



# Standing International Forum of Commercial Courts

Report of the Second Meeting

New York

27-28 September 2018

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Available separately:

- (1) A booklet of short biographies of Attendees
- (2) A booklet of outlines of each Commercial Court

## Introduction

On Thursday 27 September 2018, the world's commercial courts convened once more for the second meeting of the Standing International Forum of Commercial Courts (SIFoCC). SIFoCC was warmly welcomed by the hosts for this meeting, the United States District Court for the Southern District of New York and the Supreme Court of the State of New York.

At a time when the Forum's objectives of sharing best practice, collaborating towards stronger rule of law and supporting courts in developing countries, are more important than ever, the Forum's growth and development in the short period since its inaugural meeting in London in May 2017 was notable.

Once again, commercial courts from the world over were represented. This time a total of 35 jurisdictions were in attendance through a total of around 100 judges and court staff. The representation was at senior judicial level, with 13 jurisdictions represented by their Chief Justice, many delegations represented at senior appellate level, and most delegations including the head of their commercial court.

The meeting was held at the Daniel Patrick Moynihan US District Courthouse, 500 Pearl Street, Manhattan, New York with a reception and dinner at the New York Federal Reserve.



## Actions

1. Complete the draft Multilateral Memorandum on Enforcement of money judgments of commercial courts and publish on the SIFoCC website.
2. Start work towards a second document that will identify shared principles for enforcement.
3. Start work to highlight obstacles to the use of summary process for enforcement.
4. Establish the first SIFoCC International Working Group, to bring together case management best practice from both common law and civil law systems, and distil working presumptions of international best practice keeping in mind the individual needs of the case.
5. Continue and expand the SIFoCC Judicial Programme of Observation and Study following the first programme hosted in London.
6. Following the first meeting in London (May 2017) and the second meeting in New York (September 2018), convene the third meeting of SIFoCC in Singapore (March 2020) which should include a particular focus on technology in courts and the resolution by commercial courts of disputes involving technology in commerce.
7. Continue to develop the SIFoCC website.
8. Develop the guidance available to SIFoCC through Steering Group meetings.

## Summary of Programme

On Thursday 27 September 2018 members were given the opportunity to visit courtrooms and judges' chambers at the Southern District of New York's US District Court and the New York Supreme State Court, before assembling in the Ceremonial Courtroom to hear presentations on paperless chambers, auxiliary judicial personnel and the initiation of systems. Chief Judge Janet DiFiore addressed members over lunch.

Later that afternoon the full meeting commenced with welcome remarks from Hon. Loretta Preska and introductory remarks from Lord John Thomas. Members received a report from Sir Robin Knowles on SIFoCC's progress since the first meeting in May 2017. Members heard that the SIFoCC Secretariat function had been established in London's Rolls Building. In addition to work with the New York courts towards the second meeting, the Secretariat had focussed on driving actions from the London meeting, in particular establishing the website, collating the draft Multilateral Memorandum on Enforcement and commencing the SIFoCC Judicial Programme of Observation and Study.

The following session, chaired by Sir William Blair, continued the conversation on enforcement which had begun in London, but this time with reference to the draft Multilateral Memorandum on Enforcement. This document seeks to compile explanations from each member country of the available and most efficient process for enforcement of money judgments of other countries. Opening remarks were provided by Chief Justice Michael Hwang. Members also heard from the Chair of The Hague Conference Special Commission on the Judgments Project (David Goddard QC). This was followed by a lively discussion from a panel of senior global General Counsel about what users of commercial courts want, chaired by Robert Haig Esq.

Attendees departed for New York's Federal Reserve where they were welcomed by its General Counsel, Michael Held. A Q&A session with the Chair of the US Securities and Exchange Commission (Jay Clayton III) was led by Hon. Loretta Preska. After dinner, the Chief Justice of Uganda, Hon. Bart Katureebe, addressed guests on the topic of sharing judicial experience and expertise globally.

The second day commenced with a roundtable discussion on the subject of Case Management, co-chaired by Hon. Charles Ramos and Presiding Judge Jan Tolkmitt, with an opening address from Chief Justice James Allsop and closing observations from Lord Justice Peter Gross. Guest experts Daniel Kolb and Vivian Berger contributed on Alternative Dispute Resolution. There was an update from the Kingdom of Saudi Arabia followed by feedback from the first judicial participants of SIFoCC's Judicial Programme of Observation and Study commenced in London in July 2018.

The Deputy General Counsel of the World Bank, Irina Kichigina, addressed members over lunch. The afternoon session started with a third roundtable discussion on the topic of Technology in the Courts, chaired by Chief Justice Sundaresh Menon. Members heard examples of cutting edge technology used in SIFoCC member courts. Attendees went on to discuss areas of interest on the horizon (radar topics) – Litigation Funding by Third Parties (chaired by Lord Hope) and Arbitration Issues (chaired by Lord John Thomas). The latter session included an address from the Secretary-General of UNCITRAL, Anna Joubin-Bret, and concluding remarks from Chief Justice Geoffrey Ma.

As the meeting drew to an end, Lord Thomas spoke about the forthcoming work of SIFoCC, its priorities and its next meeting. Closing remarks were delivered by Hon. Loretta Preska who then invited members to the neighbouring State Supreme Court's 25th floor Library for a closing reception with New York judiciary and senior legal professionals.

## Attendees

### AFRICA

#### **The Gambia**

##### The High Court of The Gambia

Hon. Justice Zainab Jawara Alami, Justice of the High Court of The Gambia and SIFoCC Judicial Observation Programme participant.

#### **Ghana**

##### Commercial Court of Ghana

Hon. Justice Jennifer Dodoo, President of the Commercial Court of Ghana

Hon. Justice Gertrude Torkornoo, Supervising Judge for the Commercial Division of the High Court of Ghana; Judge of the Court of Appeal

#### **Nigeria**

##### Federal High Court of Nigeria

Hon. Justice Ibrahim N. Buba, Justice of the Federal High Court of Nigeria

Hon. Justice Nnamdi O. Dimgba, Justice of the Federal High Court of Nigeria

#### **Sierra Leone**

##### Supreme Court of Sierra Leone

Hon. Chief Justice Abdulai Hamid Charm, Chief Justice of the Republic of Sierra Leone

Hon. Justice Amy Wright, Resident Judge in the Admiralty and Commercial Division of the High Court

Hon. Justice Miatta Samba, Justice of the High Court of Sierra Leone

Hon. Justice Abdulrahman Mansaray, Justice of the Supreme Court of Sierra Leone

#### **Uganda**

##### Supreme Court of Uganda

Hon. Chief Justice Bart M. Katureebe, Chief Justice of Uganda

Hon. Justice David K. Wangutusi, Justice of the Supreme Court of Uganda

Hon. Justice Geoffrey Kiryabwire, Justice of the Court of Appeal of Uganda

Hon. Justice Anna Mugenyi Bitature, High Court of Uganda and SIFoCC Judicial Observation Programme participant

Deputy Registrar Boniface Wamala, Deputy Registrar, Supreme Court of Uganda

### ASIA

#### **People's Republic of China**

##### Supreme People's Court of the People's Republic of China

Mrs. GAO Xiaoli, Deputy Chief Judge, Fourth Civil Division, Supreme People's Court of the People's Republic of China; Judge of the International Commercial Court of the SPC

Mrs. SUN Mingjuan, Judge of the Supreme People's Court of the People's Republic of China  
Mrs. YANG Lei, Judge of the Supreme People's Court of the People's Republic of China

## **Hong Kong SAR**

### Hong Kong Judiciary

Hon. Chief Justice Geoffrey Ma, Chief Justice of the Court of Final Appeal of Hong Kong  
Hon. Madam Justice Mimmie Chan, Judge of the Court of First Instance of the High Court, Hong Kong Judiciary  
Mr David Lau, Assistant Judiciary Administrator, Hong Kong

## **Japan (Observer)**

### Tokyo High Court

Judge Makoto Hashizume, Judge of the Tokyo High Court, Japan

## **Kazakhstan**

### Astana International Financial Centre (AIFC) Court

Rt Hon. Lord Harry Woolf, Chief Justice of the AIFC Court, Kazakhstan  
Mr. Christopher Campbell-Holt, Registrar and Chief Executive, AIFC Court, Kazakhstan

## **Malaysia**

### Federal Court of Malaysia and Court of Appeal of Malaysia

Hon. Justice Nallini Pathmanathan, Justice of the Court of Appeal of Malaysia  
Hon. Justice Alizatul Khair binti Osman Khairuddin, Justice of the Federal Court of Malaysia

## **Philippines**

### Supreme Court En Banc

Hon. Associate Justice Alfredo Benjamin S. Caguioa, Associate Justice of the Supreme Court of the Philippines

## **Singapore**

### Supreme Court of Singapore

Hon. Chief Justice Sundaresh Menon, Chief Justice of Singapore  
Hon. Justice Quentin Loh, Justice of the Supreme Court of Singapore  
Deputy Registrar Ms Teh Hwee, Judicial Registrar, Supreme Court of Singapore  
Assistant Registrar Scott TAN Chun Wen, Assistant Registrar, Supreme Court of Singapore

## **Sri Lanka**

### Supreme Court of Sri Lanka

Hon. Justice Buwaneka Aluwihare P.C, Judge of the Supreme Court of Sri Lanka  
Hon. Justice Priyantha Jayawardena P.C, Judge of the Supreme Court of Sri Lanka  
Hon. Justice Mahinda Samayawardhena, Judge of the Court of Appeal, Sri Lanka and SIFoCC Judicial Observation Programme participant

Mr Dappula De Livera P.C, Solicitor General and Appellate Counsel for the Republic of Sri Lanka  
Mr Paul Mylvaganam, Programme Manager, Sri Lanka

## **AUSTRALASIA**

### **Australia**

#### **Federal Australia**

##### **Federal Court of Australia**

Hon. Chief Justice James Allsop AO, Chief Justice of the Federal Court of Australia

Hon. Justice John Eric Middleton, Justice of the Federal Court of Australia

### **Victoria**

##### **Supreme Court of Victoria**

Hon. Justice Peter Riordan, Principal Judge of the Commercial Court of Victoria

Hon. Justice Michael Sifris, Justice of the Supreme Court of Victoria

Judicial Registrar Julian Hetey, Judicial Registrar of the Commercial Court of Victoria

### **New South Wales**

##### **Supreme Court of New South Wales**

Hon. Chief Justice Tom Bathurst, Chief Justice of New South Wales

Hon. Justice David Hammerschlag, Head of Commercial List, New South Wales

Hon. Justice Julie Ward, Chief Judge in Equity, New South Wales

### **New Zealand**

##### **High Court of New Zealand**

Hon. Justice Geoffrey Venning, Chief Judge of the High Court of New Zealand

## **EUROPE**

### **France**

##### **Paris Court of Appeal and Paris Commercial Court**

Judge Jean Messinesi, President of the Paris Commercial Court

Judge François Ancel, Judge (Acting President) of the International Chamber of the Paris Appeal Court

### **Germany**

##### **Hamburg Landgericht**

Presiding Judge Dr Jan Tolkmitt, Presiding Judge, Hamburg Landgericht; Judge-elect, Federal Court of Justice of Germany

Judge Heike Hummelmeier, Presiding Judge of the Commercial Chamber, Hamburg Landgericht



## **Netherlands**

### Netherlands Commercial Court

Judge Lincoln Frakes, Judge of the Netherlands Commercial Court, District Court  
Registrar Willem A. Visser, Registrar and Administrator, Netherlands Commercial Court  
Netherlands Commercial Court of Appeal (To be established beginning 2019)  
Judge Duco Oranje, President, Netherlands Commercial Court, Court of Appeal

## **Republic of Ireland**

### High Court of the Republic of Ireland

Hon. Mr Justice Brian McGovern, Judge of the Court of Appeal, Republic of Ireland  
Hon. Mr Justice Peter Kelly, President of the High Court of the Republic of Ireland

## **United Kingdom**

### **England and Wales**

#### High Court of England and Wales

Rt Hon. Lord John Thomas of Cwmgiedd, Chair of the SIFoCC Steering Group; former Lord Chief Justice of England & Wales  
Rt Hon. Lord Justice Peter Gross, Lord Justice of Appeal, England & Wales  
Hon. Sir William Blair, Former Judge in Charge of the Commercial Court of England & Wales  
Hon. Mr Justice Robin Knowles, Judge of the Commercial Court of England & Wales

### **Northern Ireland**

#### High Court of Northern Ireland

Hon. Mr Justice Mark Horner, High Court Judge in Charge of the Commercial List, Northern Ireland

### **Scotland**

#### Court of Session, Scotland

Hon. Lord Raymond Doherty, Principal Commercial Judge, Scotland  
Hon. Lord Iain Bannatyne, Judge to the Commercial Court, Scotland

## **MIDDLE EAST**

### **Abu Dhabi**

#### Abu Dhabi Global Market Courts

Rt Hon. Lord David Hope of Craighead KT, Chief Justice of the Abu Dhabi Global Market Courts  
Mrs Linda Fitz-Alan, Registrar and Chief Executive, Abu Dhabi Global Market Courts

## **Dubai**

### Dubai International Financial Centre Courts

Hon. Chief Justice Michael Hwang SC, Chief Justice of DIFC Courts, Dubai

Hon. Justice Sir Richard Field, Justice of DIFC Courts, Dubai

H.E. Justice Ali Shamis Al Madhani, Justice of DIFC Courts, Dubai

Deputy Registrar Nour Hineidi Kirk, Deputy Registrar, DIFC Courts, Dubai

## **Iraq**

His Excellency Faiq Zidan, Chief Justice of Iraq

## **Qatar**

### Qatar International Court and Dispute Resolution Centre

Rt Hon. Lord Nicholas Phillips KG, President of the Qatar International Court

Mr Faisal Rashid Al-Sahouti Al-Mansoori, Chief Executive of the Qatar International Court and Dispute Resolution Centre

Mr Christopher Grout, Registrar of the Qatar International Court

## **Saudi Arabia**

H.E Dr. Hamad Alkhudhairi, Appeal Judge; Chief of the Committee for the Development of Commercial Judiciary in Saudi Arabia

H.E Osama Allahim, Judge of Saudi Arabia

H.E Ibrahim Alfheid, Judge of Saudi Arabia

H.E Abdullah Alsulaimi, Judge of Saudi Arabia

H.E Ahmed AlAbudi, Judge of Saudi Arabia

## **NORTH AMERICA AND THE CARIBBEAN**

### **Canada**

#### Ontario Superior Court of Justice

Hon. Associate Chief Justice Frank N. Marrocco, Associate Chief Justice of Ontario

Regional Senior Justice Geoffrey Morawetz, Regional Senior Justice for Toronto Region

Hon Mr. Justice Glenn Hainey, Head of the Commercial List, Toronto, Ontario

### **Cayman Islands**

#### Grand Court of the Cayman Islands (Financial Services Division)

Hon. Chief Justice Anthony Smellie, Chief Justice of the Cayman Islands

Hon. Justice Nick Segal, Justice of the Grand Court of the Cayman Islands

Ms Shiona J. Allenger, Clerk of the Court, the Cayman Islands

Mrs Suzanne Bothwell, Court Administrator for the Cayman Islands

## **Eastern Caribbean**

### Eastern Caribbean Supreme Court

Hon Mr. Justice K. Neville Adderley, Judge of the Commercial Division of the Eastern Caribbean Supreme Court

## **United States of America**

### **New York**

#### United States District Courts - Southern District of New York

Hon. Loretta A. Preska, Senior District Judge, Southern District of New York US District Court

Hon. P. Kevin Castel, Senior District Judge, Southern District of New York US District Court

#### New York State Supreme Court

Hon. Lawrence K. Marks, Chief Administrative Judge of the Courts, State of New York

Hon. Charles E. Ramos, Justice of the Supreme Court of the State of New York - Commercial Division

### **Delaware**

#### Supreme Court of Delaware

Hon. Chief Justice Leo E. Strine Jr, Chief Justice of the Supreme Court of Delaware

### **Philadelphia**

#### Philadelphia Court of Common Pleas

Hon. Judge Gary Glazer, Supervising Judge of the Court of Commerce, Philadelphia

### **Guests**

Hon. Janet DiFiore, Chief Judge of the State of New York

Irina Kichigina, Deputy General Counsel, World Bank

Joseph C Clayton III, Chair of the US Securities and Exchange Commission

Michael Held, General Counsel of the Federal Reserve Bank of New York

Anna Joubin-Bret, Secretary General, UNCITRAL

David Goddard QC, Chair of The Hague Conference Special Commission on the Judgments Project

Hon. Gregory H. Woods, District Judge, Southern District of New York

Hon. Sarah Netburn, Magistrate Judge, Southern District of New York

Hon. Saliann Scarpulla, Justice of the Supreme Court - Commercial Division

James C. Duff, Director, Administrative Office of the U.S. Courts

Michelle Browdy, Senior Vice President, Legal and Regulatory Affairs, and General Counsel, IBM

Alex Dimitrief, Senior Vice President, and General Counsel, GE

Kimberley Harris, Executive Vice President, and General Counsel, NBCUniversal

Stacey Friedman, Executive Vice President, and General Counsel, JPMorgan Chase

Michele Coleman Mayes, Vice President, General Counsel, and Secretary, New York Public Library

Tony West, Chief Legal Officer, Uber

Robert Haig Esq

John Coffey Esq

Daniel Kolb, Mediator  
Vivian Berger, Mediator  
Amy Jones, Editor, Routledge  
Mark Beer, President Elect, International Association for Court Administration  
Ben Greenwood, Foreign and Commonwealth Office, China  
Ms Enhui Shen, Programme Manager, British Embassy, Beijing  
Ahmad Alshaiq, Saudi Arabia Director Assistant  
Abdullah Alsubaihi, Saudi Arabia Legal Advisor  
Mohammed Aldalaqan, Saudi Arabia Secretary  
Mohammed Al-Washtan, Senior Legal Adviser, Saudi Arabia General Investment Authority  
Mr Ahmed Hatem  
Mr Robert J. Klein

### **Judges leading visits on Courts and Technology in the USA**

Hon. Ronnie Abrams, District Judge, SDNY  
Hon. Andrew L. Carter, Jr., District Judge, SDNY  
Hon. Valerie E. Caproni, District Judge, SDNY  
Hon. Paul A. Engelmayer, District Judge, SDNY  
Hon. John G. Koeltl, District Judge, SDNY  
Hon. Victor Marrero, Senior District Judge, SDNY  
Hon. Edgardo Ramos, District Judge, SDNY

### **New York Courts Team**

Edward Friedland, District Executive, Southern District of New York  
Eric Timberman, United States Marshal, Southern District of New York  
Clara Flebus, Staff Attorney, New York State Supreme Court - Commercial Division  
Chelsey Fries, Office of District Executive, Southern District of New York  
Jordan Prince, Office of District Executive, Southern District of New York  
Samantha Gencarello, Judicial Assistant to Hon Loretta A. Preska

### **SIFoCC Secretariat**

Bee Ezete, Head of SIFoCC Secretariat  
Matthew Gaunt, Senior Policy Advisor to the Lord Chief Justice of England and Wales  
Grace Karrass, International Team, Judicial Office of England and Wales  
Ben Yallop, Head of International Team, Judicial Office of England and Wales

## Agenda

Thursday 27 September 2018	
0900	Registration and refreshments – Jury Assembly Room, Ground Floor
1000	<p>Courts and Technology in the US</p> <p>A judge-led discussion and small group visit to US Courtrooms and Chambers with Hon. Ronnie Abrams, Hon. Andrew Carter, Hon. Valerie Caproni, Hon. Paul Engelmayer, Hon. John Koeltl, Hon. Victor Marrero and Hon. Edgardo Ramos</p> <p>Led by Hon. Kevin Castel</p>
1045	<p>Meeting on the New York Court Experience - Ceremonial Courtroom Floor 9. Presentations on:</p> <ul style="list-style-type: none"> <li>• paperless chambers – Hon. Judge Scarpulla</li> <li>• auxiliary judicial personnel – Hon. Judge Netburn</li> <li>• initiation of systems – Hon. Justice Lawrence Marks and Hon. James C. Duff</li> </ul> <p>followed by Q&amp;A session.</p> <p>Led by Hon. Kevin Castel</p>
1230	Group photograph – Ceremonial Courtroom, 9th Floor
1245	<p>Lunch (Room 850 8th Floor)</p> <p>Short address: Hon. Chief Judge Janet DiFiore, to be introduced by Hon. Justice Lawrence Marks</p>
1400	<p>Full meeting commences - Jury Assembly Room, Ground Floor</p> <p>Welcome remarks: Hon. Loretta Preska, Senior District Judge, SDNY</p>
1405	Opening remarks Rt. Hon Lord John Thomas of Cwmgiedd, Chair, SIFoCC Steering Group
1410	SIFoCC Progress Report – Mr Justice Robin Knowles and Bee Ezete, Head of Secretariat
1430	<p>Judicial Roundtable Discussion 1: Enforcement with reference to the draft Multilateral Memorandum on Enforcement</p> <p>Chair: Sir William Blair Short introductory address: Chief Justice Michael Hwang</p> <p>Roundtable discussion</p>
1545	Short Break: Informal judicial discussion and refreshments
1600	<p>Judicial Roundtable Discussion 1 continued: Enforcement</p> <p>Short address: David Goddard QC, Chair of The Hague Conference Special Commission on the Judgments Project (guest) introduced by Sir William Blair</p> <p>Questions to the speaker, and further roundtable discussion</p>

1630	<p>The role and value of Commercial Courts: a perspective from court users Facilitator: Robert L. Haig, Esq. Panel of guests:</p> <ul style="list-style-type: none"> <li>• Michelle H. Browdy: Senior Vice President, Legal and Regulatory Affairs, and General Counsel, IBM</li> <li>• Alex Dimitrief: Senior Vice President, and General Counsel, GE</li> <li>• Kimberley D. Harris: Executive Vice President, and General Counsel, NBCUniversal</li> <li>• Stacey Friedman: Executive Vice President, and General Counsel, JPMorgan Chase</li> <li>• Michele Coleman Mayes: Vice President, General Counsel, and Secretary, New York Public Library</li> <li>• Tony West: Chief Legal Officer, Uber</li> </ul> <p>Followed by questions to the guests, and further discussion</p>
1800	<p>Reception and dinner – New York Federal Reserve</p> <p>Welcome remarks from Michael Held Esq, General Counsel of the Federal Reserve Bank of New York</p> <p>Q&amp;A with Joseph C. Clayton III Esq, Chair of the U.S. Securities and Exchange Commission, led by Hon. Loretta Preska</p> <p>Short address: Hon. Chief Justice Bart Katureebe – “Sharing judicial experience and expertise globally”</p>
Friday 28 September 2018	
0900	Arrive and informal judicial discussion with refreshments
0930	<p>Judicial Roundtable Discussion 2: Case Management</p> <p>Co-Chairs: Hon. Charles Ramos, with Presiding Judge Dr Jan Tolkmitt</p> <p>Short introductory address: Hon. Chief Justice James Allsop – “From process to problem solving”</p> <p>Roundtable discussion</p> <p>Short closing observations: Rt. Hon. Lord Justice Gross</p>
1100	Short Break: Informal judicial discussion with refreshments
1120	<p>Judicial Roundtable Discussion 2 continued: Case Management (including the judicial role in relation to Alternative Dispute Resolution) joined by senior mediators Daniel Kolb and Vivian Berger (guests)</p> <p>Further roundtable discussion</p>
1215	<p>A brief update from the Kingdom of Saudi Arabia: HE Judge Amad Al Abudi</p> <p>Feedback from SIFoCC Judicial Observation Programme participants Justice Zainab Jawara-Alami (The Gambia), Justice Mahinda Samayawardhena (Sri Lanka) and Justice Anna Mugenyi Bitature (Uganda).</p>

1230	<p>Lunch (Room 850, 8th floor)</p> <p>Short address: Irina Kichigina, Deputy General Counsel, World Bank (guest), introduced by Sir William Blair</p>
1330	<p>Judicial Roundtable Discussion 3: Technology in the courts Chair: Hon. Chief Justice Sundaresh Menon</p> <p>Introduction: short examples of technology in use in the courts in different parts of the world, from:</p> <ul style="list-style-type: none"> <li>• Hon Justice Geoffrey Venning</li> <li>• Registrar Christopher Grout</li> <li>• Registrar and Chief Executive Linda Fitz-Alan</li> <li>• Mark Beer Esq., President-elect, International Association for Court Administration (guest)</li> </ul> <p>and a suggestion, from:</p> <ul style="list-style-type: none"> <li>• Deputy Registrar Nour Hineidi Kirk</li> </ul> <p>Roundtable discussion</p>
1500	Short Break: Informal judicial discussion with refreshments
1520	<p>Radar Topic 1: Litigation Funding by third parties</p> <p>Chair: Rt. Hon Lord David Hope of Craighead</p> <p>Short introductory address: John P. Coffey Esq. (guest) introduced by Hon. Loretta Preska</p> <p>Roundtable discussion</p>
1605	<p>Radar Topic 2: Arbitration issues</p> <p>Chair: Rt. Hon. Lord John Thomas of Cwmgiedd</p> <p>Short introductory address: Anna Joubin-Bret, Secretary General, UNCITRAL (guest), introduced by Hon. Kevin Castel</p> <p>Roundtable discussion</p> <p>Short concluding remarks: Chief Justice Geoffrey Ma</p>
1650	<p>Agreed actions, forward look and details of next meeting Rt. Hon Lord John Thomas, Sir William Blair, Mr Justice Robin Knowles and Bee Ezete</p>
1700	Closing remarks: Hon. Loretta Preska
1705	Reception (guests to include New York judiciary and senior legal professionals) Library, 25th Floor, Thurgood Marshall Courthouse
1900	End

## Seating Plan

Seating Plan		Guest	Guest	Guest		
	Justice Torkomoo Ghana				Mark Beer IACA	
	Justice Doodoo Ghana				Judge Glazer Pennsylvania, USA	
Justice Jawara-Alami, The Gambia	Justice Caguioa Philippines				Justice Adderley, Eastern Caribbean Courts	
Justice Bitature Uganda	Lord Bannatyne Scotland				Chief Administrative Judge Marks New York Supreme Court	
Justice Samayawardhena Sri Lanka	Lord Doherty Scotland				Justice Sifris Victoria, Australia	
Christopher Campbell-Holt, Kazakhstan	Chief Justice Woolf AIFC, Kazakhstan				Justice Riordan Victoria, Australia	Registrar Hetyey Victoria, Australia
Scott Tan Singapore	Justice Loh Singapore				Justice Jayawardena Sri Lanka	Sol Gen De Livera Sri Lanka
Judicial Registrar Hwee Hwee Teh, Singapore	Chief Justice Menon Singapore				Justice Aluwihare Sri Lanka	Paul Mylvaganam Sri Lanka
Linda Fitz-Alan Abu Dhabi	Chief Justice Hope Abu Dhabi				Judge Castel New York, USA	
Enhui Shen	Judge Sun China				Justice Wright Sierra Leone	Justice Mansaray Sierra Leone
Judge Yang China	Judge Gao China				Chief Justice Charm Sierra Leone	Justice Samba Sierra Leone
Ben Greenwood	Chief Justice Ma Hong Kong SAR				Justice Venning New Zealand	
David Lau Hong Kong SAR	Justice Chan Hong Kong SAR				Judge Hashizume Japan	Robert Klein
	Justice Ramos New York, USA				Lord Thomas SIFoCC Steering Group	Matthew Gaunt SIFoCC Secretariat
	Presiding Judge Tolkmitt Germany				Judge Loretta Preska New York, USA	
	Chief Justice Allsop Australia FCA				Mr Justice Knowles England & Wales	Bee Ezete SIFoCC Secretariat
Ben Yallop England & Wales	Lord Justice Gross England & Wales				Sir William Blair SIFoCC Steering Group	Grace Karrass SIFoCC Secretariat
Ahmed Hatem	Chief Justice Zidan Iraq				Judge Messinesi France	
Justice Kiryabwire Uganda	Chief Justice Katurebee Uganda				Judge Ancel France	
Boniface Wamala Uganda	Justice Wangutusi Uganda				Chief Justice Phillips Qatar	Registrar Grout Qatar
	Justice Pathmanathan Malaysia				Chief Executive Al-Sahouti Qatar	
Justice Al Mahdani Dubai	Chief Justice Hwang Dubai				Judge Frakes Netherlands	Registrar Visser Netherland
Nour Kirk Dubai	Justice Field Dubai				Judge Oranje Netherlands	
	Chief Justice Strine Delaware USA				Justice Buba Nigeria	
	Mr Justice Horner Northern Ireland				Justice Dimgba Nigeria	
Justice Ward New South Wales Australia	Chief Justice Bathurst, New South Wales, Australia				Justice McGovern Republic of Ireland	
	Justice Hammerschlag New South Wales, Australia				Chief Justice Smellie Cayman Islands	Shiona Allenger Cayman Islands
	Judge Hummelmeier Hamburg, Germany				Justice Segal Cayman Islands	Suzanne Bothwell Cayman Islands
	Justice Middleton Australia, FCA				Justice Morawetz Canada	
		H.E Al-Lahim Saudi Arabia	H.E Alkhu-dhairi, Saudi Arabia	Assoc Chief Justice Marrocco Canada		
		H.E Al-Sulaimi Saudi Arabia	HE Al-fhaid, Saudi Arabia	Justice Hainey Canada		
			HE AlAbudi Saudi Arabia			



## Selected Remarks

### **Opening Remarks: Rt Hon Lord John Thomas of Cwmgiedd, Chairman of Steering Group of SIFoCC**

I want to talk about where we think we will go next. The aims of SIFoCC are sharing good practice and making practices more standard, assisting in the Rule of Law especially in its relation to Commercial Law and to assist developing courts and give them a chance to interact with countries of more experience. Good progress has been made. Now, we want views on examining ADR, mediation and the like and seeing what the interrelation with the courts should be, as well as looking at wider issues relating to IT and its impact on the development of the law. The third area is whether we ought to establish small working parties to report back. We would appreciate views over the course of the Forum. We are keen to have volunteers for some of this work. It is paramount that we all go forward together.

## **Introductory Remarks for the host jurisdiction (New York) – Chief Judge Janet DiFiore**

I am so pleased to have the opportunity to address and welcome you to New York City (the Big Apple) on behalf of the New York State Unified Court System.

I want to start by commending the former Lord Chief Justice of England and Wales, the Right Honourable Lord Thomas, as well as Sir William Blair, for their vision and foresight in creating the Standing International Forum of Commercial Courts (SIFoCC). Their recognition of, and commitment to, the rule of law around the globe, has been extraordinary.

I also want to acknowledge my friend, United States District Court Judge Loretta Preska, our former Chief Judge, for her leadership, and her hard work in organizing the very impressive and highly informative agenda for this second meeting of SIFoCC. And, of course, the planning committee members: District Court Judge Kevin Castel; New York State Chief Administrative Judge Lawrence Marks; and New York State Supreme Court Justice (assigned to the Commercial Division) Charles Ramos.

We are delighted to have you all here in New York City, and that is because we value the mission and goals of the International Forum, and we have committed ourselves to being active participants and supportive partners in improving the efficacy of commercial courts around the world.

We live in a time of rapid technological, social and political change, which to state the obvious, presents unique and compelling challenges for the international business community and, of course, our respective legal and judicial systems.

In our modern global economy, it is more important than ever -- indeed, critical -- that we, as the judicial leaders and representatives of commercial courts, come together to exchange ideas and work collaboratively to promote best practices in support of the just and effective resolution of commercial disputes -- something we all desire.

The roles we have assumed, and the responsibilities we have accepted, in our individual and collective capacities, to strengthen our commercial courts and reinforce the rule of law, rank among the most important contributions we can make to stability and prosperity around the globe.

Here, in New York, we are fortunate to have a federal judiciary long recognized for its excellence in resolving commercial disputes, and for being a leader in the development of an internationally influential body of commercial law.

In the New York State courts, we have worked tirelessly to create a respected forum for the resolution of business disputes -- our Commercial Division of the New York State Supreme Court. And this specialized court has, indeed, earned the confidence of the business community here in New York, across the country and among our international colleagues.

Our efforts to promote strong business courts here in the U.S. and abroad reflect our understanding of the critical connection between well-functioning judicial systems grounded in the rule of law, and healthy, thriving local and national economies.

Since assuming the position of Chief Judge, in February 2016, I have made the goal of operational and decisional excellence our court system's top priority. And through our Excellence Initiative, a comprehensive and critical evaluation of court operations at every level, we are working to achieve the highest levels of

efficiency and productivity and to make our court system as affordable and accessible as possible for every class of litigant.

In today's global economy, litigation is a major cost of doing business. When cases languish for years and litigation costs increase due to inefficiency, business litigants naturally grow frustrated and turn to more attractive venues, or outside our judicial systems altogether to private dispute resolution providers. We cannot afford to accept judicial approaches, practices or attitudes that are not responsive to the needs of litigants and counsel alike. We know we must maintain the status and value of our courts as the best possible option among a growing array of alternatives for commercial dispute resolution.

Maintaining fair, well-functioning judicial systems must be our highest priority. And fortunately, we are wise enough, and experienced enough, to recognize that no one has a monopoly on good ideas. That is why the SIFoCC has already grown into a valuable platform where judges and representatives of commercial courts can come together:

- To exchange ideas and best practices on case management, technology and other operational strategies to promote greater efficiencies and improved services;
- To pursue collaborative projects and initiatives focused on key issues, such as facilitating the enforcement of judgments or the resolution of disputes over jurisdiction;
- A place where we can devise protocols and structures on how courts from different jurisdictions can cooperate on important issues, such as pretrial discovery;
- And, ultimately, a place to exchange ideas and improve our efforts to achieve high-quality judicial decision-making marked by fairness, predictability and excellence.

It is critical that we make progress on these issues together, domestically and internationally. When litigation cost and delay become obstacles to justice, there is a loss of confidence and respect for our courts, which weakens us institutionally and makes us easy targets for those who would undermine the rule of law.

When businesses feel confident about litigating in our commercial courts -- as they do in the New York State Commercial Division and our Federal Courts -- and perceive that the rule of law is working as intended, they not only are more comfortable investing in our economies but also come to understand, first-hand, the urgency in maintaining strong and independent courts supported by adequate judicial budgets, appropriate judicial salaries and competent, valued staffing.

I am confident that everyone attending this Conference will agree with me when I say that as leaders and representatives of commercial courts throughout the world we have an obligation to earn the trust and confidence of the litigants we serve. And I have come to understand, first-hand, the importance and power of SIFoCC to help us achieve this vital objective.

I have no doubt that this organization, by guiding us and fostering cooperation and collaboration, will serve as an important vehicle to bring us all closer to our goals.

On behalf of the New York State Unified Court System, and our partners in the Federal Judiciary, I welcome you to New York City, and thank you for your dedication and commitment.

**Sharing Judicial Experience and Expertise: Spurring business growth through commercial courts**

Business growth is a factor of several variables which include:

- Speedy and efficient resolution of disputes
- Good governance including state and corporate governance
- Predictable and stable markets
- Encouraging and protecting innovation
- Consumer protection etc.

The question we need answered here is how the commercial courts can play a role in all of the above variables and actually become one of the variables themselves.

**The Experience of Uganda and other African Jurisdictions**

Over time we have learnt that:

- a) Spurring business requires the establishment of commercial specialized courts. Commercial disputes can no longer be efficiently resolved through a general civil division. In Uganda, we have experienced increased efficiency and effectiveness in the handling of commercial disputes since the establishment of the Commercial Division of the High Court in 1996.
- b) The World Bank annual “Doing Business Report” in their chapters on “Enforcement of Contracts” has recognised the growth of commercial courts worldwide as a tool for making those countries attractive destinations for foreign direct investment.
- c) The question that remains, however, is how far should this specialization go? In some jurisdictions, there are now further specialization within Courts like:
  - Bankruptcy/ Insolvency Courts (common in USA)
  - Intellectual property and patent courts (Malaysia)
  - Construction courts (Malaysia), etc.
- d) Judges of commercial courts require continuous judicial education to keep up with trends and laws that affect business. We have encouraged and facilitated our Judges in the Commercial Court to take on constant training as necessitated by changing trends in the business sector and the law.
- e) Business is fast moving and is raising a constant need for innovation to catch up with the emerging new areas of law. Examples include:
  - (i) Block chain and crypto currencies.
  - (ii) Some disputes are taking on international dimensions which require cross boarder cooperation and therefore further training. An example is cross border insolvency.
- f) Court processes and court rooms should be automated to achieve greater efficiency and effectiveness thereby facilitating expeditious and cost-effective disposal of cases. This raises two issues:
  - (i) Provision of funds in order to bring in technology into the court room.
  - (ii) Possible evolution of courts from places where people go to be served to a service that is available on demand at any time.

- g) Commercial courts should encourage effective use of alternative dispute resolution (ADR). Businesses are very adaptable to compromise and so the use of fast track processes like court annexed and referred ADR should be considered. ADR should not be viewed as competition to established court processes but should be embraced as part of an overall process of dispute resolution. Strengthened use of mediation and arbitration is a major feature of effective commercial justice.

In Uganda we have made use of court annexed mediation; we have in place a Centre for Arbitration and Dispute Resolution (CADER) that is run alongside the Commercial Court; and recently, the Uganda Law Society in collaboration with the Uganda Bankers' Association have launched the establishment of an International Centre for Arbitration and Mediation in Kampala. This is the way to go in order to achieve better resolution of commercial disputes.

- h) Commercial courts need to work together and develop best practices for effective handling of business disputes. Commercial courts should learn from one another's experiences. Best practices should evolve so that ultimately there is a worldwide accepted practice and convergence of commercial law and dispute resolution.

The above are some of the ideas we need to explore and develop under this forum. Each jurisdiction has aspects it does better than others. Our major purpose of being here is to learn from each other, develop and share best practices.

**World Bank's View of the Importance of Commercial Dispute Resolution as a Channel for the Rule of Law and Sustainable Investment**

The World Bank strives to assist countries to meet the Sustainable Development Goals (SDGs). We recognize that the resources needed to meet the SDGs easily surpass national budgets and available donor and multilateral bank funding.

Accordingly, the World Bank has adopted Maximizing Finance for Development (MFDs) – an approach aimed at systematically leveraging all sources of finance, expertise and solutions to support developing countries' sustainable growth. We do this by improving the enabling environment, developing regulatory conditions, building capacity in our member countries, putting in place standards, financing a first mover or innovator, and reducing risks.

The enabling environment of a country impacts the investment decisions of firms – whether they be micro-entrepreneurs, small and medium-sized enterprises or a large company – and irrespective of whether the firm is local or foreign. In turn, investor decisions have implications for growth/poverty reduction and the level of commercial activity in an economy.

A good enabling environment – or investment climate provides opportunities and incentives for firms to:

- invest productively;
- create jobs;
- respond to consumer needs and wants;
- improve upon manufacturing and business production processes; and
- grow.

Each of these (above-listed) actions by firms expands the tax base, offering governments larger tax revenues from which to fund public services - health, education, welfare and core infrastructure.

Government policies and behaviours exert a strong influence on investment levels by impacting costs, risks, and barriers to competition. Governments play an important role in maintaining a stable and secure environment. Policy-related risks are the main concern of firms in developing countries.

As we can see, business needs government; and government needs business when it comes to economic growth and development.

The primacy of the rule of law is a key aspect of an enabling environment that attracts sustained investment from the private sector. The courts, and their role in resolving commercial disputes, are integral. If a country doesn't have functioning and efficient commercial dispute resolution mechanisms, how can it protect property rights or ensure the proper enforcement of contractual obligations between commercial parties?

The better protected property and contractual rights are from government or third parties, the stronger the link between effort and reward, and thus the greater the incentives to open new businesses, to invest more in existing ones, and simply to work harder. In the big picture, a functioning judiciary helps encourage investor confidence and promote public trust.

In our experience at the World Bank, the link between an efficient, effective court system and better investment outcomes is fairly clear. For example:

- economies in which courts can effectively enforce contractual obligations have more developed credit markets and a higher level of development overall. Lenders will be more likely to provide credit, and enter into new business relations, if they know they can enforce against a defaulting debtor. Not only does the flow of credit enhance commercial activity levels, but timely, predictable and effective enforcement by the courts has been shown to reduce the cost of credit;
- A stronger judiciary is associated with more rapid growth of small firms;
- In some of our member countries, firms doing business in provinces with better-performing courts enjoy greater access to credit. In others, more efficient firms are found in states with better court systems;
- The impact of a well-functioning court system extends far beyond the number of cases it resolves. The more timely and predictable a court's decisions, the better able firms are to predict the outcome of any dispute – and adjust their contractual and business arrangements accordingly.
- As predictability and timeliness improve, the number of disputes filed may decline, because – reinforced by court decision after decision – parties are inclined to honour their contractual obligations instead of turning to the courts. Courts impact the incentives for business behaviour.

In emphasizing the critical nature of effective commercial dispute resolution for a sustainable investment environment, the World Bank also makes good practice recommendations to member countries. Many of you may be familiar with our Doing Business publication. A new Doing Business 2018 report will be released at the end of October 2018. Doing Business includes 2 specific indicators pertinent to commercial dispute resolution:

- (i) the “enforcing contracts indicator” which measures the time and cost for resolving a commercial dispute through a local first-instance court; and
- (ii) the “quality of judicial processes index” which evaluates whether countries have adopted a series of good practices that promote quality and efficiency in the court system.

Re (i): enforcing a contract through the courts can take 10 months in Singapore, New Zealand and Rwanda; but almost 4 years in other countries. Meanwhile, the cost of doing so ranges from 10% of the value of the claim in Iceland, Luxembourg and Norway, to more than 80% in some other economies. In yet other economies, the cost of litigating a fairly standard claim through local courts exceeds the value in dispute, a huge disincentive to using courts and engaging in commerce.

Re (ii): Bearing in mind that solutions always need to be tailored to the specific country context, what are some of the good practices for effective commercial dispute resolution mentioned in Doing Business?

Maintaining a specialized commercial court, division or judge:

- since having a separate commercial court or judge usually means fewer cases in front of the main/other courts, it can also mean shorter times for case resolution;
- generates consistency in application/interpretation of the law and thereby increases predictability for court users;
- judges develop expertise in the field which likely leads to faster and more qualitative dispute resolution.

Introducing small claims courts or simplified procedures for small claims:

- since small claims tend to be the type of claims confronted by most members of the public, small claims courts naturally play a special role in building public trust and confidence in the judicial system;
- usually quick and inexpensive resolution of disputes;

- less formal hearings;
- simplified evidence rules and rules of civil procedure;
- small claims courts tend to offer costs and procedures that are realistic and proportionate to the size of the dispute – thereby offering a better chance at achieving justice for businesses and individuals.

#### Introducing/expanding case management system:

- aimed at ensuring timely and organized flow of cases through the court -- from initial filing until resolution/disposition.
- when well used, case management systems:
- enhance processing efficiency;
- enhance record-keeping;
- reduce delays and case backlogs;
- improve predictability of court processing methods which improves transparency and accountability and increases public trust;
- create realistic schedules and manage party expectations about timelines;
- incorporate mechanisms to control frivolous adjournment requests and incorporate notice of early options for settlements
- help generate reports that compile and analyse case performance data for individual judges and at the overall court level – e.g. number of cases pending/cleared, average disposition time and average waiting time of pending cases.

#### Court automation and computerization: seeking efficiencies via:

- electronic filing of the initial complaint - helps speed up commencement of a lawsuit;
- electronic service of process + electronic fee payment;
- creation of electronic records, which are more reliable/ convenient;
- overall, helps reduce the cost of enforcing a contract because users don't need to take a trip down to the court for administrative steps; exorbitant document reproduction costs are reduced; courts save in physical storage space and archiving costs;
- ensuring random case assignment using an automated system so as to reduce chances of corruption;
- making judgments public electronically – contributes to transparency and predictability – allowing litigants to rely on existing case law and judges to continue to build it

#### Accepting/Permitting Alternative Means to Resolve Disputes:

- are there court-annexed mediation and/or conciliation services – are they mandatory in some situations?
- Not to be viewed as “competing” with court services – rather offering alternative fora that may be more suitable for certain disputes.

#### Conclusion

As you can tell, in the World Bank's advisory services work with client countries, we most definitely see a link between the effective functioning of a commercial dispute resolution system and positive economic and investment outcomes. The World Bank supports and encourages member countries to learn from the experiences of other countries – whether via “desk reviews”, technical discussions, study tour visits etc. In this way, the Standing International Forum of Commercial Courts has an exceptionally important mandate as providing a very helpful forum for the exchange of views and the launch of collaborative networks.



## Discussions

### Enforcement

- There are a number of compilations on enforcement, but the draft SIFoCC Multilateral Memorandum is unique in that it has been compiled by judges.
- It is an important document that provides transparency to users, gives confidence to foreign investors in access to justice, and shows that judgments can be enforced in a summary way.
- It is not binding, but could serve an important purpose in the absence of a treaty in this area.
- The Memorandum highlights that in common law systems an action can be brought on a foreign money judgment.
- The summary judgment procedure is then important in common law jurisdictions and the Memorandum seems to show that common law jurisdictions share the same rules.
- Although on the face of it the Memorandum shows more diversity in civil law jurisdictions, on further examination there are considerable similarities to the common law.
- The Multilateral Memorandum is the ultimate version of the various bilateral Memoranda agreed between jurisdictions. They all provide knowledge of how to enforce.
- Memoranda are also the first step towards harmonisation, which should or could be our focus.
- The Memorandum is a useful mapping exercise setting out each country's process, but it has limitations, particularly where templates differ.
- Common law harmonisation means a treaty may not be required.
- Civil law jurisdictions rely on reciprocity, but that need not be a barrier where in practice one jurisdiction has a procedure to enforce the judgments of another.
- Lack of reciprocity should not be a bar to enforcement where the judgment would otherwise be capable of enforcement in that country. What the Memorandum shows is that countries will strive to enforce as quickly as possible the money judgments of each other, that is reciprocity in action.
- There is a high degree of commonality in the recognition of foreign judgments and that extends to civil and common law.
- It would be useful to work towards extracting common principles, themes and language which will contribute towards a unified approach.
- Service is an important issue. Enforcement is intrinsically tied with service; we should come to some understanding on simplification of this.
- It would be worth considering what are the obstacles to a speedy process and how to work towards avoiding delay in the summary process.
- SIFoCC should or could work towards a situation where members are agreed on a programme of harmonization and should try to accelerate the progress of a unified approach.
- Experienced courts should identify emerging principles.
- There could be consideration of the extent to which the countries here feel it is appropriate to regard those emerging principles as acceptable to all others.
- In that way we could raise certain principles which reflect what might be termed natural justice.

## **A Perspective from Court Users**

- Commercial courts should approach technological innovations carefully and predictably, allowing room for innovation whilst keeping to the spirit of the law.
- Expertise and experience on the bench gives users access to judges with a deeper understanding, who upon early assessment can quickly get to the heart of the issues that really matter. This leads to predictability and efficiency which is important to users.
- For mediation to work, it should be entered into willingly. Balance rather than mandation is best.
- Proactive case management involves clear messages from a judge who understands the dynamics of the case and checks in occasionally. Setting a trial date and working back from there to consider what resources are needed can keep things moving.
- Recent efforts made in some jurisdictions to focus discovery, focus on the merits, achieve a tight schedule, and advance the merits of the case, are things other jurisdictions could helpfully learn from.
- Judges should have discretion, but ensure speed and predictability. This, as well as controlling the docket and developing a written body of precedent will aid in the efficient resolution of cases.
- A challenge for commercial courts is that employment models are changing whilst labour law frameworks are rooted in the 20<sup>th</sup> Century. Courts should keep justice as its foremost goal, respecting the dignity of work with protections of labour law while recognising that the economy is flexible with people choosing how and where to work.
- Arbitration is often chosen where parties think they will not get a fair hearing or for speed. Local, fast and reliable dispute resolution is preferred. Experience and specific knowledge of the industry is also important when choosing venue.
- Litigation funding and class actions can give cause for concern as they can distort away from the pursuit of justice.
- A priority for international judicial reform is witness testimony. Sometimes courts do not hear the most important evidence.
- Moving from an industrial to digital economy poses challenges and opportunities including accessibility and efficiency. Use of the internet does pose procedural questions which courts should address.
- Companies should invest in educating judiciaries in how technology works.
- Companies have to participate in building systems so that local disputes can be resolved locally.

## Case Management

- Case management is the management or control of the resolution of disputes. It can be undertaken in a variety of ways, with a variety of procedural tools, under the control of the court to resolve a dispute as quickly and cost effectively as possible.
- Every piece of commercial litigation is unique. Flexibility and focus on key problems and issues are the hallmarks of good case management. The pitfalls of bad case management can be avoided by a problem-solving approach, rather than a process-driven approach.
- Extensive discovery is a tool that can be used to dispose of cases quickly by taking control and focusing in on grey areas where parties can be convinced there is a chance of losing.
- A good rapport between the judge and the parties can be key to effective case management.
- Parties should be encouraged to work together collaboratively to distil the common ground and issues.
- Case management is a real challenge, arguably the main challenge, and is part of the judge's leadership mission.
- In some common law jurisdictions there is pressure to be visible in court causing a lack of available time to write judgments and read.
- One of the tools civil law jurisdictions use for bringing parties to settlement is the question of how much evidence has to be taken. Under law, evidence is only taken if the fact in question meets two preconditions – it has to be relevant and in dispute.
- Judges can help parties to assess likely costs and find a settlement
- One of the best ways to move the case forward is through frequent case management conferences. They are a good tool to bring parties to their senses and to streamline a hearing, with a list of issues, witnesses and a cross-examination timetable, before we start the trial with reminders throughout about keeping to the timetable.
- A timetable from the start of the case to which parties agree and adhere to until the conclusion really helps. However instead of trying to find the ideal system we must remember that it is an individual case with individual parties and as a judge you are primarily responsible for ensuring that justice is being done.
- It might be helpful to pull together case management best practice from both the common law and civil law systems, not to try to find an international version of a code, but to try to distil working presumptions of international best practice, keeping in mind the needs of the individual case.
- The common and civil systems are all looking at the same issues with the same end in mind.

## **Alternative Dispute Resolution**

- Mediation is a speedy and cost-efficient process as compared with litigation. It enables the parties to resolve matters globally beyond the framing of the immediate complaint and fashion innovative solutions beyond what courts can do.
- There is efficiency in the process including the benefit that can be achieved from the fact that the mediator is not the decision maker. The parties can feel more comfortable with someone of experience who does not decide the case.
- Mediation is a way of bridging the gap between our commitment to access to all the relevant facts and the problem that cost can create.
- Where mediation can be started early it is likely to produce greater efficiencies.
- Even if the case does not settle, trust and cooperation can still develop and issues fall away. The case can be stripped back and cooperation encouraged where none existed before.
- Where a case is not considered ripe for mediation it may still settle because you get to the facts that had not been uncovered earlier.
- To do justice you have to find symmetry between the parties and consider who has the resources.

## **Technology in the Courts**

- The introduction of technology might require the redesign of processes that were designed for a paper based system.
- Technology gives access to justice. The process can be accessed from a distance which is important in a world where borders matter less.
- Online Dispute Resolution is an area of growth. Benefits include supporting dispute prevention and consensual resolution (so that courts can reallocate their resources) and providing access to justice for lower socio-economic groups and those who cannot easily get to court.
- Although Online Dispute Resolution is a critical feature that should be annexed to courts, it is more relevant in low level disputes.
- Technology raises legal issues which it is important for this Forum to consider.
- Technology can encourage compliance.
- There is value in sharing knowledge so that we do not reinvent the wheel or repeat past mistakes.
- Technology can be an enabler, enabling hearings to be held without parties in one place or taking away the burden of notetaking in another.
- Technology makes data available which in turn can improve case management.
- Technology encourages transparency by making information available to the public.
- In large trials parties may need to engage private contractors which have the capacity to manage the databases of these trials. It is important that this need is identified early on so parties can consider the viability of litigation.
- It is important to have champions for uses of technology, if not you might not get the traction you need. Champions from within the judiciary, led by the Chief Justice are important.
- Technology is expensive and it is important that you proceed with preparation as trial and error is problematic and expensive. The easiest way is to look for a partner. The government has to commit and the work needs to be sustainable.
- A well written strategy that includes stakeholders and adequate change management is important. Staff may need to be reskilled to be part of the future.
- SIFoCC is a good platform for sharing experiences.

- The pace of technological change is exciting and frightening. It should be dealt with as a substantive area of the law.
- Online dispute resolution using AI to predict the outcome for cases is the next frontier but raises issues such as due process. If it works it will reduce costs and take cases out of the system, which moves them out of being able to contribute to developing the common law in the field of (for example) negligence.
- How is the current system of legal education preparing future generations of lawyers to deal with this new world? Many experts note that the basic way in which we teach has not changed much and is ill-suited to these sorts of issues. Rapid change is needed.
- Access to justice results in legal service providers accessing the system from all over the world, meaning less ability to control conduct, values and ethics. You may find non-lawyer legal providers emerging.
- Further discussion of technology and its implications is an urgent priority.

### **Litigation funding by third parties**

- Abuse of the litigation system is a matter of concern. Most agreements ensure no control from the funder, direct or indirect.
- An issue that often arises is how to deal with conflict between the funder and the applicant. The funder does not have a duty to the court but the solicitor does and is relied on to direct and advise on settlement.
- Areas requiring legislation are the power of the court to vary the contract and the character of the funder.
- In cases where the funder has figured ways to exercise control, the issue is independence. You might be able to bake in an agreement and milestones where you have some sort of control.
- The onus is on the party receiving funding. The court should know the identity of the funder, but not the terms of the funding unless otherwise ordered.
- An area of jurisprudence in its infancy is the recent phenomenon of multiple actions brought against the same defendant by different parties, apparently representing the same class, where there is funding by a number of different litigation funders in multiple courts.

## **Arbitration Issues**

- Having a list within the court of judges for arbitration cases helps consistency and the system of enforcing consistently with the NY Convention.
- A practical problem emerging is the question of an Article 6 New York Convention application to enforce where the respondent asks for setting aside at the seat and asks to adjourn enforcement.
- One complex issue worth further study is what effect should be given to a decision of the seat court. Although we might not achieve uniformity, some convergence would be useful.
- How should precedent value be treated?
- Sharing arbitration decisions or judgments of other courts to consider if they are persuasive is something SIFoCC could assist with.
- It would be useful to encourage institutions to promote transparency but it is an uphill battle. There is a presumption that there would be a need for transparency but some have no appetite for it.
- Often people choose arbitration because they want confidentiality and we need to appreciate that before we alter it.
- For reasons of confidentiality the parties can be anonymised, or names invented to make the case more memorable.
- What is important is that the commercial public are assured that arbitration is a valid form of dispute resolution. But should commercial courts do more to assist or benefit arbitrations, and make things easier so that parties opt in more often? The consequences for development of the law are important.
- These are matters of great interest to the community that should be further explored.
- UNCITRAL's New York Convention on enforcement hopes that it will have 160 member states by the end of this, the 60<sup>th</sup> anniversary year. UNICTRAL sees a strong convergence on the pro-arbitration role of the Convention and the role as guardians that the courts have taken.
- UNCITRAL is now moving into work on expedited arbitration, and emergency and interim measures, where members have found the framework was lagging behind.
- A newly adopted Convention on enforcement of mediated settlements will be opened for signature on 7 August in Singapore; it will be the Singapore Convention. It aims to give the same level of certainty and assurance to those using mediation as to the parties resorting to arbitration.
- UNICTRAL would be pleased to learn more about what international commercial courts do to address investment disputes.

## SIFoCC Programme of Judicial Study and Observation

At the first meeting of SIFoCC in London in May 2017, SIFoCC agreed that one of its next steps should be to implement a structure through which judges of the courts of developing countries would be given an opportunity to spend short, concentrated, periods of time with an established commercial court of another SIFoCC country.

The three-part Programme developed as a result is the first of its kind. It aims to assist in building expertise and capacity, developing sustainable peer-to-peer relationships, and promoting discussion on judicial best practice and its wider application.

A number of Chief Justices were invited to nominate a judge for one week of intense observation, shadowing and study with the Commercial Court in London (within the Business and Property Courts of England & Wales). Hon. Justice Mahinda Samayawardhena of Sri Lanka, Hon. Justice Anna Bitature of Uganda and Hon. Justice Zainab Jawara-Alami of The Gambia were nominated by their Chief Justices and commenced the first phase of the Programme on 9 July in London.

The first part of the Programme comprised a series of discrete areas of discussion (including decisions on the documents, case management, applications, trial, judgments, orders, costs and appeals) and observation of live cases from the Bench. The judges met with senior judiciary and operational court staff to discuss court processes and technology. They also had the opportunity to meet with partner organisations such as the Commonwealth Magistrates and Judges Association and the International Law Book Foundation (ILBF). The week closed with a reception and dinner which was kindly hosted by The City of London Corporation.

The second part of the Programme involved the judges' attendance at the New York SIFoCC meeting and presenting to the assembled membership on the impacts of the Programme so far.

In his remarks Justice Samayawardhena said that following the programme, he has recommended the development of a commercial court guide similar to that used in the UK and initial steps have been taken towards that. Justice Bitature is now making use of ex tempore judgments. Through collaboration with the ILBF a shipment of books has been sent to Uganda. Uganda's Commercial Court User Guide from 2005 is now under further review. Justice Jawara-Alami said that collegiate links are being maintained amongst the three judges. She has made recommendations on specialisation, in particular, to address the need for manual notetaking and a donor is being sought. A commercial court guide for The Gambia is under review.

The third (and continuing) part of the Programme involves maintaining collegiate links between the three judges and thus the three jurisdictions, to compare challenges and keep in touch on progress. It was confirmed to the SIFoCC meeting in New York that an electronic channel for these links had been established.

The costs of the first and second parts of the Programme (flights, accommodation, meals) were raised by SIFoCC from ROLE UK (a partner of the UK's Department for International Development) to which SIFoCC owes sincere thanks.

It is hoped that in future the Programme can be offered to more judges and the first part hosted in a number of SIFoCC member countries. The third part of the Programme offers the opportunity for an expanding global alumni of judicial participants of the Programme.

## The Standing International Forum of Commercial Courts

### With thanks to:

The judges and staff of the Southern District of New York US District Court and the New York State Supreme Court  
The New York Federal Reserve  
The Judicial Office of England and Wales and its International Department

### **SIFoCC Steering Group:**

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