted the amount of the instalments already paid), or only the amount of the three late instalments. This information is legally significant in order to understand the scope and the content of both the European Order for Payment, and the subsidiary claim. As three instalments have fallen due on 25th October 2020 and Mr Smith was unable to pay them, the European Order for Payment could relate to that specific amount. On the other hand, it is mentioned in the case that "the Bank declared the credit premature" when initiating the European Order for Payment proceedings on 25th October 2020. This expression could lead to the assumption that the Bank intends to target the whole credit amount and not only the amount of the three unpaid instalments. The relevance of this information is related both to the content of the settlement agreement concluded in the mediation (a), and to the nature of the subsidiary claim filed by the Bank (b).

The Bank requested European Order for Payment for the whole unpaid amount of the Credit.

45. With the present request for clarifications the "Red Foxes" team would like to address the bench on the issue regarding Mr. Smith's professional activity. The common core of all

different definitions of “consumer” is that a consumer shall be defined as a natural person, who is acting outside the scope of an economic activity (e. g. trade, business, craft, profession). The conclusion of the credit contract in order to finance Mr. Smith’s project could be seen as part of an economic activity if Mr. Smith’s objective was to earn money by “making the space available”. In the case it is only stated that Mr. Smith intends to participate in the carbonneutral multifunctional office space project, and, in frame of this project, “to make the space available” to NGOs looking for temporary workspace. Should this phrasing be interpreted to state that Mr Smith intends to rent the space to have profits, or should it be understood in the sense that he wants to provide the space to NGOs for free?

**It is up to the parties to argue.**

46. With the present request for clarifications, the “Red Foxes” team would like to address the bench on the issue of the mortgage on the apartments. It is requested whether the mortgage provided in the loan agreement should be considered as valid. Indeed, mortgages are in general subject to additional formal requirements other than being concluded in written form. The case does not state that Mr Smith and the bank followed any further formalities in that regard, except for the clause included in the loan agreement.

**The mortgages were valid and served as security for the credit. Nevertheless, the Bank requested issuance of European Order for Payment.**

47. With the present request for clarifications, the “Red Foxes” team would like to address the bench on the issue of the habitual residence of Mr. Smith. Before June 2020 Mr. Smith was working in a law firm based in London being a UK citizen, which leads to the assumption that also his habitual residence was in the UK before June 2020. After being fired from the law firm, it is possible to assume that Mr Smith’s centre of main interests moved to Paris, where the ten apartments are located and where Mr. Smith decided to locate his favourable court regarding the credit contract.

**Upon his dismissal from the law firm in the UK, Mr. Smith visited his sister and then returned to his lodgings in London attempting to start his own legal practice.**

48. What is a Notice of Return and what entails? It is not clear the importance of this notice relating to the service of the EOP.

**The Notice of Return has the meaning set out in Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000.**

49. When was the credit contract concluded between the parties? We need to know in order to assess whether or not Mr. Smith paid each installment diligently and his insolvency started only in July and August 2020 due to Covid.

**Mr. Smith paid each installment diligently until July 2020.**

50. When Mr. Smith paid the Eur 500.000 installment according to the settlement agreement? It is important to know in order to assess whether or not the Bank legitimately resumed the EOP enforcement. In facts, it is not disclosed if Mr. Smith was late by March 15.

Mr. Smith paid the EUR 500.000 installment for February.

51. Did transmitting agency (France) communicate with receiving agency (UK) in accordance with Regulation (EC) No. 1393/2007?

Yes, during the failed attempt for service in December 2020.

52. Did French bailiff serve the European payment order via Messenger (on January 29, 2021)?

Yes.

53. Did Singapore Investment Bank, as a creditor, mark in its application for issuance of European payment order the criteria upon which the jurisdiction of court in Paris should be established?

They marked code 14, but did not indicate anything more.

54. Who did sign the loan contract first – did the Bank sign the loan contract first and then send it to Mr. Smith who changed the prorogation clause (by his pen) and thereafter signed the contract?

The Banks sent a draft and Mr. Smith, after changing the dispute resolution clause, signed it first.

55. Has Mr. Smith changed his (habitual) residence after the conclusion of loan contract?

No.

56. Does the deal of financial assistance between Mr. Smith and Singapore Green Building fall through because of Covid implications?

No, the interest rates of the Singapore Investment Bank were simply better.

57. Can the Mortgage Credit be considered to be 'Eurohypotheec'?

Yes.

58. We wish to inquire some more information about mr. Smith's habitual residence, the case facts mention that mr. Smith is a solicitor in the UK and Singapore, however he obtained a loan in Singapore of which we can derive that he is also habitual resident in Singapore?

Mr. Smith often traveled to Singapore on business.

59. In addition, the case facts regarding the conclusion of the contract are vague. Mr. Smith contacted the bank and the Bank said that in the future the ICCP would be considered but there is no explicit agreement on the ICCP, for the specific case between Smith and the Bank.

It is up to the parties.

60. We ask for confirmation that Mr. Smith's domicile and residence are in the United Kingdom, considering that he holds English citizenship, has practiced in this State as a solicitor and the contact details in the credit contract with the Defendant refer to England. Doubts have arisen in this regard due to Mr. Smith's dismissal in June 2020 and the inability to locate him in this state since December 2020 and in January 2021 for the EOP notification.

**Mr. Smith was visiting his sister after his dismissal in June 2020.**

61. Another doubt arises about the jurisdiction. Is it possible to jointly address the first and second questions? It seems possible to answer affirmatively as, even if in the first question the jurisdiction regards an aspect of admissibility of the application for review filed by Mr. Smith and in the second question concerns the bank's claim, they have the same reasonings.

**Mr. Smith's domicile shall be determined based on the facts of the case.**

62. A query occurs in connection with question 5 whether Article 67(1) of the Withdrawal Agreement applies instead of Article 67(2). The answer should be negative, according to our view of the facts, since the legislation lacks any reference to "the recognition and enforcement of judgments, decisions, authentic instruments, court settlements and agreements" and only the notion of "actions that are related to such legal proceedings" is present, which in our opinion is not applicable in this case.

**Question 5 relates to possible recognition and enforcement of the subsidiary claim filed on 21<sup>st</sup> of April 2021. The rest is up to the parties to argue.**

63. Had Mr. Smith expressly accepted electronic means as a method of service in advance?

**No.**

64. Had the Court served or attempted to serve Mr. Smith by other means before serving him via his Facebook profile Messenger?

**Yes, the Court tried to serve Mr. Smith in December 2020.**

65. Had the Court verified that the Facebook profile used to serve the order to the Claimant is actually that of Mr. Smith's, that it is active and that Mr. Smith uses it regularly?

**The Court verified that the profile is active and used regularly, but John Smith is a common name and Mr. Smith did not enter any date of birth visible on his profile.**

66. Had the Singapore Investment Bank formally requested payment from Mr. Smith for the due installments or had tried any kind of communication with its client seeking the payment of the outstanding debt before declaring the credit overdue and applying for the European Order for Payment? If this were the case, under what terms did the Bank so and by what channel said communication was sent to the Claimant? What was Mr. Smith's reply to the Bank, if any?

**The Bank sent an email to Mr. Smith on the address previously known to the bank.**

67. Kindly confirm whether the Credit Contract between Mr Smith and the Singapore Investment Bank contains any specific provision regarding the governing law of the credit. Was

said issue ever the subject of discussion between the parties, as was apparently the case with the dispute resolution clause?

No, unlike in the mediated agreement (Question 40), the parties in their initial contract included only the dispute resolution clause.