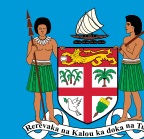


# REGIONAL INTERNATIONAL ARBITRATION CONFERENCE

## THE DAWN OF INTERNATIONAL ARBITRATION IN THE SOUTH PACIFIC

12–13 February 2018

Westin Denarau Island, Nadi, Fiji





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# agenda

DAY 1  
12 FEBRUARY 2018

9 a.m.–1:45 p.m.

**REGISTRATION** 9 a.m.–10 a.m.

**SESSION 1: OPENING CEREMONY (Senirosi Ballroom, Ground Floor)** 10 a.m.–11:45 a.m.

## WELCOME AND INTRODUCTION

- ▶ **OPENING ADDRESS** *by Sharvada Sharma*  
Solicitor General, Republic of Fiji (15 minutes)
- ▶ **SPEECH BY ADB REPRESENTATIVE** *by Mr. Christopher Stephens*  
General Counsel, Asian Development Bank (ADB) (15 minutes)
- ▶ **SPEECH BY UNCITRAL REPRESENTATIVE** *by Mr. João Ribeiro-Bidaoui*  
Head, Regional Centre for Asia and the Pacific, UNCITRAL (15 minutes)

**PHOTO SESSION AND BREAK** 10:45 a.m.–11:15 a.m.

## KEYNOTE ADDRESS *by Mr. Gary Born*

Partner, Wilmer Cutler Pickering Hale and Dorr; President, SIAC Court; and Consultant, ADB International Arbitration (30 minutes)

**BREAK** 11:45 a.m.–12 noon

**LUNCH/NETWORKING (Meke Lounge)** 12 noon–1 p.m.

**SESSION 2: PROMOTION OF FDI AND TRADE THROUGH INTERNATIONAL ARBITRATION REFORM**

1 p.m.–1:45 p.m.

Moderator: *Mr. Christopher Stephens*, General Counsel, ADB

▶ **WHY INTERNATIONAL ARBITRATION REFORM IN THE SOUTH PACIFIC?**

**Speakers:**

*Mr. Rob Jauncey*, Regional Director, Pacific Subregional Office, ADB

*Mr. Wolfram Fischer*, Assistant General Counsel (Asia), International Finance Corporation

*Prof. Dr. Jordi Paniagua*, Professor of Economics, University of Valencia

*Prof. Michael Ewing-Chow*, Professor, National University of Singapore

**SESSION 3: INTRODUCTION TO INTERNATIONAL ARBITRATION** 1:45 p.m.–2:45 p.m.

Moderator: *Mr. João Ribeiro-Bidaoui*, Head, Regional Centre for Asia and the Pacific, UNCITRAL

▶ **HOW DO YOU RESOLVE A DISPUTE BETWEEN PARTIES FROM TWO DIFFERENT COUNTRIES?**

▶ **DIFFERENCES BETWEEN ARBITRATION AND OTHER FORMS OF DISPUTE RESOLUTION**

▶ **AN OVERVIEW OF UNCITRAL TEXTS ON ARBITRATION (MODEL LAW, RULES, TRANSPARENCY RULES)**

▶ **AD HOC AND INSTITUTIONAL ARBITRATION**

▶ **ANATOMY OF AN INTERNATIONAL ARBITRATION**

**Speakers:**

*Ms. Sarah Grimmer*, Secretary-General, Hong Kong International Arbitration Centre

*Mr. Daniel Meltz*, Barrister, 12 Wentworth Selborne Chambers; and Consultant, ADB International Arbitration

*Mr. Eun-Young Park*, Partner, Kim & Chang

**SESSION 4: THE NEW YORK CONVENTION AND THE PACIFIC SMALL ISLAND DEVELOPING STATES** 2:45 p.m.–3:45 p.m.

Moderator: *Mr. Gary Born*, Partner, Wilmer Cutler Pickering Hale and Dorr; President, SIAC Court; and Consultant, ADB International Arbitration

▶ **INTRODUCTION TO THE NEW YORK CONVENTION**

▶ **THE NEW YORK CONVENTION AND THE SOUTH PACIFIC COUNTRIES**

▶ **UPDATE ON INTERNATIONAL ARBITRATION REFORM IN THE SOUTH PACIFIC**

**Speakers:**

*Ms. Susana Faletau, CEO, Ministry of Justice, Kingdom of Tonga*

*Dr. Petra Butler, Co-Director, Centre for Small States; and Professor, School of Law, Victoria University Wellington*

*Ms. Gitanjali Bajaj, Partner, DLA Piper*

**COFFEE/NETWORKING** 3:45 p.m.–4 p.m.

▶ **CISG: ENABLING ACCESS TO CROSS-BORDER TRADE FOR THE PACIFIC ISLANDS' BUSINESSES**

4 p.m.–4:30 p.m.

by *Dr. Petra Butler, Co-Director, Centre for Small States; and Professor, School of Law, Victoria University of Wellington*

▶ **INTRODUCTION TO THE UNCITRAL SECRETARIAT GUIDE ON THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS** 4:30 P.M.–4:45 P.M.

by *Ms. Brenda Horrigan, Head, International Arbitration – Australia, Herbert Smith Freehills*

**COFFEE/NETWORKING** 4:45 p.m.–5 p.m.

**SESSION 5: FIJI INTERNATIONAL ARBITRATION ACT 2017 – OVERVIEW OF KEY PROVISIONS AND INNOVATIONS** 5 p.m.–6 p.m.

Moderator: Representative from the Office of the Attorney General

▶ **REGIONAL IMPLEMENTATION OF THE UNCITRAL MODEL LAW; RECENT ARBITRATION REFORMS IN THE ASIA-PACIFIC REGION**

▶ **OVERVIEW OF KEY PROVISIONS AND INNOVATIONS OF THE FIJI INTERNATIONAL ARBITRATION ACT 2017**

▶ **IMPACT ON LEGAL PRACTICE AND BUSINESS IN FIJI**

**Speakers:**

*Mr. João Ribeiro-Bidaoui, Head, Regional Centre for Asia and the Pacific, UNCITRAL*

*Mr. Avendra Singh, Partner, Squire Patton Boggs*

*Mr. Michael Hwang SC, Barrister and Arbitrator, Michael Hwang Chambers and Essex Court Chambers; and Chief Justice, DIFC Courts*

**CONFERENCE DINNER/FIJI CULTURAL SHOW (Coco Palms, Westin Denarau Hotel) Attire: Bula** 6:30 p.m.–9 p.m.

# DAY 2

## 13 FEBRUARY 2018

8:30 a.m.–11:15 a.m.

### **SESSION 6: SPECIAL BREAKFAST SESSION: WOMEN IN ARBITRATION** (Meke Lounge) 8:30 a.m.–10 a.m.

- ▶ **OPENING REMARKS BY MR. CHRISTOPHER STEPHENS, GENERAL COUNSEL, ADB**
- ▶ **BUILDING A CAREER IN INTERNATIONAL ARBITRATION WITH A PARTICULAR FOCUS ON HOW WOMEN CAN AVOID COMMON PITFALLS**

Facilitators: *Dr. Petra Butler, Ms. Christina Pak, Ms. Judith Levine, Ms. Sarah Grimmer, Ms. Jo Delaney, Ms. Gitanjali Bajaj, Ms. Brenda Horrigan and Ms. Sae Youn Kim*

### **COFFEE BREAK/NETWORKING** 10 a.m.–10:15 a.m.

### **SESSION 7: DISPUTES IN THE SOUTH PACIFIC** 10:15 a.m.–11:45 a.m.

Moderator: *Mr. Daniel Meltz, Barrister, 12 Wentworth Selborne Chambers; and Consultant, ADB International Arbitration*

- ▶ **ENERGY DISPUTES** 10:15 a.m.–10:45 a.m.
  - Energy developments relevant to the South Pacific
  - Types of energy disputes
  - Focus on renewable energy and future directions

#### **Speakers:**

*Mr. Kevin O’Gorman, Partner, Norton Rose Fulbright, Houston*  
*Ms. Huawei Sun, Partner, Zhong Lun Law Firm*

- ▶ **CONSTRUCTION DISPUTES** 10:45 A.M.–11:15 A.M.  
Moderator: *Ms. Jo Delaney, Partner, Baker & McKenzie, Sydney*
  - Construction developments in the South Pacific
  - Types of construction disputes
  - Features of construction dispute resolution

**Speakers:**

*Mr. Tejas Karia*, Partner, Shardul Amarchand Mangaldas & Co

*Ms. Sae Youn Kim*, Partner, Yulchon

*Ms. Gitanjali Bajaj*, Partner, DLA Piper

▶ **CLIMATE FINANCE DISPUTES** 11:15 a.m.–11:45 a.m.

Moderator: *Ms. Christina Pak*, Senior Counsel, ADB

- Overview of climate finance in the South Pacific
- Types of emerging climate finance disputes

**Speakers:**

*Ms. Judith Levine*, Senior Legal Counsel, Permanent Court of Arbitration

*Ms. Jo Delaney*, Partner, Baker & McKenzie, Sydney

**COFFEE BREAK/NETWORKING** 11:45 a.m.–12 noon

**SESSION 8: CONCURRENT BREAKOUT SESSIONS (LAWYERS, PRIVATE SECTOR AND JUDICIARY)**

(*Seijale, Senibua and Senirosi Boardroom*) 12 noon–1:15 p.m.

▶ **FOR LAWYERS: DRAFTING ARBITRATION AGREEMENTS**

Moderator: *Mr. Daniel Meltz*, Barrister, 12 Wentworth Selborne Chambers; and Consultant, ADB International Arbitration

**Speakers:**

*Ms. Jo Delaney*, Partner, Baker & McKenzie, Sydney

*Ms. Brenda Horrigan*, Head, International Arbitration – Australia, Herbert Smith Freehills

*Mr. Timothy Lindsay*, Partner, Lindsay

▶ **FOR PRIVATE SECTOR: CONTRACTING WITH FOREIGN PARTIES AND CROSS-BORDER DISPUTE RESOLUTION**

Moderator: *Mr. Erik Aelbers*, Unit Head, Economics and Programming, Pacific Department, ADB

**Speakers:**

*Ms. Koh Swee Yen*, Partner, WongPartnership LLP

*Mr. Terry Reid*, ADB Private Sector Development Initiative

*Mr. Kevin O’Gorman*, Partner, Norton Rose Fulbright, Houston



▶ **IMPLEMENTATION OF THE NEW YORK CONVENTION - JUDICIAL PERSPECTIVE**

Moderator: *Mr. Gary Born*, Partner, Wilmer Cutler Pickering Hale and Dorr; President, SIAC Court; and Consultant, ADB International Arbitration

**Speakers:**

*Mr. Justice A.H.C.T. Gates*, Honorable Chief Justice, Supreme Court of Fiji

*Honorable Sir David Williams*, President, Court of Appeals, Cook Islands

*Mr. Michael Hwang SC*, Barrister and Arbitrator, Michael Hwang Chambers and Essex Court Chambers; and Chief Justice, DIFC Courts

*Honorable Judge Yang Honglei*, Judge, Fourth Chamber, Supreme People's Court of the People's Republic of China

**LUNCH/NETWORKING (Meke Lounge) 1:15 p.m.–2:15 p.m.**

▶ **UNCITRAL E-COMMERCE LAW 2.0 FOR THE IMPLEMENTATION OF FTAS AND TRADE FACILITATION MEASURES 2:15 p.m.–2:30 p.m.**

by *Mr. João Ribeiro-Bidaoui*, Head, Regional Centre for Asia and the Pacific, UNCITRAL

**SESSION 9: MOCK ARBITRATION 2:30 p.m.–3:30 p.m.**

Facilitator: *Mr. Jonathan Lim*, Senior Associate, Wilmer Cutler Pickering Hale and Dorr

▶ **ROLE PLAY: CONSTRUCTION DISPUTE WITH ENERGY/ENVIRONMENTAL/CISG/ ELECTRONIC COMMUNICATIONS ELEMENTS**

• **3-MEMBER TRIBUNAL:**

*Mr. Gary Born*, *Ms. Sae Youn Kim*, and *Mr. Christopher Stephens*

• **CLAIMANT'S COUNSEL:**

*Ms. Ana Tuiketeki*, Barrister and Solicitor, High Court of Fiji

• **RESPONDENT'S COUNSEL:**

*Ms. Ofa Solimailagi*, Senior Legal Officer, Office of the Attorney General of Fiji

• **JUDGE – ENFORCEMENT OF AWARD:**

*Justice Suresh Chandra*, Judge, Fiji Supreme Court; and Resident Justice of Appeal, Fiji Court of Appeal

**SESSION 10: CONCLUDING REMARKS AND RECOMMENDATIONS** 3:30 p.m.–4 p.m.

▶ **ADB TECHNICAL ASSISTANCE: PROMOTION OF INTERNATIONAL ARBITRATION REFORM FOR BETTER INVESTMENT CLIMATE IN THE SOUTH PACIFIC**

**Speakers:**

*Mr. Christopher Stephens*, General Counsel, ADB

*Ms. Christina Pak*, Senior Counsel, ADB

*Mr. Gary Born*, Partner, Wilmer Cutler Pickering Hale and Dorr; President, SIAC Court; and Consultant, ADB International Arbitration

*Mr. Daniel Meltz*, Barrister, 12 Wentworth Selborne Chambers; and Consultant, ADB International Arbitration

*Mr. João Ribeiro-Bidaoui*, Head, Regional Centre for Asia and the Pacific, UNCITRAL



# background paper

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The South Pacific region is one of the last few regions in the world without an effective legal framework to resolve cross-border commercial disputes through international arbitration. This form of cross-border dispute resolution and enforcement regime is fundamental to foreign investment and trade. The absence of an international arbitration framework increases the risks and cost of doing business and stifles the economic growth potential of the region. International arbitration can also play a critical role in attracting more international climate finance and climate investments into the South Pacific region.

## What is International Arbitration?

International arbitration is a private dispute resolution mechanism that involves parties from different countries submitting their dispute to a neutral arbitrator or a panel of neutral arbitrators, who then render a decision in the form of an arbitral award that is capable of enforcement in 157 countries under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the “New York Convention”).

## Advantages of International Arbitration

In recent decades, international arbitration has become the preferred means of resolving international commercial disputes all over the world. International arbitration is preferred over litigation in the national courts because it offers certainty for commercial parties and allows parties greater autonomy to manage the risks involved in cross-border transactions. In particular, international arbitration provides parties with major advantages such as: (i) flexibility and ability to choose neutral forum, impartial arbitrators with subject matter expertise, procedure and governing law; (ii) confidentiality and privacy; (iii) cost-effectiveness; and (iv) finality and ability to enforce a foreign arbitral award in 157 countries pursuant to the New York Convention.

## Legal Framework for International Arbitration

There is already a well-established legal infrastructure in place for international arbitration, namely, (i) the New York Convention, and (ii) the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (“UNCITRAL Model Law”). Both these instruments are relatively easy to adopt and have potentially outsized benefits for South Pacific countries. By adopting these two instruments, such countries can quickly establish a framework for resolving international commercial disputes by arbitration (or reform any existing frameworks in accordance with accepted international practices) and reap the corresponding benefits.

## Current Status in the South Pacific Countries

Currently, a majority of the South Pacific countries are not party to the New York Convention - out of 15 countries, only Cook Islands, Fiji and Marshall Islands have acceded to the New York Convention. The following South Pacific countries have not signed onto the New York Convention: Kiribati, Federated States of Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu. Moreover, many South Pacific countries do not have the domestic legal frameworks to support the recognition and enforcement of international arbitration agreements and foreign arbitration awards.

## ADB's Technical Assistance on International Arbitration Reform in the South Pacific

ADB, through the Office of the General Counsel's Law and Policy Reform Program, implements a regional technical assistance entitled "*Promotion of International Arbitration Reform for Better Investment Climate in the South Pacific*" (the "TA"). The TA aims to establish an effective commercial dispute resolution regime in ADB's Pacific developing member countries (DMCs)<sup>1</sup> through international arbitration reform to boost regional and international investor confidence to lead to greater foreign direct investment and cross-border trade in the region. The TA has been assisting ADB's Pacific DMCs to: (i) accede to the New York Convention; (ii) modernize existing arbitration law or draft new international arbitration law based on the UNCITRAL Model Law to implement the New York Convention and reflect international best practices; and/or (iii) provide related capacity building to the users and implementing parties. Under the TA, ADB has been supporting the governments of its Pacific DMCs to implement international arbitration reform, assisted by a dedicated team of international arbitration experts and in collaboration with UNCITRAL's Regional Centre for Asia and the Pacific.

## The Dawn of International Arbitration in the South Pacific

To raise awareness and discuss the positive development impact of international arbitration reform in the South Pacific, the Government of Fiji, in conjunction with the Asian Development Bank (ADB) and United Nations Commission on International Trade Law (UNCITRAL) Regional Centre for Asia and the Pacific, will be hosting the first-of-its kind inaugural South Pacific International Arbitration Conference (the "Conference"). The Conference will be attended by key government officials, policy makers, development partners, judges, law practitioners, and private sector participants from the South Pacific region, as well as international speakers. The Conference will also provide in-depth knowledge on the practical aspects of different type of disputes in the region and globally. There will also be specialized interactive sessions tailored for different stakeholders such as private sector, law practitioners and judges.

Conference topics will include:

- the promotion of cross-border trade and foreign direct investment through international arbitration reform;
- the importance of an effective dispute resolution system to a country's investment climate and economic development;
- disputes in the South Pacific region, particularly on energy (including renewable energy), construction and climate finance; and
- their implementation in the South Pacific region.

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<sup>1</sup> ADB's 14 Pacific DMCs include: Cook Islands, Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu, and Vanuatu.

Additionally, the Conference will cover:

- contract drafting in supply-chain contracts for micro-, small-, and medium-sized enterprises (MSMEs) in accordance with the United Nations Convention on Contracts for the International Sale of Goods (CISG); and
- the role of UNCITRAL texts on e-commerce for the implementation of free-trade agreements and trade facilitation measures.

The Conference will culminate in a mock international arbitration designed to walk participants through the process of a typical international arbitration.





# opening speeches

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## Speech by **MR. SHARVADA SHARMA**

Honourable Ministers, Attorneys-General and Solicitors-General from around the Pacific;  
Head of the Regional Centre for Asia and the Pacific of UNCITRAL;  
Distinguished Representatives from the Asian Development Bank;  
Distinguished Speakers and Guests;  
Ladies and Gentlemen;

Good Morning and Bula Vinaka,

It gives me great pleasure to welcome you all to the inaugural Pacific Regional International Arbitration Conference here in Fiji, which is being co-hosted by the Fijian Government, the Asian Development Bank and UNCITRAL (the United Nations Commission on International Trade Law).

Fiji is proud to be partnering with the ADB and UNCITRAL in what we believe is an area of law that could truly benefit international trade for Fiji and within the region, and we are delighted to be able to host you all here in Fiji for what promises to be an informative and interesting programme.

Firstly, I would like to convey the Honourable Attorney-General's apologies for not being able to join us here this morning to open this conference. The Honourable Attorney-General is one of the driving advocates for law reform in Fiji and it is his work with UNCITRAL which influenced the Fijian Government's agreement to co-host this conference.

The title of this conference is 'The Dawn of International Arbitration in the South Pacific' is quite relevant and it is true that for many Pacific island countries, international arbitration is not something we see on a daily basis.

For me, as an old-school litigator, when a dispute arises, the reaction in Fiji is to take matters to court. However, with the growing international trend to settle disputes outside the courtroom, our thinking must change and we must embrace complimentary dispute resolution mechanisms such as mediation and arbitration.



In actual fact, Fiji already has an existing Arbitration Act from 1965 that covers arbitration at the domestic level. What we were lacking, was an international commercial dispute resolution mechanism that could be used for international commercial contracts. A mechanism to not only arbitrate across borders, but to enforce arbitration awards in Fiji and in other jurisdictions. This was a gap that had been identified in terms of the promotion and attraction of foreign trade into Fiji.

Accordingly, this was a driving factor for Fiji to introduce a legislated mechanism for international arbitration.

Fiji acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the ‘New York Convention’ on 27 September 2010. As the foundational instrument for international arbitration, accession to the New York

Convention is the first step to harmonise the treatment of international disputes across borders. This is an important step for Fiji to take as investors and those doing business with Fiji want the comfort that if a dispute arises, there are internationally recognised mechanisms to determine these disputes. And as the New York Convention has about 157 countries, it is a mechanism that is familiar to foreign investors.

Following accession, the next step is of course to domesticate the Convention into local laws. And I’m pleased to say that in September last year, the Fijian Parliament enacted the International Arbitration Act 2017 (**‘Act’**), which is an Act that implements Fiji’s obligations under the New York Convention.

In the lead up to the passing of the Act, we were privileged to have been assisted with technical assistance from UNCITRAL and ADB, and we would like to especially thank:

- (a) Ms. Christina Pak, Senior Counsel, ADB;
- (b) João Ribeiro-Bidaoui, Head of UNCITRAL’s Regional Centre for Asia and the Pacific;
- (c) Mr. Daniel Meltz; and
- (d) Mr. Gary Born.

## **Speech by MR. SHARVADA SHARMA** *(continued)*

Recognising the importance of international arbitration as a means of settling international commercial disputes, the Act was drafted to provide uniformity in its application and the observance of international best practices.

Our Act was drafted according to the Model Law on International Commercial Arbitration adopted by UNCITRAL on 21 June 1985 and as amended by UNCITRAL on 7 July 2006 (**‘Model Law’**). You will see that the Fijian Act is largely a replication of the Model Law. This is so that our legislation is based on international standards of arbitration and enables the wealth of jurisprudence that has been developed around the world to be utilised in Fiji.

There are however, some differences between the Model Law and our Act. The Act has some additional provisions taken from laws in Australia, New Zealand, Singapore and Hong Kong, which were recommended to us for insertion to reflect the current international best practice. I understand that these will be discussed further in a session later today. With these additional provisions, we believe that Fiji has a modern Act, at the forefront of international arbitration.

For those in the room from Fiji, I should point out that the Act is not yet in force. Work is currently being done for the preparation of Rules to amend the High Court Rules to make the process clearer for taking issues to court in relation to the Act. We hope that the Act will be in full force by the end of the year, which will give everyone the opportunity to be trained on the new processes and also allow for capacity building within the legal profession, the private sector and the Judiciary.

Some of you might be aware, that last week, there was a dedicated training for the Judiciary on the Act and last year in Fiji, the ADB provided training for the legal profession and the private sector. This training is particularly beneficial as it prepares Fiji for the implementation of the Act.

The introduction and the implementation of the International Arbitration Act in Fiji will give investors and trading partners more confidence in doing business here in Fiji. It is envisioned that the Act will contribute directly to economic growth by providing a gateway to increasing regional and international investor confidence, which in turn will lead to greater economic development potential.

The Act provides an alternative, cost effective and time efficient means of dispute resolution between parties. Additionally, awards under the Act are recognised in 157 countries, which include Fiji’s major sources of foreign direct investment such as the People’s Republic of China, Australia, the United States of America and New Zealand.

By enacting and commencing the Act, Fiji complies with our obligations under the New York Convention. Moreover, complying with the New York Convention and other relevant instruments signifies our commitment to fostering the right environment for investment, which creates new jobs and inevitably boosts the Fijian economy.



In addition to the work on the International Arbitration Act, the Fijian Government has been working closely with UNCITRAL and other multilateral partners on a number of legislative reforms that will improve the ease of doing business in Fiji and help improve the business environment, aligning Fiji's laws with international best practice. The work on international arbitration is only one of these areas. Last year Fiji also acceded to the:

- (a) United Nations Convention on the Use of Electronic Communications in International Contracts; and
- (b) United Nations Convention on Contracts for the International Sale of Goods.

These are just some of the areas that Fiji is reforming as we believe that there will be a positive impact on doing business in Fiji and in turn a positive impact on the Fijian economy.

As mentioned earlier, the introduction of the International Arbitration Act in Fiji will provide a better investment climate and boost investor confidence. Understanding more about international arbitration and how it works in practice is an important part of the implementation and the use of international arbitration, and it is conferences like this which will assist practitioners to gain a better understanding of the particulars of international arbitration.

You will no doubt note from the programme, we have a line-up of sessions and speakers that are well-known within the field and we all look forward to the presentations and robust discussions in these sessions.

Distinguished Ladies and Gentlemen, we are very pleased that you have made it here today to join us in what promises to be a very fruitful and informative conference.

On behalf of the Fijian Government, I take this opportunity to wish you all a successful conference.

Vinaka.

## Speech by MR. CHRISTOPHER H. STEPHENS

### Introduction

Honourable Sharvada Sharma, Solicitor General of the Republic of Fiji;  
Mr. João Ribeiro-Bidaoui, Head of the United Nations Commission on International Trade Law (UNCITRAL) Regional Centre for Asia and the Pacific;  
distinguished guests; ladies and gentlemen:

*Bula Vinaka.*<sup>1</sup> Good morning. My name is Christopher Stephens, and I am that General Counsel of The Asian Development Bank.

ADB is deeply honoured to be partnering with the Fijian Government and UNCITRAL to bring all of you together for the first ever International Arbitration Conference in the South Pacific.

This truly is a remarkable gathering of key government officials, policymakers, judges, lawyers, private sector and development partners from the South Pacific region, as well as world's foremost experts on international arbitration and rule of law, coming together to help lift barriers to foreign direct investment and regional and international trade in the South Pacific region.

### ADB's Commitment to South Pacific Countries: Projects + Law and Policy Reform

For almost half a century, ADB has worked to support growth and development in the South Pacific region, which is one of our 5 core geographic areas of operations. 14 of our 45 developing member countries (DMCs) or about 30% of DMCs are in this region.

ADB has more than 65 projects ongoing across all 14 Pacific countries, with total financing exceeding \$2.6 billion. This is a five-fold increase over our \$500 million portfolio in 2005. I am also proud to note that ADB is now the Pacific's largest single source of renewable energy financing.<sup>2</sup>

ADB's recently announced new *Pacific Approach*, our operational framework for the next five years - anchored on the three strategic pillars: (i) reducing costs through better connectivity; (ii) managing the risks of natural disasters, climate change, and economic shocks; and (iii) enabling value creation by tapping the private sector and human capital.<sup>3</sup>

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<sup>1</sup> A warm hello in Fijian.

<sup>2</sup> T. Nakao. 2017. *27th Pacific Developing Member Countries Governors and ADB Management Meeting* <https://www. www.adb.org/news/speeches/27th-pacific-developing-member-countries-governors-adb-management-meeting-takehiko-nakao>

<sup>3</sup> *Ibid.*

However, the small size, remoteness, fragility, and vulnerability of South Pacific countries to climate change require us to carefully tailor our assistance to the region's unique development needs and constraints.

We also have to ensure that the South Pacific countries are ready and capable to accept, activate, and optimize this increasing development assistance and new investments.

To that end, alongside our operations, ADB's Legal Department runs our **Law and Policy Reform Program** or LPR, in which we design technical assistance or TA projects to work with our DMC partner governments to modernize their legal systems to encourage investment and trade, facilitate commercial activity, and build the capacity of their judicial, regulatory and administrative institutions to establish, implement, and enforce laws and regulations efficiently, consistently, ethically, and predictably.

### **The Pacific needs a voice in international arbitration**

One major barrier in attracting greater foreign direct investment, and stimulating more cross-border trade is the lack of investor confidence in available effective and efficient ways to resolve commercial disputes between people from different countries.

In recent decades, international arbitration has become the preferred means of resolving international commercial disputes all over the world for reasons our guest experts will discuss over the next two days.

However, the South Pacific is one of the few regions in the world without an accessible legal framework to resolve cross-border commercial disputes through international arbitration.

Currently, only 3 out of the 14 ADB Pacific DMCs, have an international arbitration legal framework in place. The absence of reliable dispute resolutions mechanisms discourages foreign investment, finance and trade.

### **ADB's Technical Assistance: *Promotion of International Arbitration Reform for Better Investment Climate in the South Pacific***

To assist our Pacific DMCs to put in place an international arbitration legal framework, ADB launched a technical assistance project beginning of 2017.

One significant outcome of this early work has been the enactment of Fiji's International Arbitration Act 2017<sup>4</sup> - which is the most recent and most advanced and state-of-the-art legislative regime for international arbitration in the region, if not the world - enhancing Fiji's reputation as a place for international arbitration and business.

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<sup>4</sup> The Fiji International Arbitration Act was enacted on 15 September 2017 and approved by the President on 18 September 2017. <http://www.parliament.gov.fj/wp-content/uploads/2017/03/Act-44-International-Arbitration.pdf>

## **Speech by MR. CHRISTOPHER H. STEPHENS** *(continued)*

We are also working with other South Pacific countries to put in place an international arbitration legal framework and hope to get more countries onboard.

In addition to our arbitration work, under our Law and Policy Reform Program, we have been working with Fiji and other ADB member countries to identify and resolve legal barriers to attracting international climate finance to facilitate climate change mitigation and adaptation.

### **Conclusion**

Over the next two days, we will hear from some of the foremost experts in the world on international arbitration and legal reform, discuss the issues and challenges, and share knowledge on best practices.

Let's all use this incredible opportunity to work together towards common objectives that can produce substantial benefits to the people and countries of this special and beautiful region.

Let me convey our special thanks to the people and government of Fiji for hosting us and for the gracious hospitality that is so typical of the Fijian people.

ADB is also looking forward to holding our annual meeting here in Nadi in 2019.

So again, thank you all for coming to this conference and for your commitment to your countries and this region.



## Speech by MR. JOÃO RIBEIRO-BIDAOU

Honourable Solicitor-General, and in you, the Attorney-General, to whom I wish to thank on behalf of UNCITRAL for co-hosting this landmark event and for his regional leadership by example, engaging in significant legal reforms, crucial for the promotion of a rule-based regional trade.

Dear Christopher Stephens, General Counsel of the Asian Development Bank, to whom I must thank the willingness to coordinate with UNCITRAL on a technical assistance project, something that happens for the first time since both organizations were created – and by the way, both were created within the same week, back in December 1966.

Distinguished guests, speakers and delegates,

Ladies and Gentlemen.

A scattered geography and relative isolation, heightens the Pacific Small Island Developing States vulnerability to climate change, to rising sea levels, to expensive energy supply and to extraordinary logistics costs.

The South Pacific Island of Niue suffered devastation at three times its GDP due to cyclone Heta in 2004. Vanuatu lost about 64 per cent of its GDP due to cyclone Pam in 2015. Severe rises of sea-level and storm surges forced people to relocate away from the coastline, for instance, in the atolls of Bikini and Kili in the Marshall Islands, in Carteret, in Papua New Guinea and in other coastal communities in Kiribati and Tuvalu.

Additionally, small island developing States are 33 per cent more vulnerable to external economic shocks than other developing countries; over 12 times more exposed to oil-related price shocks; and, structurally, at least 8 per cent more vulnerable to climate change.

No organization, and certainly no agency within the UN, can ignore which have to be the top political priorities in this context for each of your governments.

But we are here because we believe our work can help raise the income of the populations and of your governments, providing resources to address such daring challenges.

A sustainable private sector development and better trade and interconnectivity with the key world economies will help strengthening the political profile of your States. This may help give you a stronger voice in the international community to demand urgent cooperation and assistance.

## **Speech by MR. JOÃO RIBEIRO-BIDAOU** *(continued)*

Ladies and gentlemen.

For the Copenhagen Consensus Centre, the single development target with potentially the larger impact on global prosperity, is the removal of trade barriers.

Clearly, divergences arising from trade laws of different States, create obstacles to cross-border commerce, and raises commercial risks.

To put it simply, disparity in legal frameworks leads to unbearable transactional costs, preventing SME's from sharing the benefits they stand to gain, from increased cross-border trade.

This becomes more urgent when the regional economy is witnessing an unprecedented level of negotiations and implementation of free trade agreements: from the renewed Comprehensive and Progressive Agreement for Trans-Pacific Partnership; the Regional Comprehensive Economic Partnership (RCEP); or the Melanesian Spearhead Group Trade Agreement (MSGTA); to the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) and of course the Pacific Agreement on Closer Economic Relations (PACER) Plus.

UNCITRAL combined framework of standards enhances the commercial bargaining power, provides mechanisms for affordable access to justice in trade, instils trust between trade partners and levels the contractual terms, raising the value for money. Particularly on sale of goods or in electronic commerce-based transactions - which can have a huge effect in redistribution of income.

Laws are expected to serve legitimate economic and social objectives: they are not an end in itself. Whenever legal provisions go beyond the understanding of a common citizen, the problem does not lie with the person, but with the law. This said, whenever available trade law dispositions are inaccessible to common businessmen, such laws no longer serve the best interest of a given political, economic and social system.

In this context, to ensure a rule-based trade and access to justice for small and medium sized businesses, a sound and progressively integrated legal framework on commercial and investment arbitration is mandatory.

And that has been central to our assistance work in the Region.

In 2012, 15 out of 56 States in the region had arbitration legislation recognized as an enactment of the UNCITRAL Model Law. Today, 25 States have enacted the Model Law, which represents a 67% increase in less than 5 years. Also, since 2012, we witnessed 4 new ratifications of the New York Convention, doubling the pace of regional ratifications from the previous 5 years. UNCITRAL provides a unique resource to States to raise their local legal capacity of implementing sound commercial law reforms, providing accessible technical assistance to States that otherwise, by themselves, cannot update and reform.

Looking at and adopting United Nations texts may also provide the necessary political guarantees for successful reforms, unlike any other regional sources of inspiration for legislative change.

Thus, providing technical assistance and capacity building to the south Pacific, which represents 26% of the total number of jurisdictions under the mandate of the UNCITRAL Regional Centre for Asia and the Pacific, is, therefore, one of our key regional priorities.

Of 13 considered PSIDS jurisdictions, 8 have not yet adopted any UNCITRAL text on trade law, and only 1, Fiji, has adopted more than 2 out of the main 11 Conventions and Model laws on arbitration, conciliation, sale of goods, transport of goods by sea, electronic commerce, secured transactions, cross-border insolvency or public procurement.

Fiji has acceded to 3 UNCITRAL Conventions over the past 8 years, 2 of them just within the last year: the United Nations Convention on Contracts for the International Sale of Goods (known as CISG) and the United Nations Convention on the use of Electronic Communications in International Contracts (known as e-CC).

Against this backdrop, UNCITRAL has agreed to collaborate with the Asian Development Bank in its Technical Assistance Programme for the reform of laws on international commercial arbitration in the South Pacific, aiming to assist broad regional accession to the New York Convention.

This allowed for the coordination of technical cooperation with the Government of Fiji in reforming its legislation on arbitration, resulting in the enactment of the UNCITRAL Model Law on International Commercial Arbitration.

Fiji is now an ongoing case study on commercial legal reforms and a reference for others to follow.

Ladies and gentlemen,

In conclusion, please do not forget that UNCITRAL law-making work takes place in the broader context of the United Nations. We are not just simply concerned with the technicalities of commercial law.

As a political organization, the United Nations would have no interest in the harmonization and modernization of international trade law and practices, if it were not convinced that such technical work is conducted, on the long run, in pursuance of greater goals such as the promotion of the rule of law, access to justice and ultimately, peace.

I thank you very much for your attention and wish you a very productive Conference.

# keynote speech

## Speech by MR. GARY BORN

Honourable Solicitor-General Sharvada Sharma,  
Honourable Ministers, Attorney-Generals and Solicitor-Generals,  
Distinguished Speakers and Guests,  
Good morning and Bula Vinaka,

It is a great honour and pleasure to deliver this keynote address. I would like to thank the Government of Fiji, the Asian Development Bank and UNCITRAL for putting together this wonderful conference, which is very aptly titled “The Dawn of International Arbitration in the South Pacific.”

I would like to begin by saying a few words about international arbitration, its development over the years and the important role it plays in international trade and commerce. International arbitration enjoys a very long history as the preferred means of resolving commercial and other disputes, with the earliest reported arbitrations in the Middle East (what is now contemporary Iraq) taking place several thousands of years ago and recorded in cuneiform tablets. Arbitration was also recorded as a means of resolving disputes in ancient Greece and Rome.

In more recent times, there has been a very substantial increase in the use of arbitration to resolve commercial and other disputes throughout the world, as reflected by the caseload statistics of arbitral institutions around the world, including the SIAC, HKIAC and other institutions. It is no exaggeration to say that arbitration is the default, or preferred, means of resolving international commercial and other disputes.

What is arbitration? It is a voluntary contractual process of dispute resolution, which takes place in private before arbitrators chosen by the parties, rather than before courts. The arbitrators are non-governmental decision-makers. Arbitrations are often, but not always, confidential. The arbitrators then render, after considering carefully the cases put forward by parties, a final and binding award which is capable of enforcement globally.

Why is it that parties agree to arbitrate? There are several reasons why arbitration has become the preferred means of settling international disputes all around the world. First, arbitration is efficient and expeditious. The process is quicker and cheaper as compared to the alternatives, usually litigation before national courts. Second, arbitration is expert. One of the





critical features of arbitration is that parties are able to choose their arbitrators, who may have particular commercial experience or specialized experience in specific industries, for example construction or commodities or international law. Arbitrators are also particularly expert in terms of procedures, and can manage the process to ensure the arbitration proceedings proceed both expeditiously and fairly. Third, arbitration is even-handed and perceived as neutral, meaning that the arbitrators are independent of the parties and will hear the dispute impartially. Finally, arbitration is enforceable. Arbitral awards have an enforceability premium, particularly under the New York Convention, which I will discuss in greater detail later, which allows the enforcement of arbitral awards in over 150 different countries. This makes arbitration superior to the available alternatives, being national court litigation, because judgments are not as easily enforced. There is no real equivalent to the New York Convention for court judgments. These are what I call the 5 “E”s.

International arbitration offers particular benefits for South Pacific Island States. It plays an important role in attracting foreign direct investment. Investors and other commercial parties require efficient, expeditious, expert, even-handed and enforceable dispute resolution mechanisms to mitigate business risks and provide legal certainty. International arbitration can help provide this assurance to investors by providing the “rule of law,” in particular a stable and predictable business environment. This reduces barriers to trade and encourages greater levels of investment, which in turn creates jobs and wealth. International arbitration can also relieve docket congestion in courts: by allowing expert arbitrators to decide international commercial disputes, which often might not have a direct connection to the particular seat in the first place, courts can then focus on important domestic disputes. This will again strengthen the rule of law.

The New York Convention and UNCITRAL Model Law are important international arbitration instruments, and key components of the international infrastructure for trade and investment. Both instruments are essential “passports” that are necessary for states and businesses to participate on mutually beneficial terms in the modern international trading system, and will facilitate access by South Pacific Island States to international markets and foreign investment.

The New York Convention, in particular, is one of the most successful multilateral trade conventions of all time. Although it is almost 60 years old, it remains the foundation of international arbitration globally. 157 states have now ratified the New York Convention, including

## **Keynote Speech by MR. GARY BORN** *(continued)*

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states in Africa, Asia, Europe, the Middle East, and the North and South Americas. The Convention is a simple, concise document, and spans only a few pages. Yet, in the words of the former President of the International Court of Justice, Judge Stephen Schwebel, “It works.” The Convention was designed to encourage the recognition and enforcement of arbitration agreements and arbitral awards. It does this by: (a) requiring national courts to recognize arbitration agreements in writing subject to specified, limited exceptions; and (c) requiring national courts to recognize foreign arbitral awards, subject to specified, limited exceptions.

The UNCITRAL Model Law was developed after the New York Convention, in 1985, and was intended to address disparities among national arbitration laws. The New York Convention was hugely successful, but it did not address a number of issues. The Model Law thus complements the New York Convention by providing a legislative template that states can choose to adopt to implement their obligations under the New York Convention. The Model Law deals with issues such as the appointment and challenge of arbitrators, provisional measure, the conduct of arbitral proceedings, evidence-taking and discovery and applicable law. More than 100 jurisdictions have adopted the provisions of the Model Law, and many others have used the Model Law as a model for arbitration legislation.

Fiji took an important step in 2010 when it signed the New York Convention. It took a further important step this year when it enacted the Fiji International Arbitration Act 2017, which is based on the Model Law and implements the New York Convention. The adoption of these two instruments will have a tremendous impact on foreign investment in Fiji, for all of the reasons I have mentioned earlier. This reform is available also to other Pacific Island States, who should give serious consideration to acceding to the New York Convention and implementing it by revising their arbitration laws based on the Model Law.

# opening speakers



**MR. SHARVADA SHARMA** is Fiji's solicitor general. He obtained his Bachelor of Laws degree with honours from the University of Waikato, New Zealand in 1996. He was admitted to the Fiji and New Zealand bar. He started his legal career in September 1997, as a legal officer in the Fiji Law Reform Commission, and has been serving in the Attorney-General's Chambers since January 1998. In 2003, he successfully read for the Master of Laws degree at the University College, University of London, United Kingdom, as a Chevening scholar.

**MR. CHRISTOPHER H. STEPHENS** has been the general counsel of the Asian Development Bank (ADB) since the end of 2012. ADB's legal team comprises 85 staff from 16 countries, and advises ADB's board of governors, resident board of directors, management, and operations and administrative departments.

The legal department also runs ADB's Law and Policy Reform (LPR) Program, through which ADB provides technical assistance to ADB's client countries in areas relating to the role of law in their development, including support for law and regulatory reforms, governance, judicial training, capacity building and legal literacy.

ADB's legal team and Mr. Stephens have won more than 20 awards in the last 4 years from Financial Times, Thompson-Reuters and other international publications, including "Best In-House" legal team, "Best Banking and Financial Services" legal team, "Most Innovative" team and several project awards.

Mr. Stephens has practiced law in the private and public sectors in Asia and the United States for more than 30 years.



**MR. JOÃO RIBEIRO-BIDAOU** is currently Head of the UNCITRAL Regional Centre for Asia and the Pacific, managing technical assistance and capacity building programming available to over 50 States in Asia and the Pacific, namely least developed, landlocked developing and small islands developing States. In that capacity, he coordinates with Governments and international and regional organizations with respect to trade law reform activities. He also manages programmes to promote the rule of law in commerce in the context of UN Partnership Framework Agreements with Lao PDR and Papua New Guinea, aimed at achieving the Sustainable Development Goals. He presents regularly at major conferences in the region on key topics of international trade law, including investment and commercial arbitration. He has been involved in reviewing, commenting or drafting commercial legislation from China, Fiji, India, Kazakhstan, Lao PDR, Macau SAR, Myanmar, Mongolia, Papua New Guinea, Qatar, Republic of Korea, Sri Lanka, Saudi Arabia and United Arab Emirates.



## keynote speaker

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**MR. GARY BORN** is chair of the International Arbitration Practice Group at Wilmer Cutler Pickering Hale and Dorr LLP. He also serves as president of the Singapore International Arbitration Centre (SIAC) Court of Arbitration. He is widely recognized as the world's leading authority on international arbitration and litigation. He has served as counsel in over 650 arbitrations, including several of the largest arbitrations in International Chamber of Commerce (ICC) and ad hoc history, and has sat as arbitrator in more than 200 institutional and ad hoc arbitrations.

He is the author of *International Commercial Arbitration* (Kluwer, 2nd ed. 2014), the preeminent treatise in the field, as well as *International Arbitration: Law and Practice* (2nd ed. 2015), and a number of other notable works on international dispute resolution. He is an honorary professor of law at the University of St. Gallen in Switzerland and the Tsinghua University in Beijing. He also teaches regularly in law schools in Europe, Asia, and North and South America.

# moderators and panel speakers

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**MR. ERIK AELBERS**, head of the Asian Development Bank (ADB) Economics and Programming Unit, leads and coordinates ADB's country strategy and programming, policy dialogue and relationship management, policy-based financing operations, and economic analysis in countries covered by ADB's Pacific Subregional Office (Cook Islands, Fiji, Kiribati, Samoa, Tonga, and Tuvalu). Prior to this position, he served as an advisor with ADB's Private Sector Development Initiative (PSDI) from 2009 to 2017, first posted in Port Moresby, Papua New Guinea, then in Sydney, Australia, and finally in Suva, Fiji. PSDI works with ADB's 14 Pacific developing member countries to improve the enabling environment for business and support inclusive, private sector-led economic growth.

Mr. Aelbers began his career with the European Investment Bank (2004–2006). He then served as a principal economist at the Papua New Guinea Department of Treasury (2007–2009). He holds a bachelor's degree in economics (2003) and a master's degree in development economics and economic policy analysis (2004) from the University of Southampton.

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**MS. GITANJALI BAJAJ**, partner at DLA Piper's Litigation and Regulatory team, focuses on major international and domestic construction and infrastructure disputes across a wide range of sectors, including building and construction, oil and gas, transport, power and clean energy. She is an experienced litigator and has represented clients in various forums of dispute resolution ranging from court proceedings to international arbitrations to domestic court proceedings, mediations, expert determinations and other forms of alternative dispute resolution in Australia, Asia Pacific and the Middle East. She currently co-leads the DLA Piper team representing the Government of Timor-Leste against Australia in the first of its kind compulsory conciliation proceedings under Annex V of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) concerning the establishment of permanent maritime boundaries between the two states.

Ms. Bajaj is qualified as a solicitor of the Supreme Court of New South Wales. She holds a bachelor's degree with a major in international relations and affairs and an LLB with a certificate of specialization in international law from the University of Queensland.





**DR. PETRA BUTLER**, co-director of the Centre for Small States and professor at Victoria University of Wellington, has been involved in projects related to Pacific Island countries for over 10 years. These projects include the anthropology of law in the Pacific Islands and the book *Human Rights in the Pacific*. She is the co-editor of *The World of Small States*, a series published by Springer dedicated to exploring current issues small states face. She is New Zealand's leading human rights academic and widely regarded as an expert in the law relating to the international sale of goods.

Dr. Butler is a fully qualified German lawyer and New Zealand qualified barrister. She regularly advises private clients and governments on law reform and international obligations in the areas of her expertise. She is New Zealand's CLOUT correspondent for the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the United Nations Convention on the Use of Electronic Communications in International Contracts.

**JUSTICE SURESH CHANDRA** is a judge of the Fiji Supreme Court and a resident justice of appeal of the Fiji Court of Appeal, after retiring from his position as judge of the Supreme Court of Sri Lanka in 2012. He obtained his LLB and LL.M. from the University of Colombo and did private practice from 1972 to 2008. He served as a consultant to several leading banks and institutions, including the United States Agency for International Development (USAID) and the World Bank. He was also the deputy permanent representative of Sri Lanka to the United Nations in New York in 2009 and a member of the panel of arbitrators of the Sri Lanka National Arbitration Centre. He has been a resource person for the International Labour Organization, the International Organization for Migration, the Sri Lanka Bar Association, and the Sri Lanka Judges' Institute. He also taught at the Faculty of Graduate Studies of Colombo University, the Open University of Sri Lanka, the Sri Lanka Law College, and the University of Moratuwa.





**MS. JO DELANEY** is a partner at Baker & McKenzie in Sydney with 20 years experience in commercial, construction and investment arbitrations under the American Arbitration Association (AAA), the International Centre for Settlement of Investment Disputes (ICSID), the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), and the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules. Her experience covers a diverse range of industries, including energy, resources and infrastructure, general construction and telecommunications and information technology across many different regions, having worked in London and Sydney.

Ms. Delaney has been involved in a number of investment arbitrations in Eastern Europe, the Middle East and Asia and regularly advises on investment protection planning. Jo has also worked on climate change related disputes, including disputes referred to arbitration under the PCA Environmental Rules. Jo regularly speaks, lectures and publishes on various aspects of international arbitration. She is involved in a number of organisations including the Chartered Institute of Arbitrators (Australian branch and Practice and Procedures Committee), Arbitral Women and the International Law Association.

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**PROF. MICHAEL EWING-CHOW** is an associate professor and World Trade Organization (WTO) chair at the National University of Singapore (NUS) Faculty of Law. He has a first class honours degree in law from NUS and a masters from Harvard Law School.

Prof. Ewing-Chow worked in Allen & Gledhill before joining NUS, where he started the first World Trade Law course in Singapore and helped negotiate some of Singapore's early free trade agreements. He has been a consultant to the Singapore Government, the Asian Development Bank (ADB), the Association of Southeast Asian Nations (ASEAN), the United Nations Conference on Trade and Development (UNCTAD), the World Bank and the WTO. He has advised government officials from all over the world on trade and investment law and governance, and helped review the country's corporate law.

Prof. Ewing-Chow has taught in a number of universities in Asia, Europe and Latin America, and has published papers on governance, trade law and investment law. He also cofounded Aidha, a non-governmental organization which provides financial education and microfinance opportunities to domestic migrant workers.





**MS. SUSANA FALETAU** is a lawyer and is currently the chief executive officer of the Ministry of Justice, Kingdom of Tonga—a post she has held since 2012. She is a part of a team that examines and reviews court and mediation systems that enable more effective access to justice for all.

Ms. Faletau worked in the public affairs division of the Commonwealth Trust in London, United Kingdom. In 1993, she joined the Tonga public service. As a senior official at the Prime Minister’s Office and the Ministry of Foreign Affairs, she rendered policy advice to the Cabinet and the Privy Council on Treaty Ratification.

**MR. WOLFRAM FISCHER** is the Assistant General Counsel (Asia) at the International Finance Corporation (IFC). Based in Singapore, he manages IFC’s Regional Legal Department covering IFC’s investment activities in the East Asia and Pacific and South Asia regions. Since joining IFC in 1998, he has been responsible for coordinating and delivering internal legal services across all regions and covering a broad range of industry sectors. Prior to joining IFC, he served as in-house counsel at the World Bank and at Alcatel-Lucent, and as an associate at Cleary Gottlieb and at Shearman & Sterling. A native of Berlin, Germany, he holds an LL.B. from the Free University of Berlin and an LL.M. and a J.D. from the University of Illinois College of Law.



**CHIEF JUSTICE ANTHONY HAROLD CUMBERLAND THOMAS (A. H. C. T.) GATES** is the chief justice of Fiji. He is best known for his decision in *Chandrika Prasad v. Att-Gen of Fiji* [2000] 2 FLR 89; *Prasad v. Republic of Fiji & Another* [2001] 1 LRC 665; [2001] NZAR 21, where he held that the 2000 military intervention did not abrogate the Fiji Constitution, which remained the law of the land. He is also known for writing decisions enforcing the civil rights of prison inmates.

Chief Justice Gates is a graduate of Cambridge University. He qualified as a barrister at Inner Temple London and practiced law in London before joining government service in 1977.





**MS. SARAH GRIMMER** is secretary-general of the Hong Kong International Arbitration Centre. She was formerly senior legal counsel at the Permanent Court of Arbitration (PCA), where she acted as registrar in inter-state arbitrations and tribunal secretary in investor-state arbitrations. Prior to working at the PCA, Sarah practiced at the International Chamber of Commerce (ICC) International Court of Arbitration and at Shearman & Sterling LLP in Paris. She has an LL.M. from Cambridge University and an LLB/BA (Criminology) from Victoria University of Wellington. She is admitted to practice law in New Zealand.

In 2017, Sarah was appointed chairperson of the MCCI Arbitration and Mediation Center (MARC) Advisory Board. She is also a member of the International Council for Commercial Arbitration–The American Society of International Law (ICCA-ASIL) Task Force on Damages, the Global Arbitration Review (GAR) Board of Advisors, the ICCA Publications Committee, and the New Zealand International Chamber of Commerce (ICC) Arbitration Committee.

From 2015 to 2017, she was a member of the Disciplinary Board for defence counsel at the Special Tribunal for Lebanon. Prior memberships include the International Bar Association (IBA) Investment Arbitration Subcommittee and the IBA Arb40 Steering Committee.

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**JUDGE YANG HONGLEI**, a judge of the Fourth Chamber of the Supreme People’s Court of the People’s Republic of China, is an expert on the New York Convention. He is experienced in commercial arbitration, particularly in cases involving a foreign party. In a 2009 publication, he stated that an award made in China by a foreign arbitration institution should be considered foreign or non-domestic.





**MS. BRENDA HERRIGAN** is head of International Arbitration – Australia at Herbert Smith Freehills, based in HSF’s Sydney office. She brings to this role over 20 years’ experience in the field, with a particular focus on disputes involving emerging markets. She works with clients on complex international commercial and investment treaty arbitration matters at both the arbitration and enforcement stages, acts as counsel in matters conducted under a wide variety of arbitration rules, and also sits as an arbitrator.

Her background as a transactional lawyer provides valuable insight for clients into the underlying commercial and contractual aspects of the disputes on which she advises.

In addition to her work as counsel, Brenda has spoken at many conferences and seminars on both arbitration and the challenges of investments in emerging markets. She is the past cochair of the China Committee of the American Bar Association (ABA) Section of International Law, and served for several years as Global Adjunct Professor of Law at New York University Law School (Shanghai campus).

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**DR. MICHAEL HWANG, SC** is the chief justice of the Dubai International Financial Centre (DIFC) Courts. He is a graduate of Oxford University and a former law teacher in the University of Sydney and the University of Singapore. In 1997, he was appointed as one of the first 12 senior counsel (SC) of the Supreme Court of Singapore. His former appointments include being the president of the Law Society of Singapore, a judicial commissioner (a contract judge) of the Supreme Court, a vice chairman of the International Chamber of Commerce (ICC) International Court of Arbitration, a vice president of the International Council for Commercial Arbitration (ICCA), and a court member of the London Court of International Arbitration (LCIA).

He is currently Singapore’s non-resident ambassador to Argentina, having previously been ambassador to Switzerland. He was appointed as the chief justice of the DIFC Courts in June 2010, having previously served as deputy chief justice since April 2005.





**MR. ROBERT JAUNCEY** has been the Asian Development Bank Regional Director for the South Pacific, based in Suva, Fiji, since February 2014. He leads ADB efforts to scale up engagement with the Cook Islands, Fiji, Kiribati, Samoa, Tonga, and Tuvalu. He has overseen ADB's re-engagement with Fiji, and mobilized approximately \$600 million in ADB resources and cofinancing for new investments across the six countries, including the first grant for the Pacific from the Green Climate Fund.

Prior to joining ADB, Mr. Jauncey coordinated World Bank engagement with eight Pacific island countries, Fiji, Kiribati, Marshall Islands, Micronesia, Samoa, Tonga, Tuvalu, and Vanuatu, and with the Western Balkans. He also served as advisor to the World Bank managing director. He began his development career, working for the Australian Government overseas aid program from 1990 to 2000, discharging corporate policy roles in Lao PDR and Papua New Guinea. He has a bachelor degree from the Australian National University and a master's degree in financial economics from the University of London.

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**MR. TEJAS KARIA** is a partner and the head of the arbitration practice of Shardul Amarchand Mangaldas & Co. (New Delhi). He is also the vice-chairman of the Society of Construction Law – India. He specialises in international and domestic commercial arbitration and information technology law. He has extensive experience in representing public and private corporations in complex matters involving shareholders' disputes, constructions, joint ventures, oil and gas, real estate, and private equity among others in international commercial arbitrations before virtually all major arbitration institutions with seats in India, London, Paris, and Singapore.

Mr. Karia obtained his LLB from ILS Law College, University of Pune (2000), his LL.M. major in corporate and commercial law at Sir L A Shah Law College, University of Gujarat (2002) and his second LL.M. major in international commercial arbitration and information technology law from the London School of Economics and Political Science (2003). He is affiliated with the Bar Council of Gujarat, the Law Society of England and Wales, and the Chartered Institute of Arbitrators.





**MS. SAE YOUN KIM** chairs the international dispute resolution practice at Yulchon. She practices primarily in the areas of litigation and arbitration with an emphasis on commercial and international law. She is also an arbitrator at the Korean Commercial Arbitration Board (KCAB) and the Singapore International Arbitration Centre (SIAC). She is licensed to practice in Korea and New York. She is often selected as a leading lawyer by publications such as Chambers Global and Asialaw and she regularly speaks at international conferences.

Before joining Yulchon, Ms. Kim served as a judge in various Korean district courts and was a partner at another major Korean law firm.

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**MS. KOH SWEE YEN** is a partner in the Commercial & Corporate Disputes and International Arbitration Practices of WongPartnership LLP.

Her practice focuses on complex, high-value and cross-border commercial and investment disputes spanning various business sectors, including energy, natural resources and trade, under the major institutional rules.

Ms. Koh is recommended in various legal publications, including *The Legal 500: Asia Pacific for Dispute Resolution and Chambers Asia-Pacific Guide for Arbitration*, with one source declaring “*She’s in a league of her own, she’s very impressive*”, and another source praising her for a “*keen sense of strategy*” and “*great ability to quickly grasp her clients’ perspective and understand their commercial issues*”. She is known to “*fight tooth and nail for her clients*”, and regarded as one of the “*outstanding members of the next generation*” under the age of 45 in *Who’s Who Legal: Arbitration – Future Leaders 2017*.





**MS. JUDITH LEVINE** is senior legal counsel at the Permanent Court of Arbitration (PCA), an intergovernmental organisation (IGO) currently administering 130 disputes among states, IGOs and/or private parties. She assists tribunals in some of the world’s largest investor-state and contract cases. Recently, she served as registrar in the South China Sea arbitration. In 2011 to 2012, she served as the PCA representative and legal officer in Mauritius. She also represented PCA in United Nations (UN) climate conferences, such as the UN Framework Convention on Climate Change Conference of the Parties (COP) 21 in Paris in 2015 and COP23 in Bonn in 2017. She is also a visiting fellow at Sydney University.

Before joining PCA in 2008, Ms. Levine practised law in New York as an attorney in the White & Case LLP arbitration group for 5 years. She also served as a judge’s associate at the High Court of Australia (2001–2002), assistant adviser to Australian Attorney General Daryl Williams (2002), and judicial clerk at the International Court of Justice (2002–2003).

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**MR. JONATHAN LIM** is a senior associate with WilmerHale in London. He has represented governments and private corporations in commercial and investment arbitrations under all major arbitration rules sited across Africa, Asia, Europe and South America. He has also advised governments in Africa and Asia on a range of public international law issues and the drafting of arbitration legislation. In addition to his practice as counsel, Mr. Lim has a developing practice as an arbitrator, with appointments as sole and party-appointed arbitrator in proceedings seated in Europe and Asia.

Mr. Lim is cochair of the Asia-Pacific Forum for International Arbitration (AFIA) and serves on the various committees in Singapore and the UK. He is one of the youngest lawyers listed as a Future Leader in International Arbitration in Who’s Who Legal 2018 (a list of leading under-45 practitioners from around the world), and has been described as “a very smart all-round lawyer with a strong work ethic,” “able to digest and master a large amount of material very quickly,” and “always available to provide creative and practical solutions.” He co-teaches a course on international arbitration at the National University of Singapore (NUS) every January. He was educated at NUS and the Harvard Law School.





**MR. TIMOTHY LINDSAY** leads the practice at specialist litigation and arbitration firm Lindsay, based in Auckland, after nearly a decade in London, most recently as an international arbitration partner in leading US law firm Dechert LLP. He is recognized for his “outstanding reputation” in the arbitration field, and as an “outstanding advocate” in complex disputes with “total commitment” to his clients.

Mr. Lindsay has expertise in corporate/shareholder, complex contract, banking and finance, foreign investment, energy/resources and regulatory disputes, and clients draw on his experience from litigating complex disputes in all major developed and emerging economies.

In addition to his experience in significant litigations in the New Zealand courts, Mr. Lindsay has appeared as counsel in some of the most significant international disputes in recent times before the world’s leading arbitration institutions. He has also acted in disputes concerning Africa, Asia, Australasia, Europe, Eurasia, India, Latin America, the Middle East, Russia and the Commonwealth of Independent States, and the United States, across a broad range of industries.

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**MR. DANIEL MELTZ** is a barrister practising in international arbitration and commercial litigation as a member of 12 Wentworth Selborne Chambers, Sydney, Australia. Mr Meltz is retained as international arbitration expert co-consultant, together with Gary Born, to the Asian Development Bank (ADB), on the ADB’s Technical Assistance program for International Arbitration Reform in the South Pacific. Mr Meltz has extensive experience as counsel in arbitrations and before courts on enforcement and recognition of arbitral awards and is listed in *Who’s Who Legal* and *Best Lawyers in Australia*. Mr Meltz was an Adjunct Professor at the University of Technology Sydney and a founding member and board member of the Asia-Pacific Forum for International Arbitration. He is a fellow of the Australian Centre for International Commercial Arbitration. Prior to being called to the bar, Mr. Meltz practised international arbitration in Zurich and London.





**MR. KEVIN O'GORMAN** is a partner at Norton Rose Fulbright US LLP based in Houston, USA. He represents clients in international arbitration and litigation cases involving energy, commercial, construction, and investor-state disputes around the world. In addition to his client work, he regularly serves as arbitrator in international cases.

Mr. O'Gorman is vice chair of the Energy Arbitrators List Review Committee and serves on the Conflict Prevention and Resolution's (CPR) arbitration and energy committees. He chaired the Disputes Division and International Arbitration Committee of the American Bar Association's Section of International Law. He also served as senior legal secretary and team leader of the Claims Resolution Tribunal for Dormant Accounts in Zurich, Switzerland, which resolved claims relating to Holocaust-era dormant accounts in Swiss banks. He is a member of the Texas and New York bars and is admitted to the roll of solicitors in England and Wales.

**MS. CHRISTINA PAK** is a senior counsel of the Asian Development Bank, specializing in international finance and has been working on multi-sector projects across the Southeast and East Asia regions and currently serves as Myanmar country counsel. She is also responsible for developing and implementing environmental law, climate finance and international arbitration law reform technical assistance projects under the ADB Office of the General Counsel's Law and Policy Reform Program. She is also a member of the ADB Climate Change thematic group.

Prior to joining ADB, Ms. Pak worked as legal counsel and vice president for markets and international banking at The Royal Bank of Scotland in Singapore, and as a capital markets and structured finance associate at two large New York City law firms. She is admitted to the bar in the States of New York and New Jersey and is a member of the Chartered Institute of Arbitrators, International Union for Conservation of Nature World Commission on Environmental Law and International Bar Association.



**PROF. DR. JORDI PANIAGUA** is Professor of Economics at the Department of Applied Economics II of the University of Valencia (Spain). He has an academic and applied specialization in Foreign Direct Investment (FDI) and online networking. In his academic career he has published papers in leading academic journals in the field of international economics and business. He has worked as telecommunications engineer in multinational enterprises and served in the public administration in the area of FDI promotion. He has consulted to multinational companies and to public bodies, like NATO and the World Bank. His research interests include gravity models of trade and FDI, and its interplay with migration, trade law, energy and social media networks.



**DR. EUN YOUNG PARK** is the co-head of the International Arbitration & Cross-Border Litigation Group at Kim & Chang. His practice focuses on court and international arbitration proceedings in multiple jurisdictions, including international arbitrations under the rules of the renowned arbitral institutions and also sits as an arbitrator in international arbitration cases.

Dr. Park has been serving as a court member and vice president of the London Court of International Arbitration, a member of board and court of arbitration of the Singapore International Arbitration Centre, and an executive member of the Seoul International Dispute Resolution Center. He was the vice chair of the IBA Arbitration Committee, inaugural cochair of the IBA Asia Pacific Arbitration Group, and a member of the IBA's Subcommittee on Conflicts of Interest. He has served as a judge of the Seoul District Court and taught in law schools in Korea. He received his J.S.D. and LL.M from the NYU School of Law, after graduating from the Seoul National University Faculty of Law. He is admitted to the New York bar and Korean bar and is registered with the Singapore International Commercial Court.

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**MR. TERRY REID** has over 25 years experience as a barrister and solicitor. He graduated in arts and law with first class honours from the University of Auckland and subsequently completed his postgraduate qualification at the University of Melbourne. After a period advising banks and financial institutions on financing transactions, he entered legal practice, focusing on business, contracts and corporations law and taught in universities. His clients ranged from small single proprietorships to large publicly listed companies.

Since 1996, he has worked in developing economies and for the past 10 years, has served as a long-term legal advisor to the Asian Development Bank (ADB) in the Pacific. He has led many of the programs under the ADB Pacific Private Sector Development Initiative (PSDI), including the reform of companies, secured transactions, foreign investment, and trustee laws, the design and installation of new online business registries, and the implementation programs supporting legal reform. He currently leads PSDI's business law and competition law and policy areas.







**MR. AVENDRA SINGH**, partner at Squire Patton Boggs, practices in the area of projects and construction and advises his clients on claims management and dispute resolution. He has extensive experience in giving strategic advice on the structuring and delivery of projects and the negotiation, drafting and administration of contracts. His skills have been applied in projects as diverse as airports, roads, defence, water and sewage treatment plants, high rise residential and commercial structures, industrial complexes and telephony.

He has conducted litigation that has resulted in major decisions affecting the operation of the Security of Payments Act. He also conducts ADR procedures. He is named in Doyle's Guide as one of the Leading Construction Lawyers in New South Wales and described as someone who "knows his stuff."

**MS. OFA SOLIMAILAGI** is a senior legal officer at the Office of the Attorney General of Fiji. She served as a solicitor at Parshotam Lawyers. She has a bachelor's degree in political science and governance and in law as well as a professional diploma in legal practice all from the University of the South Pacific.



**MS. HUawei SUN** is a partner at Zhong Lun Law Firm and practices litigation, arbitration and compliance/regulatory law. She specializes in international commercial and investment treaty arbitration. She has more than 10 years' experience working as counsel and arbitrator on disputes involving cross-border mergers and acquisitions, energy and resources projects, financial products, intellectual property, and construction projects, with governing laws including Chinese, Dutch, English, French, Hong Kong, Malaysian, Singaporean, and Swiss law. She also has extensive experience arguing China-related cases before international tribunals. Before working at Zhong Lun, she worked at the China International Economic and Trade Arbitration Commission Secretariat (1996–2001) and served as counsel at the Allen & Overy Beijing and Hong Kong offices (2006–2013).

She obtained her bachelor's degree and master's degree from the University of International Business and Economics and her J.D. from Vanderbilt University Law School. She is qualified to practice law in New York.



**MS. ANA TUIKETEI** is a barrister and solicitor in the High Court of Fiji. She has extensive litigation experience having served as a principal prosecutor in the Office of the Director of Public Prosecutions from 2006 to 2010. She practices in the areas of litigation, good corporate governance, human rights, commercial law and regulatory and compliance matters. She has provided services to a number of regional countries. She is also a part time sessional academic and currently teaches law at the University of the South Pacific.

Ms. Tuiketeti is an executive board member of the Employment Relations Advisory Board, the Miss Pacific Islands Pageant Association, the Fiji Women Lawyers Association, the Fiji Chamber of Commerce & Industry, the Fiji Women in Business, the Fiji Fashion Council, and the Fiji National Health Research and Ethics Review Committee. She is the legal adviser for Hibiscus Events Group and Miss World Fiji. She is also heavily engaged as a judge in the fashion and music industry.

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**SIR DAVID A R WILLIAMS**, KNZM, QC is a graduate of the University of Auckland (LLB, 1965) and of Harvard University (LL.M., 1966). He was a litigation partner in leading Auckland law firm Russell McVeagh from 1969 to 1986. He later moved to the independent bar, attaining the rank of Queen's Counsel in 1987. He served as a judge of the High Court of New Zealand from 1992 to 1994 before returning to legal practice as a barrister and arbitrator. He serves part time as the President of the Court of Appeal of the Cook Islands and as an honorary professor at the University of Auckland.

Sir David Williams has developed a global international arbitration practice, serving in over 150 international arbitration disputes. He has written extensively on international arbitration and the Second Edition (2017) of his text *Williams and Kawharu on Arbitration* has been described as one of “the great New Zealand texts” by the President of the Court of Appeal of New Zealand. He drafted the Cook Islands Arbitration Act of 2013 which covers both domestic and international arbitration and is based on the UNCITRAL Model Law and the 1996 New Zealand Arbitration Act.

He was made a Knight Companion of the New Zealand Order of Merit in 2017, an award which acknowledged his contribution to the development of arbitration in New Zealand and internationally.





**MS. TRACEY WONG** is Fiji's deputy solicitor general. She focuses on corporate and commercial issues for the Fijian Government. She is the chief negotiator with respect to loans from multilateral organizations and is heavily involved in the Fijian government's state owned enterprises divestment program. As the commissioner for the Revised Edition of the Laws of Fiji, she was instrumental in the consolidation, revision and publication of the 2016 Revised Edition of the Laws of Fiji.

Before joining the Fijian Government, Ms. Wong specialized on finance, corporate, real estate and governance matters for local, national and international corporations. Her industry experience includes the financial services, infrastructure, hospitality, leisure and sports sectors. She has experience in reviewing and negotiating cross-border loan agreements, security documentation, shareholder and unit trust agreements, project development agreements, commercial leases, hotel management agreements and associated contracts.

In Australia, she has advised clients on aspects of the Personal Property Securities Act 2009 (Cth). Her practice includes project finance, acquisition finance, security enforcement, corporate governance and due diligence with respect to finance, corporate and property related issues.



# presentation summaries

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## Session 1: Opening Ceremony

Mr. Sharvada Sharma, solicitor general of the Republic of Fiji, gave the opening address, followed by Mr. Christopher Stephens, general counsel of the Asian Development Bank (ADB), and Mr. João Ribeiro-Bidaoui, head of the United Nations Commission on International Trade Law (UNCITRAL) Regional Centre for Asia and the Pacific, who also gave opening remarks.

Mr. Gary Born then gave the keynote address on past, present and future of international arbitration. He talked about the development of international arbitration over the years and the important role it plays in international trade and commerce. He also discussed the benefits of international arbitration to small states, particularly the Pacific Small Island Developing States, and the means by which such states can reform their legal frameworks at little cost by adopting the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) and the UNCITRAL Model Law on International Commercial Arbitration.

## Session 2: Promotion of FDI & Trade through International Arbitration Reform

Mr. Christopher Stephens moderated the panel which brought together a diverse group from academia, private sector and regional development bank to discuss the role international arbitration plays in facilitating foreign direct investment (FDI) and cross-border trade.

Prof. Dr. Jordi Paniagua discussed the effects of international arbitration reform on a country's FDI and trade. He said that international commercial arbitration is a system of private commercial laws that enables firms to more effectively enforce contracts by allowing them to avoid inefficiencies that arise from domestic courts. As a result, access to international arbitration should foster FDI. To explain the effect of international arbitration on FDI, he presented a model he developed with Myburgh (Journal of Law and Economics, 2016) to explain the use and effect of resolving international disputes through arbitration on FDI. The predictions of the model are tested empirically in a gravity framework with a large panel of countries during the last decade. The results of this analysis suggest that access to arbitration through the New York Convention leads to an increase in new FDI flows. This increase largely occurs through a change in investment volume with a much smaller effect on the number of investment projects. The effect of arbitration is greater for countries with transitioning institutions and for larger investment projects.

Prof. Michael Ewing-Chow talked about the effects of a change in production and trade pattern from single producer to global value chain (GVC). He also touched on the factors affecting the attractiveness of a country to foreign investors

by pointing out the relationship between a country's FDI inward stock and its GVC participation, between logistics performance and corruption score, and between rule of law index and gross domestic product per capita. He then enumerated the benefits of international arbitration to multinational corporations and host states.

Mr. Wolfram Fischer gave anecdotal background on the value international investors place on the existence of appropriate frameworks, including the availability of arbitration as an alternative mode of dispute resolution, to enforce arbitral awards. He also emphasized that predictability of dispute resolution is crucial in encouraging parties to enter into transactions, whether cross-border or domestic.

Mr. Robert Jauncey provided an overview of ADB's development priorities and why he thinks international arbitration reform is good for the region in attracting more FDI, stimulating private sector growth and tackling climate change.

### Session 3: Introduction to International Arbitration

This session provided the participants with an overview of the basics of international arbitration, the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules.

Mr. Daniel Meltz presented the procedure for dealing with disputes between parties from different countries and the differences between arbitration and other forms of dispute resolution.

Ms. Sarah Grimmer explained the differences between ad hoc and institutional arbitration, such as the different roles played by the institution, the arbitral tribunal, and the courts in either instance.

Lastly, Dr. Eun Young Park discussed the anatomy of international arbitration, including the essential elements of an international arbitration; its legal basis and rules on constituting a tribunal, appointing arbitrators, and choosing the seat and procedure of arbitration; the timing and form of parties' submissions, document production and evidence; the conduct of hearings; and the rendering of the award itself. He also touched on the issue of recognition and enforcement of an arbitral award.



## **Session 4: The New York Convention and the Pacific Small Island Developing States**

Mr. Born moderated this panel discussion on the key obligations that states accept by acceding to the New York Convention, the benefits of the New York Convention, as well as the status of accession to and implementation of the New York Convention in the South Pacific region.

Dr. Petra Butler and Ms. Gitanjali Bajaj gave a presentation on kustom as a public policy exception to the recognition or enforcement of an arbitral award under the New York Convention. Kustom, which is enshrined in nearly all of the Pacific Island Constitutions, plays an important role in legal decision-making in Pacific Island countries. In fact, about 15 years ago, an arbitration agreement was challenged in front of a Pacific Island court on the ground that arbitration goes against kustom. Attempts to reconcile the European settlers' imported legal models with the Pacific Island countries' kustoms and traditions in a unique "Pacific Way" have been and continue to be identity-generating for the societies in the South Pacific.

Dr. Butler also discussed the United Nations Convention on Contracts for the International Sale of Goods (CISG) as a means to facilitate cross-border trade for Pacific Island businesses. She said that predictable legal frameworks are crucial to generating inclusive, sustainable and equitable development, economic growth, employment, and investment, as well as to facilitating entrepreneurship. A modern and harmonised international commercial law framework is the foundation of rule-based commercial relations and an indispensable part of international trade. In reducing or removing legal obstacles to the flow of international trade, such framework will contribute significantly to universal economic cooperation among the Pacific Island countries and with their global partners on the basis of equality, equity, common interest and respect for the rule of law.

Dr. Butler added that the CISG is an essential part of the international commercial law framework since contracts of sale form the backbone of international trade in all countries. The CISG provides a modern, uniform and fair regime for contracts for the international sale of goods. Thus, the CISG contributes significantly to sustainable and equitable development and economic growth by introducing certainty in commercial exchanges and decreasing transaction costs.

## **Session 5: Fiji International Arbitration Act 2017 – Overview of Key Provisions and Innovations**

Ms. Tracey Wong moderated the session.

Mr. Ribeiro-Bidaoui talked about how the UNCITRAL Model Law on International Commercial Arbitration is being implemented in the region and how the UNCITRAL, particularly the UNCITRAL Regional Centre for Asia and the Pacific, has been working to create a favorable environment for dispute settlement.

## **Session 6: Special Breakfast Session: Women in Arbitration**

Mr. Christopher Stephens gave the opening remarks during the special session on women in international arbitration and highlighted the career opportunities open to women in the field of international arbitration.



Ms. Christina Pak and Dr. Butler introduced the panelists and facilitated the discussions. Ms. Grimmer then gave a short history of the participation of women in arbitration. Ms. Sae Youn Kim, Ms. Bajaj, Ms. Brenda Horrigan, Ms. Delaney, and Ms. Judith Levine described what women should have and do to forge a career in this field. Ms. Levine and Ms. Grimmer further talked about the steps in getting an arbitral appointment, the measures being adopted by arbitral institutions to ensure more women appointments, and the actions governments can take to make good female candidates available for public international arbitrations. Ms. Delaney and Ms. Horrigan stated what else women can do to pursue a career in international arbitration before Ms. Pak closed the session.

### **Session 7: Disputes in the South Pacific: Energy Disputes**

Mr. Daniel Meltz moderated the session.

Mr. Kevin O’Gorman talked about the types of energy disputes often submitted to arbitration and the bases for submission, namely host country instruments, joint operating agreements, service contracts, gas sale and purchase agreements, and liquefied natural gas agreements.

Ms. Huawei Sun focused on the implementation of the “Belt and Road” initiative and the establishment of the Asian Infrastructure Investment Bank that led Chinese energy enterprises to become increasingly active in trading and investing in the South Pacific region. Disputes arose in the process and Chinese companies gained experience in handling disputes with local counterparties and governments. She also identified the common issues that often gave rise to disputes, including price review, take-or-pay clauses, stabilization clauses and changes in the local regulatory regime. She gave suggestions on how to manage these issues and resolve energy disputes.

### **Session 7: Disputes in the South Pacific: Construction Disputes**

Ms. Delaney moderated the session and talked about the construction developments in the South Pacific, the features of construction dispute resolution, the best practices in construction arbitration, and the types of construction disputes.

Mr. Tejas Karia focused on the latest trends in construction disputes in India, the types of dispute resolution mechanisms, the effectiveness of arbitration, the key issues involved, and the use of experts in construction disputes.

## **Session 7: Disputes in the South Pacific: Climate Finance Disputes**

Ms. Christina Pak moderated the session and highlighted the critical role international arbitration can play in attracting international climate finance and investments into the South Pacific region which is acutely vulnerable to climate change impacts. The South Pacific countries face serious threat to their development from climate change and will need significant international climate finance to respond. Ms. Pak noted that in their Nationally Determined Contributions submitted under the Paris Agreement, the South Pacific countries have made their commitments conditional on receiving international financial support. She then provided a snapshot of the various sources of climate finance in the South Pacific and the different financing arrangements available under the public international and private international climate finance regimes and the different types of emerging climate finance disputes.

Ms. Judith Levine walked the participants through various climate change related disputes under the United Nations Framework Convention on Climate Change, the kinds of climate finance disputes that may be resolved through international arbitration, and the ways by which international arbitration might need to adapt to suit these kinds of disputes, based on the Permanent Court of Arbitration's experience.

Ms. Jo Delaney explored the nature of private climate finance disputes through a solar farm case study. She outlined a solar farm project involving a private party loan agreement to sell and purchase certified emission reductions from the project and discussed the potential disputes arising from the private party investment and the sale and purchase agreement.

Ms. Christina Pak concluded the session by noting that climate finance disputes often involve complex financial arrangements which need experts equipped with the relevant specialized knowledge to hear these types of complicated disputes. International arbitration can provide an effective and efficient way to resolve disputes which is critical to ensuring that climate finance can flow to fight climate change.

## **Session 8: Concurrent Breakout Sessions (Lawyers, Private Sector and Judiciary): For Lawyers: Drafting Arbitration Agreements**

The panel dealt with the various dispute resolution options lawyers have, the model clauses of arbitral institutions, the key elements of an arbitration clause, the optional clauses to consider, and the tips and traps in drafting arbitration agreements.

## **Session 8: Concurrent Breakout Sessions (Lawyers, Private Sector and Judiciary): For Private Sector: Contracting with Foreign Parties and Cross-Border Dispute Resolution**

Mr. Erik Aelbers, session moderator, introduced the participants, particularly business establishments and government non-lawyers, to the basics of international arbitration and how it differs from court proceedings, the advantages of international arbitration, the practicality and manner of resorting to international arbitration, Fiji's International Arbitration Act (2017), and other updates on international arbitration reform in the South Pacific.



Mr. Terry Reid then provided background on business legal frameworks in the South Pacific region, the status of the New York Convention and relevant international arbitration texts in the region, and the importance of international arbitration to government officials and private firms.

Ms. Swee Yen Koh then discussed about the inclusion of arbitration clauses in contracts without the parties truly appreciating and understanding what the process entails, and how the process could be managed and tailored to fit the parties' needs. Particular emphasis was placed on the choice of arbitral institution, arbitrator, and seat, followed by a cost-benefit analysis of arbitration as a mode of dispute resolution. Mr. Kevin O'Gorman addressed the drafting of international arbitration clauses.

Mr. Erik Aelbers, session moderator, concluded with a question and answer portion.

### **Session 8: Concurrent Breakout Sessions (Lawyers, Private Sector and Judiciary): Implementation of the New York Convention - Judicial Perspective**

Mr. Gary Born moderated this panel discussion on the interpretation and application of the New York Convention by judges in national courts. He focused on national court cases interpreting and applying the New York Convention in the context of the enforcement of both arbitration agreements (Article II) and arbitral awards (Article V).

Chief Justice Anthony Harold Cumberland Thomas (A.H.C.T.) Gates expressed appreciation for the assistance offered by ADB, UNCITRAL and other institutions in encouraging arbitration developments in the South Pacific region. He highlighted the need for judges in the region to be ready, should they be called upon to act in relation to an arbitration dispute. He also mentioned the Fiji High Court (Amendment) Rules 2018, which would bring a new Order 74 on international arbitration.

Chief Justice Gates added that despite the obvious advantages of international arbitration, the South Pacific island states remain averse to any proposal that would remove their jurisdiction to rule on cases they would normally decide on. Nonetheless, courts should enforce agreements, including arbitration agreements. Alternative dispute resolution methods, including arbitration and mediation, which can be conducted by the Fiji Mediation Centre, can resolve conflicts better and boost the prosperity of the South Pacific countries.

Sir David A R Williams focused on the issues that arise in connection with the definition of "arbitration agreement" under Article 2 of the New York Convention, which determines the jurisdiction of the court requested to enforce the arbitral award. These issues include the technical limitations on the forms of exchange and the enforceability of a subsequent award issued under the convention. He also commented on the pro-enforcement judicial bias where the party resisting enforcement has to make a strong case because the court does not often set aside an award based on the public policy exception under Article V(2)(b) of the New York Convention.

Chief Justice Michael Hwang discussed the confidential nature of arbitration proceedings in Commonwealth jurisdictions, Australia, the Dubai International Financial Centre (DIFC) Courts, Fiji, Hong Kong, New Zealand, and Singapore. He also talked about the procedure for setting aside arbitral awards, the full opportunity versus reasonable opportunity that parties have in presenting their case, equality versus fairness, and remission.

Judge Yang Honglei discussed the New York Convention and the updated concept of nationality of arbitral awards in the People's Republic of China (PRC). He said that in the past, PRC courts relied on the seat of the arbitral body in deciding the nationality of the arbitral award. The awards made by foreign arbitral bodies in the territory of PRC were considered to be non-domestic awards, with the aim of falling within the scope of the New York Convention and ensuring enforcement of as many awards as possible. Nowadays, the concept is geared to the New York Convention and PRC Courts base their classification of the nationality of the arbitral award on the place of arbitration. In this sense, an award made in the PRC territory by foreign arbitral bodies is regarded as a foreign-related award—a kind of domestic award in PRC concerning some foreign factors. The updated concept clarifies the domestic nature of arbitral service furnished by foreign arbitral bodies in PRC and indicates more judicial support from PRC courts.

### **Session 8: Concurrent Breakout Sessions (Lawyers, Private Sector and Judiciary): UNCITRAL E-Commerce Law 2.0 for the Implementation of FTAs and Trade Facilitation Measures**

Mr. João Ribeiro-Bidaoui discussed the legal framework governing electronic communications in international contracts for the sale of goods, including the relevant UNCITRAL Model Laws and UNCITRAL e-commerce principles.

### **Session 9: Mock Arbitration**

Mr. Jonathan Lim facilitated the mock arbitration.

This mock international arbitration was designed to walk participants through the process of a typical international arbitration. It is based on a purely hypothetical dispute between a Fijian developer, Nadi Construction, and a Japanese biotechnology company, Tokyo Biotechnology Company, concerning the late delivery of a biomass power plant in Namara, Fiji. The mock arbitration concerned two scenes, the first involving proceedings before a Singapore International Arbitration Centre (SIAC) arbitral tribunal seated in Fiji, and the second involving proceedings to set aside the award under the Fiji International Arbitration Act. These scenes illustrated how jurisdictional challenges could work in international arbitration, the tribunal's competence-competence with respect to its own jurisdiction, contractual issues that could arise with respect to delay under a construction contract, and the grounds for setting aside an arbitral award under the Fiji International Arbitration Act.

### **Session 10: Concluding Remarks and Recommendations**

This Conference concluded with a briefing of ADB's regional capacity development technical assistance entitled "Promotion of International Arbitration Reform for Better Investment Climate in the South Pacific" which was approved in November 2016. The technical assistance can assist ADB's Pacific development member countries to: (i) accede to the New York Convention; (ii) modernize existing arbitration law or draft a new arbitration law to implement the New York Convention and reflect international best practices; and/or (iii) provide related capacity building to private sector as users and lawyers and judges as implementing parties. Under the technical assistance, ADB supported the Fijian Government enact the International Arbitration Act 2017 and is currently assisting other South Pacific countries. ADB has a dedicated team of international arbitration experts and works in collaboration with UNCITRAL's Regional Centre for Asia and the Pacific and other development partners.



# list of delegates and observers



## SOUTH PACIFIC DELEGATES

COUNTRY	NAME	TITLE	ORGANIZATION
Cook Islands	Sandrina Thondoo	Director of Labour	Ministry of Internal Affairs
Cook Islands	Jim Armistead	Director, Pacific Division	Ministry of Foreign Affairs and Immigration
Cook Islands	Catherine Sharon Evans	Deputy Solicitor-General	Crown Law Office
Cook Islands	Erica Anderson	Industry Council Representative for Business and Professional Women	Cook Islands Chamber of Commerce
Cook Islands	Fletcher Melvin	Member, Executive Committee	Cook Islands Chamber of Commerce
Cook Islands	Julia Meari Alana Evans	Representative	Cook Islands Business Professional Woman Association
Fiji	Adrienne Sareen Farzand Ali	Mediator and Solicitor	High Courts of New Zealand and Fiji
Fiji	Supreena Naidu	Partner	AP Legal
Fiji	Armish Pal	Principal	AP Legal
Fiji	Shiu Singh	Senior Public Management Officer	Asian Development Bank, Pacific Subregional Office
Fiji	Bharat Kumar	Senior Business Relationship Manager	BRED Banque Populaire
Fiji	Mahendra Chand	Manager Legal	BSP Life
Fiji	Peter Rigamoto	Senior Legal Counsel	Digicel Group
Fiji	Peter Seares	General Counsel	Fiji Airways
Fiji	Yvonne Aitu Fatiaki	Manager Legal	Fiji Electricity Authority
Fiji	Laurel Vaurasi	President	Fiji Law Society
Fiji	Litiana Mocea Seibouma	Legal Officer	Fiji National Provident Fund
Fiji	Siteri Saro Kamikamica	Manager Legal	Fiji National Provident Fund
Fiji	Faranisese Tatila Gavidu	Principal Legal Officer	Fiji Revenue & Customs Service
Fiji	Joel Abraham	Chief Executive Officer	Fijian Competition and Consumer Commission

## SOUTH PACIFIC DELEGATES

COUNTRY	NAME	TITLE	ORGANIZATION
Fiji	Raj Sharma	Chief Executive Officer	HFC Bank
Fiji	Bhumika Khatri	Solicitor	Munro Leys Lawyers & Notaries Public
Fiji	Ronal Singh	Senior Associate	Munro Leys Lawyers & Notaries Public
Fiji	Jon Apted	Partner	Munro Leys Lawyers & Notaries Public
Fiji	Lyanne S. Vaurasi	Deputy Chief Law Draftsperson	Office of the Attorney-General
Fiji	Tupoutua'h Latianatoba Baravilala	Principal Legal Officer	Office of the Attorney-General
Fiji	Mary Lee Motofaga	Principal Legal Officer	Office of the Attorney-General
Fiji	Raumanu Pranjivan Sharma	Senior Legal Officer	Office of the Attorney-General
Fiji	Preetika Prasad	State Solicitor	Office of the Attorney-General
Fiji	James Water Bon Baledrokadroka	Manager Compliance	Reserve Bank of Fiji
Fiji	Wati Seeto	Manager Legal	Reserve Bank of Fiji
Fiji	Murgessan Pillay	Chief Financial Officer	Williams & Gossling
Kiribati	Donna Tekanene-Reiher	Senior Trade Officer	Ministry of Commerce, Industry and Cooperatives
Kiribati	Monoo Mweretaka	Senior State Attorney	Office of the Attorney-General
Kiribati	Tumai Timeon	Senior State Attorney	Office of the Attorney-General
Kiribati	Honorable Atarake Nataara	Minister	Ministry of Commerce, Industry and Cooperatives
Kiribati	Toani Takirua	Secretary	Ministry of Commerce, Industry and Cooperatives
Palau	Ernestine Rengiil	Attorney General	Office of the Attorney General
Palau	Kaleb Snyder Udui	Policy Advisor	Office of the President, Palau National Government
Palau	Lauren Suzanne Henry	Chief Legal Counsel	Republic of Palau House of Delegates

## SOUTH PACIFIC DELEGATES

COUNTRY	NAME	TITLE	ORGANIZATION
Papua New Guinea	Abmeng Kandakasi	Justice	National Court of Justice
Papua New Guinea	Jeffery Shepherd	Justice	National Court of Justice
Papua New Guinea	Iova Geita	Justice	National Court of Justice
Papua New Guinea	Rio Fiocco	President	Port Moresby Chamber of Commerce and Industry Inc.
Papua New Guinea	Maryanne Ida Tusais	Lawyer	Dentons, PNG
Papua New Guinea	Goiye Gileng	Lawyer	Posman Kua Aisi Lawyers
Papua New Guinea	Rosanda Kora	Country Coordinator	ADB Private Sector Development Initiative
Samoa	Hobart Va'ai	Chief Executive Officer	Samoa Chamber of Commerce & Industry
Samoa	Ioane Okesene	Assistant Chief Executive Officer	Legal Unit, Ministry of Commerce, Industry and Labour
Samoa	Ulupale Fuimaono (Wisteria Junior Ulupale Sauaga)	Assistant Executive Director	Samoa Law Reform Commission
Solomon Islands	James Apaniai	Attorney-General	Attorney-General's Chambers
Solomon Islands	John Keniapisia	Justice	High Court of Solomon Islands
Solomon Islands	Rex Faulkona	Justice	High Court of Solomon Islands
Solomon Islands	Natalie Takiki Kesaka	Chairman	Trade Disputes Panel, Ministry of Commerce, Labour and Immigration
Solomon Islands	Maito'o Haurae	Legal Officer	Ministry of Foreign Affairs & External Trade
Solomon Islands	Frank Bollen Paulsen	Chairman	Solomon Islands Law Reform Commission
Solomon Islands	Katalaini Ziriu	President	Solomon Islands Bar Association
Solomon Islands	Charles Persson	Advisor to CEO	Solomon Islands Chamber of Commerce & Industry
Timor-Leste	Jorge Manuel F. Da Graca	Senior PFM Legal Advisor	Ministry of Planning and Finance, Office of the Minister of Planning and Finance

## SOUTH PACIFIC DELEGATES

COUNTRY	NAME	TITLE	ORGANIZATION
Timor-Leste	Nuno Nuno Miguel Dos Santos Marrazes	Associate	Da Silva Teixeira & Associates
Timor-Leste	Sahe Loli da Silva	Partner	Da Silva Teixeira & Associates
Timor-Leste	Joana Custóias	Country Coordinator & Law Reform Expert	ADB Private Sector Development Initiative
Tonga	Hon. Sione Vuna Fa'otusia	Minister	Ministry of Justice
Tonga	Sione Sisifa	Solicitor General	Attorney General's Office
Tonga	Akanesi Emeline Katoa	Assistant Crown Counsel	Attorney General's Office
Tonga	Anthony John Hynie Cocker	Principal Assistant Registrar, Head of Division, Enforcement and Compliance Division	Ministry of Commerce, Consumer, Trade, Innovation and Labour
Tonga	Distaquaine Tu'ihalamaka	Deputy CEO and Head of Intellectual Property	Ministry of Commerce Consumers Trade Innovation & Labour
Tonga	Michael Felipe Cokanasiga	Senior Assistant Deputy CEO, Enforcement, Customs & Trade Division	Ministry of Revenue and Customs
Tonga	Lakai Fonua	Chief Executive Officer	Tonga Chamber of Commerce & Industry Inc.
Tonga	Paul Taumoepeau	Tonga Country Manager	Nautilus Minerals
Tonga	Ralph Perry Stephenson	Solicitor	Stephenson Associates
Tonga	Margaret Elizabeth Dana Stephenson	Solicitor	Stephenson Associates
Tuvalu	Corinna Ituaso-Lafai	Crown Counsel	Office of the Attorney-General
Vanuatu	Letlet August	Director General	Ministry of Finance and Economic Management



## OBSERVERS

COUNTRY	NAME	TITLE	ORGANIZATION
Australia	Sophie Mackinnon	First Secretary Development Cooperation	Australian High Commission
Australia	Amelia Richardson	Second Secretary Political-Economic	Australian High Commission
Bangladesh	A.H.M. Shafiquzzaman	Deputy Secretary	Ministry of Commerce
Fiji	Watesoni Nata	Mediator	Ministry of Employment, Productivity & Industrial Relations
Fiji	Jenny Seeto	Chair	Fiji Mediation Centre
New Zealand	Catherine Green	Executive Director	New Zealand Dispute Resolution Centre
New Zealand	John Green	Director	New Zealand Dispute Resolution Centre
New Zealand	Royden Hindle	Vice President and Director of Professional Studies	Arbitrators' and Mediators' Institute of New Zealand Inc.
Papua New Guinea	Kenneth Imako	Attorney	Corrs Chambers Westgarth
Papua New Guinea	George Koi	In-House Counsel	Nambawan Super Limited
Singapore	Steffen Pedersen	Partner	Thomas Cooper Singapore LLP
United Kingdom	Elizabeth Bakibinga-Gaswaga	Legal Adviser, Law Development	Governance and Peace Directorate-Rule of Law Section, The Commonwealth Secretariat
Thailand	Pornpat Tantikulananta	Executive Director	Thai Arbitration Institute

# conference secretariat

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**MS. CHRISTINA PAK**

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**MR. GARY BORN**

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**MR. DANIEL MELTZ**

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**MR. JONATHAN LIM**

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**MS. MA. CELESTE GRACE A. SANIEL-GOIS**

Is a Senior Legal Operations Officer at the Office of the General Counsel (OGC) of the Asian Development Bank (ADB). She provides technical, analytical, and coordination support for OGC's Law and Policy Reform Program.

Ms. Saniel-Gois has been with ADB for 20 years. Before joining OGC, she was part of the urban sector team, administering regional TAs on urban infrastructure projects. Prior to this, she was part of the gender and development (GAD) team of ADB, serving as coordinator for the multidonor Gender and Development Cooperation Fund, which provided resources for regional TA projects aimed at building gender capacity and conducting research on emerging and critical gender issues.

Ms. Saniel-Gois holds a masters degree in Social Services and Development from the Asian Social Institute, Manila; academic credits for masters in Women and Development at the University of the Philippines, and a Bachelor's degree in Communication Arts at St. Scholastica's College, Manila.



**ATTY. FRANCESSE JOY "HAPPY" J. CORDON-NAVARRO**

Happy is a consultant legal specialist at the ADB Office of the General Counsel's Law and Policy Reform (LPR) Program. Since 2013, she has worked for the LPR Program, preparing all proceedings of the annual ASEAN Chief Justices' Roundtable on Environment and the Symposium on Combating Wildlife Crime: Securing Enforcement, Ensuring Justice and Upholding the Rule of Law, serving on needs assessment and liaison missions, and providing general legal research and writing support. Outside ADB, she worked as an associate at Siguion Reyna, Montecillo & Ongsiako Law Offices, consultant for the University of the Philippines Law Center and lecturer on law, children and the environment at the Oxbridge Academic Programs in Cambridge.

Atty. Navarro graduated magna cum laude in BS Business Economics in 2007 and with a dean's medal for academic excellence in Juris Doctor (Law) in 2011 from the University of the Philippines. She finished her masters in Environmental Policy at the University of Cambridge, where she was a Peter Wilson Estates Gazette scholar. She is an associate fellow and international law on sustainable development project coordinator at the Centre for International Sustainable Development Law.



**MS. IMELDA “EMIE” T. ALCALA**

Emie has a Bachelor of Science in Business Administration major in Management. She has been with the Asian Development Bank as a Consultant for various projects since 1996, and has been the Project Coordinator of the Promotion of International Arbitration Reform for Better Investment Climate in the South Pacific technical assistance project and the Strengthening Capacity for Environmental Law in the Asia-Pacific: Developing Environmental Law Champions technical assistance project since 2015. Her twenty-two years in the bank have seen her handle projects in environmental law, energy and water regulation, climate change, food fortification and health policy, regional cooperation in law, justice and development, finance and risk mitigation, and commercial law reform.

As Project Coordinator, Emie is responsible for overseeing, managing, and the roll-over of project logistics, coordination and administration. She describes herself as the person who helps the puzzle pieces fit together.



## About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to a large share of the world's poor. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.



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