Supreme Court
of New South Wales

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## New agreement between New South Wales and Singapore Supreme Courts on questions of foreign law

The Supreme Courts of New South Wales and Singapore have entered into a Memorandum of Understanding (MOU) to work closely and expeditiously on issues arising under foreign law.

It is the first time a formal agreement has been forged between an Australian and foreign court on a legal issue, as distinct from one related to education or mutual assistance.

NSW Chief Justice James Spigelman and Singapore Chief Justice Chan Sek Keong jointly made the announcement today.

Chief Justice Spigelman said the MOU and supporting amended Uniform Civil Procedure Rules would prove valuable in determining complex cross-border commercial and family disputes.

"Money and people are more mobile today and courts are increasingly being asked to adjudicate on matters spanning multiple jurisdictions," he said.

"This MOU reflects both the fluid and complicated nature of some modern legal proceedings, and the growing need for closer cooperation between courts and judges."

Chief Justice Chan added: "The written agreement recognises the importance of facilitating legal cooperation in a way that has never been done before," he said.

"I look forward to its more widespread adoption in the future as a new means of determining complex questions of foreign law."

Usually, when an issue of foreign law arises in a case before the Supreme Court, each party to the proceedings engages an expert to provide advice and to attend court – often travelling from overseas - for cross-examination.

In effect, the presiding judge is asked to adjudicate between conflicting expert witnesses.

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In a speech to commercial judges in Asia in Hong Kong earlier this year, Chief Justice Spigelman said this practice was "a costly process and leads to significant 'lost in translation' problems, with a real prospect that an incorrect understanding of the foreign law will be adopted and applied".

In the same speech, he raised the possibility of courts directly referring questions of foreign law for determination to the court of the governing law.

Now, consenting parties will have the option to seek a ruling directly from the foreign court about its own laws.

Chief Justices Spigelman and Chan agreed a judgment by a foreign court would be more authoritative, accurate and expedient than opinions by conflicting expert witnesses.

The Supreme Court of Singapore was the first to refer a question of foreign law to a foreign court (*Westacre Investments Inc v The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR) [2009] 2 SLR (R) 166)*, when it sought a determination of a question of English law. The Commercial Court in London answered the question (*Westacre Investments Inc v Yugoimport SDPR [2008] EWHC 801 (Comm.))*.

Earlier this year, the NSW Court of Appeal delivered judgment in *Murakami v Wiryadi & Ors,* which involved the Courts of Australia, Indonesia and Singapore.

Under the new Rules, parties involved in NSW cases will have another option to have questions of foreign law answered by a single referee. This process is expected to be highly cost-effective. The Supreme Court has a long established system of referees. However, it has not previously been used to determine an issue of foreign law.

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