SICC、调解与《新加坡调解公约》：对客户和顾问的实际影响

Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland and Germany),
Solicitor (England & Wales and Hong Kong)
Of Counsel, KGP Legal LLC
alexander.ressos@kgplegal.com.sg
www.ressos.com.sg

SICC、SIMC与《新加坡调解公约》拓宽了当事人在起草争议解决条款时的选择范围。在亚洲，大多数跨境合同仍以SIAC仲裁为默认选择，因为《纽约公约》提供了最广泛的执行网络。在以下情况下，SICC更具吸引力：当事人希望保留上诉权；需要将多份合同和多方当事人纳入同一程序；公开判决具有判例价值；或交易对手方位于受海牙《选择法院协议公约》约束的国家。调解则适合当事人希望维系关系的争议，银行与其长期客户之间或家族集团内部的争议往往属于这种情况。

选择还取决于资产所在地。SICC的判决在新加坡可顺利执行，在欧洲和英国则可依条约执行。在中国、印度或印度尼西亚的执行，仍取决于互惠以及当地法院的态度。因此，在多个法域持有资产的财富结构，应结合执行版图加以审视。第E部分第IV章讨论了此类资产常用的信托和控股结构。

金融机构有特别的理由关注这一法庭。有关衍生工具、银团贷款和结构性产品的争议，往往取决于在众多合同中反复出现的解释问题。SICC的公开判决由可能包括英国和澳大利亚司法界前任领导人在内的合议庭作出，能够为

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整个市场一举解决此类问题，而保密的仲裁裁决做不到这一点。上诉权可保护银行免受一审就标准条款作出的反常裁决的影响。若保密更为重要，例如涉及私人客户关系处理的争议，仲裁或调解仍是更好的工具。家族办公室和受托人面临的权衡则有所不同。家族内部或受益人与受托人之间的争议，往往更适合通过调解解决，因为争议结束后，各方仍将共享资产、公司和声誉。SIMC的各项规程允许从一开始就将此类调解嵌入正式程序，使和解能够立即获得仲裁裁决或法庭命令的效力。

- 结合上诉需要、第三方追加、保密性和资产所在地，在SIAC仲裁、SICC和法院诉讼之间审慎作出选择。
- 若选择SICC，应订立排他性的书面管辖协议，使海牙《选择法院协议公约》得以适用，法庭的管辖权也无可争议。
- 在依赖外国律师主导案件之前，先核查案件是否可能属于离岸案件。
- 考虑当事人是否希望排除或限制上诉权，并将该选择明确记录在案。
- 对于以新加坡为仲裁地的仲裁，考虑加入适用于依《1994年国际仲裁法》所提程序的SICC示范条款。
- 在调解切实可行的情况下，加入“仲裁—调解—仲裁”或“诉讼—调解—诉讼”条款，使和解可被记录为合意裁决或法庭命令。
- 若独立调解达成的和解协议可能需要在境外执行，应明确约定适用《新加坡调解公约》，并核查执行国是否为缔约方及其作出了哪些保留。
- 梳理对手方的资产分布，并核查每个法域可用的执行途径：海牙公约、REFJA、指导备忘录或一般法律。
- 涉及私人客户时，确保条款符合消费者保护及监管投诉机制方面的强制性规定。

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Author contact: Dr Alexander Ressos, TEP · contact@ressos.com