3RD South Pacific International Arbitration Conference

De-Risking Investment in the South Pacific Through a World Class International Arbitration Disputes Regime

17 March 2021

POST-CONFERENCE BOOKLET

United Nations UNCITRAL Regional Centre for Asia and the Pacific

ICC International Court of Arbitration

ADB

PSDI The Pacific Private Sector Development Initiative

Australian Government Department of Foreign Affairs and Trade

ACICA Australian Centre for International Commercial Arbitration

NZIAC

SIAC

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Fisherfolk in Tuvalu rely on their local fish stocks for nutrition and livelihood (photo by Eric Sales/ADB).

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6 Es of International Arbitration—Efficient, Expeditious, Expert, Even-handed, Electronic and Enforceable

> 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. Third, arbitrators are also particularly expert in terms of procedures, and can manage the process to ensure the arbitration proceedings proceed both expeditiously and fairly. Fourth, arbitration is even-handed and perceived as neutral, meaning that the arbitrators are independent of the parties and will hear the dispute impartially. Fifth, beginning in the COVID-19 era, arbitration moved on-line and became more electronic than most court proceedings. 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 165 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 6 Es.
>
> Source: **Gary Born**, *International Arbitration Practice Group, Wilmer Cutler Pickering Hale and Dorr LLP/ President, SIAC Court of Arbitration/ADB International Arbitration Expert*

The Aiwo boat harbor in Nauru is set to be transformed into the country's first fully functioning international port (photo by Eric Sales/ADB).

An aerial view of Kiribati (photo by Eric Sales/ADB).

1 CONFERENCE AGENDA

Welcome to Country
—A Traditional Opening Ceremony

Session time by location:

9:20 a.m.–9:30 a.m. (Sydney)
10:20 a.m.–10:30 a.m. (Fiji)
8:20 a.m.–8:30 a.m. (PNG)
6:20 a.m.–6:30 a.m. (SG/HKG)
3:50 a.m.–4:00 a.m. (India)
6:20 p.m.–6:30 p.m. (US Eastern, -1 day)

Inaugural Session

Session time by location:

9:30 a.m.–10:15 a.m. (Sydney)
10:30 a.m.–11:15 a.m. (Fiji)
8:30 a.m.–9:15 a.m. (PNG)
6:30 a.m.–7:15 a.m. (SG/HKG)
4:00 a.m.–4:45 a.m. (India)
6:30 p.m.–7:15 p.m. (US Eastern, -1 day)

OPENING REMARKS

9:30 a.m.–9:40 a.m. (Sydney time)

- **THOMAS M. CLARK**
  General Counsel, Asian Development Bank (ADB)
- **ATHITA KOMINDR**
  Head, Regional Centre for Asia and the Pacific, United Nations Commission on International Trade Law (UNCITRAL)

KEYNOTE ADDRESS

9:40 a.m.–10:00 a.m. (Sydney time)

- **JOHN W.H. DENTON AO**
  Secretary General, International Chamber of Commerce (ICC)

Break 10:00 a.m.–10:15 a.m. (Sydney time)

Plenary Sessions

Session time by location:

10:15 a.m.–12:00 p.m. (Sydney)
11:15 a.m.–1:00 p.m. (Fiji)
9:15 a.m.–11:00 a.m. (PNG)
7:15 a.m.–9:00 a.m. (SG/HKG)
4:45 a.m.–6:30 a.m. (India)
7:15 p.m.–9:00 p.m. (US Eastern, -1 day)

SESSION 1

INVESTING IN THE PACIFIC: PROMOTING CONFIDENCE IN INTERNATIONAL BUSINESS THROUGH A STABLE DISPUTES REGIME—*A ROUNDTABLE WITH THE INTERNATIONAL BUSINESS AND DEVELOPMENT COMMUNITY*

10:15 a.m.–11:00 a.m. (Sydney time)

- GLOBAL AND REGIONAL FOREIGN DIRECT INVESTMENT IN THE PACIFIC
- MITIGATING INVESTMENT DISPUTES RISK

▶ **MODERATOR:** **Damien J. Eastman**, *Deputy General Counsel, ADB*

▶ **SPEAKERS:**

Lotte Schou-Zibell, *Regional Director, Pacific Liaison and Coordination Office, ADB*
Prof. Dr. Jordi Paniagua, *Professor of Economics, University of Valencia*
Mark Russell, *Senior Commercial Officer for Australia and New Zealand, U.S. Department of Commerce*
Craig Strong, *Chief Executive Officer, Investment Fiji*
Ram Bajekal, *Managing Director, FMF Foods Limited*
Changwan Han, *Director, International Dispute Settlement Division, Ministry of Justice, Republic of Korea*

Break 11:00 a.m.–11:15 a.m. (Sydney time)

SESSION 2

THE PACIFIC COUNTRIES AND INTERNATIONAL ARBITRATION REFORM

11:15 a.m.–12:00 p.m. (Sydney time)

- THE NEW YORK CONVENTION AND THE PACIFIC COUNTRIES
- UPDATE ON INTERNATIONAL ARBITRATION REFORM IN THE PACIFIC

▶ **MODERATOR:** **Gary Born**, *International Arbitration Practice Group, Wilmer Cutler Pickering Hale and Dorr LLP/ President, SIAC Court of Arbitration/ADB International Arbitration Expert*

▶ **SPEAKERS:**

Hon. Tatafu Toma Moeaki, *Minister of Trade and Economic Development, Tonga*
Hon. Kaleb Udui, Jr., *Minister of Finance, Palau*
Dr. Eric Kwa, *Attorney General, Department of Justice and Attorney General, Papua New Guinea*
H.E. Dr. Manuel Cãrceres da Costa, *Minister of Justice, Timor-Leste*
Christina Pak, *Principal Counsel/Team Leader, Law and Policy Reform Program, ADB*
Daniel Meltz, *Barrister, 12 Wentworth Selborne Chambers/ADB International Arbitration Expert*

Lunch Break 12:00 p.m.–1:30 p.m. (Sydney time)

Concurrent Breakout Sessions

Session time by location:

1:30 p.m.–3:00 p.m. (Sydney)
2:30 p.m.–4:00 p.m. (Fiji)
12:30 p.m.–2:00 p.m. (PNG)
10:30 a.m.–12:00 p.m. (SG/HKG)
08:00 a.m.–9:30 a.m. (India)
10:30 p.m.–12:00 a.m. (US Eastern, -1 day)

SESSION 3A

FOR LAWYERS: DRAFTING INTERNATIONAL ARBITRATION AGREEMENTS

- HOW TO DRAFT A BINDING ARBITRATION AGREEMENT
- SURVEY OF INSTITUTIONAL AND AD HOC ARBITRATION

MODERATOR: Jo Delaney, *Partner, Baker McKenzie, Sydney*

SPEAKERS:

Koh Swee Yen, *Partner, WongPartnership LLP*

May Tai, *Partner, Herbert Smith Freehills*

Daniel Kalderimis, *Barrister, Twenty Essex*

Abhinav Bhushan, *Regional Director for South Asia, ICC Arbitration and Alternative Dispute Resolution (ADR), ICC International Court of Arbitration*

* *Participants: Open to lawyers/legal practitioners from the Asia Pacific region*

SESSION 3B

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

- ARBITRATION V. LITIGATION
- ADVANTAGES OF ARBITRATION: SPEED, EXPERTISE, NEUTRALITY AND ENFORCEMENT
- ARBITRATION COSTS AND DURATION
- USING INTERNATIONAL ARBITRATION CLAUSES FOR DISPUTE RESOLUTION IN A CONTRACT

MODERATOR: Jon Apted, *Partner, Munro Leys*

SPEAKERS:

Kevin Nash, *Deputy Registrar and Centre Director, Singapore International Arbitration Centre*

Fedelma Smith, *Senior Legal Counsel, Permanent Court of Arbitration*

Jonathan Lim, *Counsel, Wilmer Cutler Pickering Hale and Dorr LLP*

Brenda Horrigan, *President, Australian Centre for International Commercial Arbitration (ACICA) and Partner/Head of International Arbitration in Australia, Herbert Smith Freehills*

* *Participants: Open to the private sector/business community from the Asia Pacific region*

SESSION 3C

FOR JUDGES: IMPLEMENTATION OF THE NEW YORK CONVENTION – JUDICIAL PERSPECTIVE

MODERATOR:

Hon. Deputy Chief Justice Ambeng Kandakasi, *Supreme and National Courts of Justice of Papua New Guinea*

SPEAKERS:

Hon. Chief Justice James Leslie Bain Allsop, *Federal Court of Australia*
Hon. Justice Anselmo Reyes, *Singapore International Commercial Court*
Hon. Acting Chief Justice Kamal Kumar, *Supreme Court of Fiji*
Lord Chief Justice Michael Whitten QC, *Supreme Court of Tonga*
Hon. Justice Jeffery Shepherd, *Supreme and National Courts of Justice of Papua New Guinea*

FACILITATORS:

Christina Pak, *Principal Counsel/Team Leader, Law and Policy Reform Program, ADB*
Daniel Meltz, *Barrister, 12 Wentworth Selborne Chambers/ADB International Arbitration Expert*
José Augusto Fernandes Teixeira, *Partner, Da Silva Teixeira & Associados*
Julian Cohen, *Barrister and Arbitrator, Gilt Chambers*

* *Participants: Open to judges from the Asia Pacific region and beyond*

Break 3:00 p.m.–3:15 p.m. (Sydney time)

Concluding Session

Session time by location:

3:15 p.m.–3:45 p.m (Sydney)
4:15 p.m.–4:45 p.m. (Fiji)
2:15 p.m.–2:45 p.m. (PNG)
12:15 p.m.–12:45 p.m. (SG/HKG)
09:45 a.m.–10:15 a.m. (India)
12:15 a.m.–12:45 a.m. (US Eastern)

SESSION 4

CONCLUDING REMARKS AND RECOMMENDATIONS

- ADB'S TECHNICAL ASSISTANCE ON PROMOTION OF INTERNATIONAL ARBITRATION REFORM FOR BETTER INVESTMENT CLIMATE IN THE SOUTH PACIFIC
- ADB'S PACIFIC PRIVATE SECTOR DEVELOPMENT INITIATIVE (PSDI)

MODERATORS:

Christina Pak, *Principal Counsel/Team Leader, Law and Policy Reform Program, ADB*
Mary Kim, *PSDI Team Leader/Senior Programs Officer, ADB*
Terry Reid, *International Business Law Expert/Team Leader Business Law Reform, PSDI*

Q&A from Audience

CONCLUSION OF CONFERENCE

The sugar industry is a major contributor to Fiji's gross domestic product, foreign exchange earnings, and employment (photo by Ian Gill/ADB).

2 BACKGROUND PAPER

The South Pacific region is one of the last global regional blocks without a cohesive 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 can stifle 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 168 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 168 countries pursuant to the New York Convention.

Further, studies have shown that ratification of or accession to the New York Convention is associated with positive economic impacts, such as increased trade flows,[1] and net foreign direct investment (FDI) inflows.[2]

Growth in Average FDI Inflows: Before vs. After a Country Joins the New York Convention

Source: A. Myburgh and J. Paniagua. 2016. Does International Commercial Arbitration Promote FDI? *The Journal of Law and Economics*. 59(3). p. 604.

[1] D. Berkowitz, J. Moenius and K. Pistor. 2004. Legal Institutions and International Trade Flows. *Michigan Journal of International Law*. 26(1). pp. 163–198.
[2] A. Myburgh and J. Paniagua. 2016. Does International Commercial Arbitration Promote FDI? *The Journal of Law and Economics*. 59(3). pp. 597–627.

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 and Timor-Leste

Currently, more than half of the South Pacific countries are not party to the New York Convention—out of 14 countries, only Cook Islands, Fiji, Marshall Islands, Palau, Papua New Guinea, and Tonga have acceded to the New York Convention. The following eight South Pacific countries have not signed onto the New York Convention: Kiribati, Federated States of Micronesia, Nauru, Niue, Samoa, Solomon Islands, Tuvalu, and Vanuatu. Many South Pacific countries also do not have the domestic legal frameworks to support the recognition and enforcement of international arbitration agreements and foreign arbitral awards.

Moreover, the Parliament of Timor-Leste, a small island developing state in Southeast Asia, approved accession to the New York Convention in February 2021. However, it has not yet deposited the instrument of accession with the United Nations Treaty Section.

The table on the next page summarizes the current status of arbitration law reform in the South Pacific countries and Timor-Leste, i.e., (i) whether the country has acceded to the New York Convention; (ii) if so, whether an implementing law has been passed; (iii) whether or not the country has arbitration legislation; and (iv) the basis of such legislation.

Arbitration Law Reform in Pacific Developing Member Countries and Timor-Leste

Country	Accession to the NY Convention	NY Convention Implementing Law	Arbitration Legislation	Basis of Legislation
Cook Islands	Yes (2009)	Yes	2009 Arbitration Act	1985 UNCITRAL Model Law, with amendments as adopted in 2006
Fiji	Yes (2010)	Yes	2017 International Arbitration Act	1985 UNCITRAL Model Law, with amendments as adopted in 2006
Kiribati	No	n/a	1990 Kiribati Arbitration Act	1950 English Arbitration Act
Marshall Islands	Yes (2006)	No	1980 Arbitration Act	Unclear
Micronesia, Federated States of	No	n/a	n/a	n/a
Nauru	No	n/a	n/a	n/a
Niue	No	n/a	1908 Arbitration Act	1908 New Zealand Arbitration Act
Palau	Yes (2020)	Yes	International Commercial Arbitration Act of 2021	1985 UNCITRAL Model Law, with amendments as adopted in 2006
Papua New Guinea	Yes (2019)	Draft bill in process	1951 Arbitration Act	1889 English Arbitration Act
Samoa	No	n/a	1976 Arbitration Act	1889 English Arbitration Act
Solomon Islands	No	n/a	1987 Arbitration Act	1889 English Arbitration Act

Country	Accession to the NY Convention	NY Convention Implementing Law	Arbitration Legislation	Basis of Legislation
Timor-Leste	Accession pending (instrument of accession not yet deposited with the UN Treaty Section as of 15 June 2021)	Draft bill in process (Voluntary Arbitration Bill under consideration in Parliament)	n/a	n/a
Tonga	Yes (2020)	Yes	International Arbitration Act 2020	1985 UNCITRAL Model Law, with amendments as adopted in 2006
Tuvalu	No	n/a	1992 Arbitration Act	1950 English Arbitration Act
Vanuatu	No	n/a	No general arbitration legislation, but the 1983 Trade Disputes Act permits arbitration	n/a

NY = New York, UN = United Nations, UNCITRAL = United Nations Commission on International Trade Law.

Source: G. Born, J. Lim, D. Meltz, and C. Pak.

ADB's Technical Assistance on International Arbitration Reform in the South Pacific and Timor-Leste

Asian Development Bank (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) and Timor-Leste through international arbitration reform to boost regional and international investor confidence, leading to greater foreign direct investment and cross-border trade in the region. The TA

has been assisting these countries 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 is assisted by a dedicated team of international arbitration experts, in collaboration with UNCITRAL's Regional Centre for Asia and the Pacific.

Third South Pacific International Arbitration Conference

17 March 2021
Yallamundi Rooms, Sydney Opera House and Virtual via Zoom

To raise awareness and discuss the positive development impact of international arbitration reform in the South Pacific, ADB, in conjunction with UNCITRAL, the Australian Department of Foreign Affairs and Trade, the Australian Centre for International Commercial Arbitration, and other renowned arbitration institutions and development partners, hosted the Third South Pacific International Arbitration Conference (the "Conference"). The Conference was attended by key government officials, policy makers, development partners, judges, law practitioners, and private sector participants from Timor-Leste and the South Pacific region, as well as international speakers. The Conference also provided in-depth knowledge on the practical aspects of different types of disputes in the region and globally. There were also specialized interactive concurrent breakout sessions tailored for different stakeholders such as private sector, law practitioners and judges.

The Conference included:

- a roundtable with the international business and development community on (i) global and regional foreign direct investment in the Pacific, and (ii) mitigating investment disputes risk;
- a discussion on Pacific countries, the New York Convention, and international arbitration reform; and
- tailored breakout sessions for lawyers, judges, and private sector/businesses.

Workers install transmission lines in Kimbe, West New Britain, Papua New Guinea (photo by Eric Sales/ADB).

3

INAUGURAL SPEECHES*

* The video of the inaugural session is available on the ADB Law and Policy Reform Youtube page (https://youtu.be/rMbbhJHz7I8).

Speech by **THOMAS MICHAEL CLARK**
General Counsel, Asian Development Bank (ADB)

Good morning Honorable Ministers, Honorable Members of the Judiciary, Dignitaries, Distinguished Guests, Ladies and Gentlemen.

Mabuhay! Good morning from Manila! My name is Thomas Clark, the General Counsel of the Asian Development Bank. Thank you very much for that kind introduction. I am delighted to be here with all of you – gathered at the Sydney Opera House and via Zoom from over 30 locations from around the region and beyond.

ADB is honored to be partnering with the Australian Government, the United Nations Commission on International Trade Law (or UNCITRAL), the International Chamber of Commerce, the Australian Centre for International Commercial Arbitration and the Singapore International Arbitration Centre to bring all of you together for this Third South Pacific International Arbitration Conference.

Indeed, this is truly a remarkable important gathering of key government officials, policy makers, judges, lawyers, private sector and development partners, and indeed all the world's foremost experts on international arbitration, to engage in a dialogue to help lift barriers to foreign direct investment and regional and international trade in the South Pacific region and Timor-Leste.

As Pacific developing member countries and Timor-Leste chart a course toward a post-pandemic recovery, efforts to increase foreign direct investment and cross-border trade and improve the overall business climate for private sector development have become even more critical.

Now since 1966, the ADB has been committed to the South Pacific region and Timor-Leste, and the region comprises indeed almost one-third of ADB's developing member countries.

ADB has more than 64 ongoing financed sovereign projects across our Pacific developing member countries, with financing exceeding $2.9 billion. This is more than a six-fold increase over the $448 million portfolio that we have just as recently as 2005. I'm also pleased to note that ADB is now the Pacific's largest single source of renewable energy financing. And in Timor-Leste, ADB has more than 70 ongoing projects with financing exceeding $430 million.

Moreover, to assist ADB member countries and to help them respond to the COVID-19 pandemic, ADB has provided numerous indeed many very significant support including (i) the immediate grant support to purchase much-need PPEs, medical supplies and quarantine facilities; (ii) budget support to finance crisis-related fiscal matters; and (iii) policy-based support to strengthen macreconomic resilience along with contingent disaster financing funds; and (iv) active management and engagement with the private sector including reaching out to financial institutions and companies such as agribusiness infrastructure companies to discuss COVID-19 impacts and requirements for potential ADB financing.

And as mentioned, private sector investment is really critical for economic growth and job creation. We all know the importance of the private sector and the importance of mobilizing and crowding in private capital. And in this regard, I note that ADB is working to improve the business environment, including ways to attract more foreign direct investment and cross-border trade, which has become even more vital with COVID-19 recovery efforts.

For example, this work is supported by ADB's Private Sector Development Initiative (or PSDI), a regional technical assistance program undertaken in partnership with the Government of Australia and the Government of New Zealand. Since 2007, PSDI has been working to reduce constraints to doing business and to promote private sector growth in the Pacific region, such as helping to streamline business registration processes, enable movable assets financing and to promote entrepreneurship and foreign direct investment.

Alongside ADB's operations, the Office of the General Counsel manages a Law and Policy Reform Program, in which we design and implement technical assistance projects to work with our developing member country partner governments. Now, these technical assistance projects are aimed at modernizing the legal systems to encourage investment and trade, and facilitate commercial activity,

and to build the capacity for judicial and legal institutions. This is a very important medium to long-term strategy that complements our investments in the financial area and with financing resources. This knowledge component is really critical for ADB.

Now as you know a major barrier in attracting foreign direct investment and stimulating cross-border trade is the lack of investor confidence in available effective and efficient ways to resolve and enforce 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. However, the South Pacific is still one of the last global regional blocks without a cohesive legal framework to resolve these cross-border commercial disputes through international arbitration. This form of cross-border dispute resolution and enforcement regime I would argue is fundamental absolutely critical to foreign investment and dispute resolution and the enforcement regime is going to be key. The absence of this international arbitration framework indeed increases the risks and the costs of doing business and stifles economic growth potential across the region.

To assist our Pacific developing member countries and Timor-Leste to put in place an international arbitration legal framework, we've been very busy and very involved across the last many years. In 2017, ADB launched a technical assistance project under our Law and Policy Reform Program (i) to help accede to the New York Convention and to put in place the implementing arbitration law; and (ii) to provide capacity building to judges, lawyers, and private sector as implementing parties.

Since 2017, there have been many positive developments, starting with (i) Fiji's enactment of the International Arbitration Act in September of 2017, followed by accession to the New York Convention by Papua New Guinea in July of 2019; (ii) accession to the New York Convention by Palau in March 2020; (iii) accession to New York Convention by Tonga in June of 2020; and (iv) the enactment of Tonga's International Arbitration Act just this February of 2021! So as you can see this is a path that we are continuing to follow and walk side by side among our developing member countries and Timor-Leste in the region.

Now we also hoped here to convene the first-of-its-kind First South Pacific International Arbitration Conference and we helped convened that first-of-its-kind conference in Fiji hosted by the Fiji Government and then the Second South Pacific International Arbitration Conference hosted by the PNG Government, all of these to raise awareness about the importance of this reform to the South Pacific region, as we have also developed and delivered numerous capacity building programs to judges, lawyers, and the private sector over the last 3 years.

Of course, I hope you understand that all of these wonderful results would not have been possible without the support of our development partners, including our long-standing partner UNCITRAL, as well as the international arbitration community. We are extremely grateful for that partnership and for the great teamwork I think that all of these groups have shown together with ADB to deliver these programs of vital importance to the region.

I will just conclude by saying that – today, we will hear from key business leaders and some of the foremost experts in the world on international arbitration and legal reform, and we will discuss the issues and challenges, and share knowledge on best practices.

I'm very grateful also to our own Christina Pak heading up Law and Policy Reform office and to all of the many people who have contributed to this program.

Let's please use this incredible opportunity to work together towards a common objective that can produce substantial benefits to the people and the countries of this region.

On behalf of the Asian Development Bank, I would like to thank all of you for coming to this conference and for your strong commitment to this region. I wish you a tremendous and very successful conference. Thank you very much.

Speech by **ATHITA KOMINDR**
Head, Regional Centre for Asia and the Pacific,
United Nations Commission on International Trade Law (UNCITRAL)

Excellencies, ADB, and ICC colleagues, distinguished speakers, and friends of UNCITRAL, greetings from the UNCITRAL Regional Centre for Asia and the Pacific in Incheon, Republic of Korea.

It is an honor to join you this morning to celebrate the ADB's successful technical assistance program for the reform of laws on international commercial arbitration in the South Pacific. UNCITRAL is honored to have been a partner in this journey since its 2017 launching. When I myself joined UNCITRAL RCAP in 2019, the Second South Pacific International Arbitration Conference was my very first mission after landing in Incheon for only a week, which highlights the importance that UNCITRAL gives to commercial law reforms and legal harmonization to further facilitate trade and de-risk investment in this beautiful region.

Since then, the UNCITRAL and ADB collaboration has proven extremely successful in the Asia Pacific region. Cumulatively, our technical assistance activities and legislative reviews have led to 4 new regional ratifications of New York Convention, 3 of which are in the South Pacific: Papua New Guinea, Palau, and Tonga, and 40 Asia Pacific jurisdictions adopting the Model Law on International Commercial Arbitration, an increase of about 33% since 2015.

The strong regional interest in enforcing contractual obligations via a predictable and neutral dispute settlement regime has also led to the successful launching of the Singapore Convention on Mediation with over half of the 53 signatories and 4 of the 6 State Parties hailing from the Asia Pacific and the South Pacific.

The South Pacific's achievements in this regard contribute to the 2030 Agenda for Sustainable Development, and in particular, Sustainable Development Goal 16: enhancing access to justice and contributing to the development of a mature, rule-based global commercial system.

But we should and will continue to aim higher. While three South Pacific States have joined the New York Convention since 2017, UNCITRAL stands ready to assist those who have not yet joined whether through awareness-raising webinars, government and judicial briefings, or legislative reviews. With near universal participation by 167 States, the latest being Malawi, the New York Convention of which UNCITRAL is the gatekeeper provides common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards, subject to only specific limited exceptions, and thus facilitate the resolution of disputes in all corners.

The same holds for the UNCITRAL Model Law on International Commercial Arbitration. First adopted by the United Nations General Assembly in 1985 and most recently amended in 2006, the Model Law is a free-standing arbitration statute that establishes a unified, fair, and efficient legal framework reflecting worldwide consensus on the principles and important issues of international arbitration practice, while providing flexibility for enacting jurisdictions. It covers all stages of the arbitral process and conforms to current practice in international trade and modern means of contracting with regard to the form of arbitration agreement, and the granting of interim measures. As of March 2021, legislation based on the Model Law has been adopted in 85 States in a total of 118 jurisdictions. Enacting South Pacific and Asia Pacific States include Australia, Fiji, New Zealand, China, India, Japan, Republic of Korea, Singapore, and many others.

For more details, you may be interested in perusing UNCITRAL's Digest on the Model Law available via the web link shown here.[3] The Digest was launched in 2012 and is usefully organized according to the Model Law chapters and articles. It provides a summary of case law for each article, highlighting common views and reporting any divergent approach, and includes 725 cases from 37 states all over the world. The Secretariat is also working on a new version of the digest so please check back on our website.

We also publish more recent cases on the Model Law in the UNCITRAL CLOUT digital case law database, also accessible on the UNCITRAL website in all six of the United Nations languages.

[3] United Nations. UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration.

For our South Pacific participants who are interested in learning more about UNCITRAL dispute resolution instruments, I invite you to join our upcoming virtual events throughout the region starting from an ADR webinar with Bangladesh next month to our flagship technical assistance and capacity-building activities with the Korean Ministry of Justice and Hong Kong SAR Department of Justice from September onwards. Many of you have participated in the UNCITRAL ADR Special Session held in Seoul, either in person or online. And we invite you all to attend this year's editions as well.

For our academic colleagues in the South Pacific, UNCITRAL RCAP invites you to co-host an event under the UNCITRAL Asia Pacific Day flagship academic series. This is an annual event aimed towards students and young professionals that RCAP co-hosts with institutions of higher learning in the last quarter of every year on a wide range of UNCITRAL thematic issues, such as arbitration, mediation, sale of goods, ecommerce, and many others, with the format ranging from in-class lectures to multi-day regional academic conferences.

Finally, UNCITRAL RCAP invites those of you interested in learning more about UNCITRAL or co-hosting an activity with UNCITRAL RCAP to reach out to us anytime via email noted there (uncitral.rcap@un.org) and to subscribe to our mailing list via the QR code shown there.

Thank you again to the ADB for giving me the honor of delivering these co-opening remarks on behalf of UNCITRAL. I wish the conference every success. Thank you very much!

Speech by **JOHN W.H. DENTON AO**
Secretary General, International Chamber of Commerce

Hola! I'm speaking to you from Madrid, and I'm deeply sorry that I can't be live and in person in the South Pacific. I often think about my engagement with the South Pacific how formative it has been in my life, and how much I have always enjoyed the company of my friends from the South Pacific. So I am sad in a way that I cannot be with you because of the challenges of the period and the world we live in now. None of us will be safe.

Many of you will know that I have been leading at the International Chamber of Commerce (ICC) to ensure the equitable access to vaccines for all. Without ensuring that is the case and that it happens in a timely manner, this context in which we operate will not end. We will not be able to move around. We will not be able to achieve the return to economic prospects that we sought so visibly before this pandemic. And so the ICC stands up for equitable access to vaccines, and it stands up for the South Pacific because it is just the right thing to do. In the end, that is what the ICC does.

Our goal is to enable businesses worldwide to secure peace, prosperity, and opportunity for all. Our mission is to make business work for everyone, every day, everywhere. What we do is we help grow the global economy. We enable trade, and we ensure it is done in a sustainable manner. All elements are so critical to the future of the South Pacific.

And I am also delighted to be able to share some time with you today because I respect so much the work of our friends at the Asian Development Bank and at the United Nations Commission On International Trade Law (UNCITRAL).

There is no doubt in my mind that a lot of the work we do, particularly in the South Pacific and in the Asia Pacific in general, would not be possible without a strong collaboration with the ADB. Let us face it. The work we are doing right now in Singapore on ensuring that we can take the whole trading world from analog to digital is enabled by our partnership with the Asian Development Bank. So I shout

out to my friends there. And I shout out to the leadership of ADB in doing course of this process. You are showing some real innovation and leadership, which, frankly, has been lacking in some of the other regions. So as a regional development bank, I think the ADB has led.

And to my friends at UNCITRAL, let me make one observation. You have done the hard yards on putting together what we call the Model Laws to ensure that we can actually recognize legally a lot of the electronic transfer of documentations that we have before us. The digitization of the trading world is enabled by the work you did on giving legal status to a number of these documents. You have made it actually easy to do. The tragedy is that it took a crisis for us to be able to get the attention of world leaders to actually adopt those Model Laws; we could not have even had that opportunity if you had not done that work. So I shout out to you and I thank you for the work you have done.

I hope you also find partnership with the ICC as we seek to take your pure work and apply it on a global basis through our Digital Standards Initiative in Singapore something that you can also rightly say is a positive consequence of working with us. More importantly, the initiative is a positive consequence of the ICC, the ADB, and the UNCITRAL's understanding the challenging context we are in, and doing something to actually help restore global economic growth by doing the pieces of work that are so critical to get that moving to digitization, moving to the recognition of electronic documentation to give them legal force, and frankly helping the real economy which is what we all do and it is something that I am just really proud of.

What we do to grow the global economy is to enable global trade and ensure that it is done sustainably. I think it is truly important when you think about what we do is how we do it. And one of the ways we do it is through respect for the law. The rule of law is a critical element and we do not only talk about how we do it by having a world leading arbitral body, such as the ICC courts of arbitration and the whole dispute resolution team. We also do it by ensuring that the court and the dispute resolution team operate in an effective way. So what we do, how we do it, and what enables us are all important.

Now, let me talk about what enables us to make certain that the world class international arbitration practice operates on a global basis. We are all world class and that is the truth. I am proud to say that the ICC courts of arbitration and the ICC

dispute resolution processes are the number one global private international dispute resolution body. Our independence and our commitment to doing things globally—that we are available not just in the Northern hemisphere and the Southern hemisphere, but also in the South Pacific—are important to us. So it is really a great pleasure to be with you here.

Pursuing a global framework for international arbitration was one of the ICC's innovations to promote trade and investment. To enable trade and investment is what we do. But it has certainly not been our last. I think—as you would have heard from some of my other comments—the work we are doing with vaccines and the work we are doing with digitizing the whole global trading environment are all new innovations. These are all necessary to continue to achieve our mission of actually growing the global economy and enabling it for the world.

Looking back, the notion that an arbitral award issued in one country would be enforceable in more than 160 countries must have seemed like an ambitious stretch to my forebearers. But that is exactly what we have done. That is exactly what we, the ICC, and the international arbitration community, have achieved.

Having been integral to the production of the first draft of the New York Convention back in 1953—thankfully before I was born—the ICC continues to innovate and adapt the rules to the needs of business globally. We need to ensure all the time that the rules fit the context in which we operate and that we operate to actually make that context as well.

In January of this year, we introduced new rules to help future-proof ICC arbitration by specifically empowering tribunals to conduct digital proceedings in the manner they see fit. We needed to do that. We must do that. As I said, we need to ensure that we can operate in the context in which we find ourselves—in the context where the possibility of human contact and actually being able to meet and actually have wet signature documents provided is impossible because of the restrictions and the lockdowns. We needed to ensure that we are actually able to empower tribunals to conduct proceedings on a digital basis. We have done that—very successfully, I think.

We have also adopted and adapted the rules to reduce the usage of paper because we are serious about sustainability and diversity. Not only do we believe that arbitration should be sustainable, but that part of sustainability is ensuring that it actually reflects the diversity of the world around us.

I think there would be no doubt in anyone's mind that decisions that are being taken as to the composition of the courts reflect our desire to ensure diversity is actually recognized and represented within the ICC courts of arbitration. We just do not talk about it. We actually do it, and it is actually a remarkable feature of our constantly changing, innovating courts of arbitration.

The new rules that we have adopted are particularly well-tied to the context of the pandemic, and will ultimately aid to ensure that ICC arbitration remains a leading force adapted to the demands of the global economy and designed with you, the users, in mind. One of the strengths I have found with the ICC courts of arbitration and the whole dispute resolution area is its openness to change and its recognition that being number one is not a God-given right. We have to work to maintain that position, and we work to maintain that position by constantly innovating, thinking about the needs of the community that we serve, trial and testing, pioneering, and doing what we want to do as well by living up to our promises of diversity. These changes are some of the steps we have taken to upgrade and make resilient the trading infrastructure on which the whole global economy depends.

Building on our long-standing leadership in the field of trade finance, for example, we are working to digitize today's paper-based trading processes and modernize the use of standardized letters of credit (which, by the way, we also first introduced back in 1933). We are also working on one of our signature services, the ICC incoterms—which we have launched actually in the middle of the Great Depression in 1936, when the world was tearing itself apart—as an instrument that could continue to unite the world through commerce. We launched that in 1936, and one of our challenges now is to ensure that this signature service is fit for the modern age. How do we ensure smart incoterms operate? How do we ensure that we can develop an Application Programming Interface (API) to actually support and enable incoterms? This is one of the things we are working on at the moment and part of the constantly changing focus that we have at the ICC.

Do not forget that one of our values is actually pioneering. Do not forget that another one of our values is connectedness. We need to remain connected to the communities we serve. We need to continue to pioneer. We need to liberate ourselves from the past and ensure that we are ready, fit, and able for the future. It is another one of our values, and always, our primal value is to be generous to each other, generous to the communities we serve, and generous to the history of the ICC, and hopefully by doing so, we create a stronger future as well.

We see all these investments as part of the evolution of our ongoing mission which is to ensure that business works for everyone, every day, everywhere. These innovations are all the more important as the pandemic has highlighted the fragility of global trade. Providing struggling economies hit hard by the pandemic will require that we use all available tools to jumpstart economic activity, and international arbitration is a proven force for growth.

A 2016 study by researchers at the IFC and the University of Valencia, including Dr. Paniagua who is on the first panel, looked econometrically at the connection between signing the New York Convention and inward foreign direct investment. The study showed that the impact was positive and significant. In fact, foreign direct investment grows five-fold in the years after countries joined the Convention.

Embedding international arbitration into national legal frameworks then sends a strong signal that businesses can rely on effective dispute resolution to support their investment. Just as property rights are a pillar of the modern economy, de-risking investment requires that companies have confidence in a stable and efficient business environment.

A study recently conducted by the Commonwealth Secretariat found that small and medium-sized enterprises (SMEs) undoubtedly boost the real economy. We want to make certain that SMEs continue to flourish. SMEs, particularly in the Pacific, account for over 90% of economic activity; on a global basis, they account for similar amount in terms of global trading sector. But these SMEs are hesitant to invest abroad. Why? Due to uncertainty about the legal systems that operate in other economies, in other countries. So effective dispute resolution helps to address these basic concerns harbored by businesses, large and small, operating across borders.

More and more countries in the South Pacific are joining the New York Convention. We are so pleased that the recent signatories include Fiji, Papua New Guinea, and Timor-Leste. Welcome aboard, Timor-Leste! I know that in signing, one of the signals that you send to the global business community is that Timor-Leste is open for business and open for foreign direct investment.

I will note that several South Pacific islands have yet to do so. If we need to continue the support, or you need help from us to argue the case with your respective governments and practitioners, please let us know and we will be happy to arm you with the advocacy tools required.

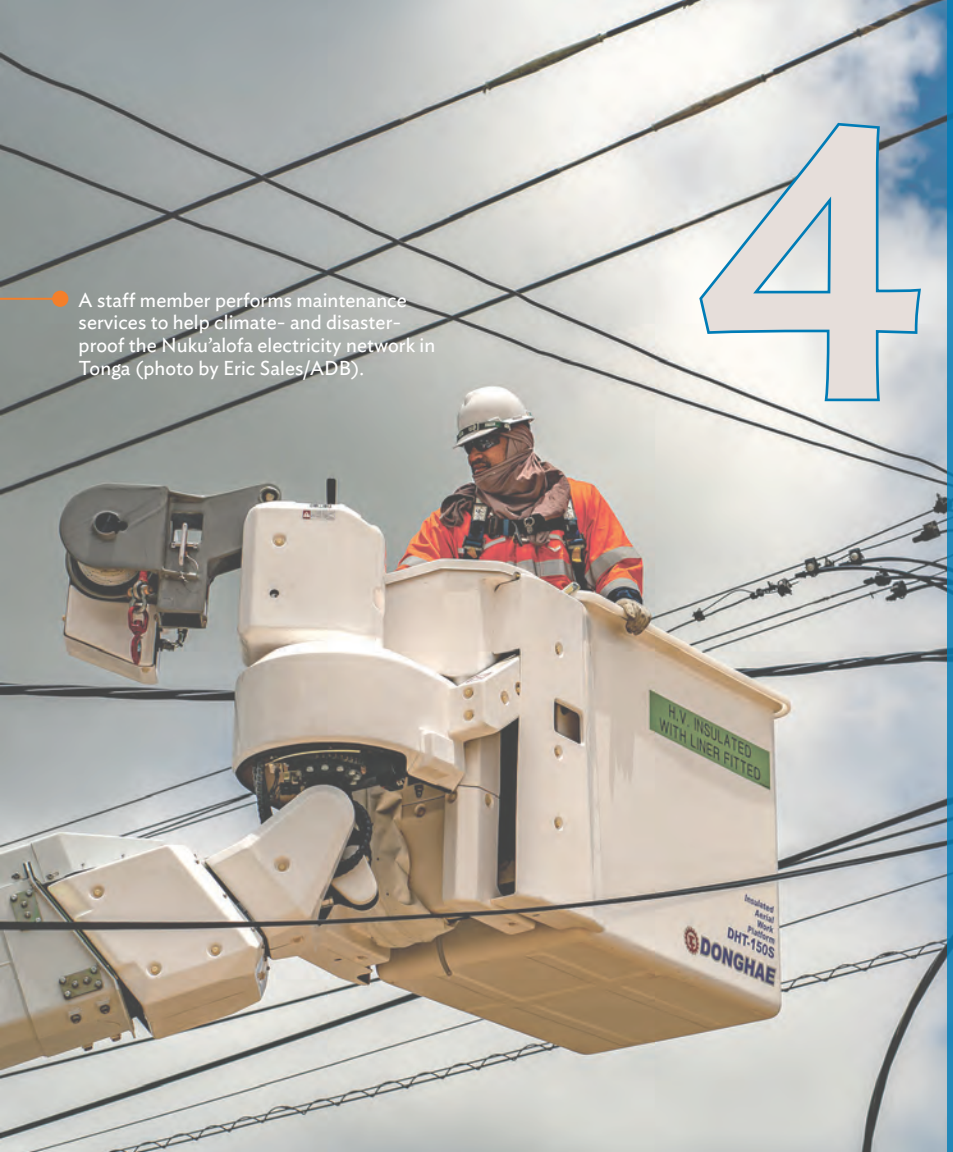
The reality is that countries considering adopting the New York Convention can take comfort that, when globally applied, arbitration is the most welcome method of dispute resolution. One of the myths about arbitration is that it is for someone else. The fact of the matter is, arbitration—the way we apply it under the ICC Rules and the process we take—means that it is for *you*. Global influence, regional significance, and local impact that is what we do at the ICC. We need to ensure and we do ensure that it is locally relevant as well.

Arbitration is a global framework. It is also tight tailored to be relevant at the local level and have an impact there, where a small firm expanding operations can have the same swift recourse to justice as a larger firm leveraging a global footprint. In fact, one of the pillars that we are working on at the moment with our Save Our SMEs campaign is how to ensure rapid and effective access to dispute resolution for SMEs at a low cost. We think it is critical to get the real economy moving. ICC's Rules enable this in dispute resolution: firstly, by administering a proceeding in the language in which the users desire to conduct it; secondly, by ensuring the tribunal rules based on the legal system chosen by the parties; and, thirdly, by guaranteeing that the procedures governing the actual process will be the ones that the parties have agreed to.

Global influence, regional relevance, and local impact. It is the opportunity that is provided by utilizing and understanding the way the ICC courts of arbitration dispute resolution operate. But it is also critical to understand the importance of acceding to the New York Convention and the benefits that actually accrue to economies.

When we talk about the challenges that this conference will be focusing on, we do think that part of the future lies in actually having an effective recourse to dispute resolution. And we at the ICC stand ready, willing, and able to ensure that the world class service we deliver is relevant, tailored, and effective for you. Please never hesitate to ask for our help. Never hesitate to ask for our support; for example, if there are issues you need to argue with your government or with other regulatory bodies to ensure that the benefits of having access to justice through arbitration are available.

Thank you for your time. Again, I am sorry I cannot be with you. Enjoy the rest of the conference, and I look forward to the moment when we can all be together again. Thank you!



A staff member performs maintenance services to help climate- and disaster-proof the Nuku'alofa electricity network in Tonga (photo by Eric Sales/ADB).

4

PRESENTATION SUMMARIES

SESSION 1

INVESTING IN THE PACIFIC: PROMOTING CONFIDENCE IN INTERNATIONAL BUSINESS THROUGH A STABLE DISPUTES REGIME—*A ROUNDTABLE WITH THE INTERNATIONAL BUSINESS AND DEVELOPMENT COMMUNITY*

Mr. Damien Eastman, deputy general counsel of ADB, served as moderator. This session aimed to explore the benefits of investing in the Pacific and promote confidence in international business through stable dispute resolution regimes.

Starting off the session, **Prof. Dr. Jordi Paniagua**, professor of economics at the University of Valencia, highlighted the positive economic impacts of international commercial arbitration. He first showed graphs illustrating the trends in foreign direct investment (FDI) worldwide and in the South Pacific in terms of capital expenditures, jobs created, and projects started from 2003 to 2020. He also emphasized the one-third loss in FDI measured in terms of all three factors in 2020 and explained the loss as a consequence of the coronavirus disease (COVID-19) pandemic.

Prof. Dr. Paniagua suggested that international arbitration can function as an economic vaccine to help countries recover from the devastating economic impacts of COVID-19. First, promoting arbitration by ratifying the New York Convention increases FDI bilateral flows by 77% and international trade with convention members by as much as 30%. Second, adopting the United Nations Commission On International Trade Law (UNCITRAL) on International Commercial Arbitration has also increased FDI flows by 67% and trade flows by 7% on the average. Third, arbitration produces three kinds of general welfare effects: increased gross domestic product, lower consumer prices, and higher producer prices. Based on statistics, arbitration has increased gross domestic product by approximately 13% globally, 15% for New York Convention members, 8% for Organisation for Economic Co-operation and Development members, and 11% for South Pacific countries. On this note, he emphasized that simply by joining the New York Convention, South Pacific countries are sending the signal that they are open for business. Consumers benefit by paying less for products and services due to the positive trade-induced effects

of arbitration mechanisms. Consumers in countries that have joined the New York Convention felt the most reduction in consumer prices (at about 9%). Lastly, producers also enjoy higher prices for their goods and services. Similarly, producers in countries that have ratified the New York Convention enjoyed the highest price increases (at approximately 8%).

He then explained the gravity equation by exploring how the geographical distance between Australia and other countries impacts trading activity. The countries that are able to overcome the negative impact of their distance from Australia are (i) those with bigger economies, such as the People's Republic of China and the United States (US); (ii) those that share the same common law system, such as Brunei, India, and Singapore; and (iii) those that have the same dispute resolution system, i.e. arbitration. Simply put, FDI and trade favor states with more economic activity and less friction. Frictions between trading partners can be natural, such as differences in history, culture, and language, or human-made, such as differences in contractual and institutional environment.

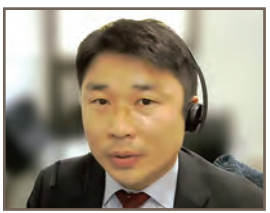
He described international commercial arbitration as an effective and predictable dispute settlement mechanism. First, it is flexible, confidential, and final. Second, it increases the trust between parties. Finally, it reduces the uncertainty of litigation in domestic courts.

To end, Dr. Paniagua suggested that countries can promote international business in four ways. They can (i) get closer to desired markets through a shared language or history, (ii) grow bigger by exploiting comparative advantages and seeking economic growth, (iii) be smarter by providing a better contractual environment through arbitration, and (iv) be healthy and safe by dealing effectively with the COVID-19 pandemic.

The next speaker, **Mr. Mark Russell**, senior commercial officer for Australia and New Zealand at the US Department of Commerce, shared his insights and experiences on attracting foreign investors, such as those from the US, to the South Pacific. In general, foreign companies have a limited amount of capital that they can invest overseas. To maximize their limited funds, these companies make investment decisions on the basis of various factors, such as market opportunity, rule of law, ease of doing business, dispute resolution, and contract enforcement.

He also said that no company wants to engage in lengthy court proceedings. Small and medium-sized companies, in particular, cannot afford the cost and time spent in such litigation, so they might simply opt to leave the country. Conversely, countries that recognize international arbitration attract investors who are looking for an efficient and expedient dispute resolution system.

In addition, companies weigh the risks versus the rewards of doing business in any country. For example, a country that does not recognize intellectual property rights might still attract a foreign company if it has a huge demand-to-market size. To illustrate, Mr. Russell shared an observation from his diplomatic tour in South Asia while some investors found it difficult to work in the country, they nevertheless still chose to invest in it given its huge market size and future potential sales. Similarly, investors might consider doing business in a country in the Pacific despite the risks, if the market opportunity and potential for growth are present.



Thereafter, **Mr. Changwan Han**, director of the International Dispute Settlement Division of Republic of Korea's Ministry of Justice, talked about how international arbitration has contributed to increased economic activities and investment flows in South Korea. A stable and effective dispute resolution system plays an important role in promoting sustained economic growth and attracting FDI.

Mr. Han shared that after the 1997 Asian financial crisis, South Korea aimed to develop dispute resolution system alternatives to traditional courts in order to resolve grievances in a more cost-effective and expedient manner. In 1999, the Office of the Foreign Investment Ombudsman was established to provide all foreign investors with free and complete grievance resolution services including business consultation and assistance.

Likewise, the Government of South Korea revised the Korean Arbitration Act twice: first in 1999 to adopt the UNCITRAL Model Law on International Commercial Arbitration, and again in 2016 to implement international best practices reflected in the 2016 UNCITRAL Model Law on Secured Transactions. Further efforts to promote arbitration in South Korea took place in 2017 with the effectivity of the Arbitration Industry Promotion Act and in 2018 with the establishment of Korean Commercial

Arbitration Board (KCAB) International. KCAB International successfully developed the arbitration industry in the country, particularly by professionalizing the industry, ensuring predictability in the practice, and growing the quality and diversity of the arbitrator pool. In 2019, it handled 443 arbitration cases, of which 373 were domestic and 70 were international cases. In 2020, the total arbitration cases and international arbitration cases increased by 12.7% and 12.9% respectively, as compared to 2019.

The Government of South Korea also promotes other alternative dispute resolution (ADR) mechanisms, such as court-annexed conciliation and mediation. On 7 August 2019, the government signed the Singapore Convention on Mediation, which it now seeks to adopt and implement domestically. The government encourages other specialized dispute resolution processes through the E-Commerce Mediation Committee, the Personal Data Protection Center, the Internet Address Dispute Resolution Committee, and the Financial Disputes Mediation Committee.

Lastly, Mr. Han highlighted the benefits of the government's efforts to enhance dispute resolution processes: conflict resolution is speedy, convenient, comparatively cheaper, and consensual. The World Bank's Doing Business 2020 report, which evaluates regulations across 190 economies in 12 business regulatory areas to appraise the business environment in each country, gave the Republic of Korea a score of 84 out of a possible 100. The Republic of Korea also ranked fifth globally in terms of ease of doing business, second in contract enforcement, and eleventh in insolvency resolution. He emphasized that an effective legal framework that provides for arbitration can greatly improve the business environment.

Mr. Craig Strong, chief executive officer of Investment Fiji, enumerated the investment reforms the Government of Fiji has taken to facilitate business, and in the process build investor confidence, in the country. First, the Investment Bill, filed in Parliament in December 2020, will replace the Foreign Investment Act of 1999 once passed. The bill has five objectives: (i) contribute to an attractive investment climate in Fiji; (ii) increase both foreign and domestic investment; (iii) generate employment; (iv) contribute to sustainable and social development; and (v) promote growth for the benefit of all Fijians. The bill will also strengthen five fundamental principes essential to attracting, retaining, and expanding investments in Fiji: (i) clarity through definitions and provisions aligned with international standards;

(ii) transparency in the investment legal framework; (iii) openness and predictability by removing the foreign investment registration certificate requirement and replacing it with an automatic investor registration process supported by Investment Fiji; (iv) basic investor rights; and (v) legal recourse and enforcement rights.

Second, Investment Fiji is transitioning from a regulatory authority into a purely trade and investment promotion agency. To stimulate the country's sustained economic growth, Investment Fiji is undertaking comprehensive consultations with all industry associations to identify key sectors and formulate regulatory reforms and capability strategy to help these sectors develop. Specific investor sector project managers will be appointed to steer investors through the approvals process.

Finally, the government promotes prompt and amicable investment dispute resolution through arbitration and other processes under the dispute settlement provisions of the Investment Bill.

Representing the private sector, **Mr. Ram Bajekal**, managing director of FMF Foods Limited, shared his insights on how international arbitration benefits businesses. As a small island country, Fiji is heavily reliant on external trade. It is thus essential for it to do business with many firms across different countries through distribution arrangements, joint ventures, technical collaboration, and royalty transactions. These partnerships require firms such as Mr. Bajekal's to determine the governing law or jurisdiction a task that can entail significant costs and the kind of legal expertise that might not be available in Fiji. Thus, they need an expedient and neutral dispute resolution mechanism that does not require knowledge of the laws of multiple countries.

Mr. Bajekal underscored that they exist to do business and not to litigate. Based on his firm's experience, international arbitration offers many benefits: clear choice of neutral and subject matter expert arbitrators, faster and less costly dispute resolution, a definitive and binding arbitral award enforceable by domestic courts, and confidential processes which enable parties to resume their business relations.

Lastly, **Ms. Lotte Schou-Zibell**, regional director of ADB's Pacific Liaison and Coordination Office, explained the means by which FDI can help Pacific countries spur economic growth and the initiatives ADB has taken to encourage FDI. Concurring with Prof. Dr. Paniagua, Ms. Schou-Zibell said that FDI facilitates skills and technology transfers, employment generation, capital increase, economic diversification, and improved corporate governance standards. However, not all countries are able to attract FDI. This could be for various reasons, such as having weak business enabling environments, which in turn lead to increased costs, reduced productivity, and more policies that hamper FDI growth.

Ms. Schou-Zibell highlighted ADB's core mandate to promote a prosperous, inclusive, resilient, and sustainable Asia and the Pacific, while sustaining its efforts to eradicate extreme poverty in the region. Thus, ADB encourages more responsible and well-managed FDI through its (i) public sector operations by providing policy and implementation support to member countries including those in the Pacific; (ii) support to strengthen business environments and improve domestic competition, such as through legal and regulatory reforms, support to micro, small, and medium enterprises, domestic resource mobilization, tax reforms, and capital market development; and (iii) private sector operations through private financing, such as equity investments and other initiatives. For instance, the Pacific Private Sector Development Initiative (PSDI), earlier mentioned by Mr. Clark, supports the enactment of FDI laws, creation of credit registries, and research. One PSDI-funded study, scheduled to be completed by the second half of 2021, will allow institutions in participating countries to better understand how their institutions align with best practices in attracting FDI.

Ms. Schou-Zibell concluded by highlighting the conference's potential to encourage more private sector solutions to support economic development. This paradigm is even more crucial in light of the increasing debt burdens of many Pacific countries.

SESSION 2
THE PACIFIC COUNTRIES AND INTERNATIONAL ARBITRATION REFORM

Mr. Gary Born—partner at the International Arbitration Practice Group of Wilmer Cutler Pickering Hale and Dorr LLP, president of the Singapore International Arbitration Centre (SIAC) Court of Arbitration, and ADB consultant / international arbitration expert—served as moderator. To set the context for this session, Mr. Born explained why business firms in Asia and the Pacific have, for decades, turned to international arbitration as the most reliable means of resolving their cross-border disputes.

First, international arbitration is more efficient and more expeditious than the alternatives, such as litigation. Parties have the procedural autonomy and tribunals have the procedural discretion to tailor processes to individual disputes. Many arbitral institutions, such as SIAC and the International Chamber of Commerce (ICC), have also developed fast-track procedures for small value disputes.

Second, parties can select experts, who know the subject matter of their dispute as well as the applicable laws and languages, to sit in their arbitral tribunal.

Third, international arbitration is more even-handed than litigation. The disputants can have a tribunal composed of members from both parties' home jurisdictions and a presiding arbitrator from a neutral jurisdiction.

Fourth, arbitration is more enforceable in international disputes because of the New York Convention, which requires contracting states to recognize and enforce international arbitration agreements and arbitral awards. If the parties to a dispute have an arbitration agreement, then contracting states must direct them to refer their dispute to arbitration. Once the arbitration concludes, courts must recognize and enforce the resulting arbitral award subject to only a few exceptions.

Lastly, international arbitration enables proceedings to be conducted electronically or remotely via Zoom or Webex. This allows parties to resolve their disputes at least as efficiently as they could have before the COVID-19 pandemic rendered in-person hearings impossible or impracticable.

For these reasons, businesses have chosen international arbitration as their preferred dispute resolution mechanism to secure their investments and trades.

Over the last 5 years, South Pacific countries have started acceding to the New York Convention. This session informs the participants about the actions taken by several South Pacific countries to adopt the New York Convention and the UNCITRAL Model Law on International Commercial Arbitration.

Dr. Eric Kwa, attorney general of Papua New Guinea (PNG), narrated PNG's steps to implement the New York Convention. Since 2018, the Arbitration Technical Working Committee (ATWC) has been analyzing arbitration best practices vis-à-vis the country's current regime in order to comply with the requirements of the UNCITRAL Model Law on International Commercial Arbitration. The Committee prepared the draft Arbitration Bill 2019 with support from ADB and UNCITRAL in order to repeal and replace the Arbitration Act 1951, their existing legislative framework on arbitration.

Dr. Kwa identified two problems with their arbitration legal regime. There are no arbitration institutions to support the selection of PNG as the seat of arbitration, so parties must refer their dispute to a foreign arbitral institution. There is also no legal basis for facilitating the enforcement of arbitral awards in PNG—a gap which the Arbitration Bill 2019 aims to fill.

The Arbitration Bill 2019 has five objectives: (i) to encourage the use of arbitration as a method of resolving disputes; (ii) to facilitate international trade and commerce by encouraging arbitration; (iii) to promote consistency between the existing arbitration regime and international best practices under the UNCITRAL Model Law on International Commercial Arbitration; (iv) to facilitate the recognition and enforcement of arbitration agreements and awards; and (v) to give effect to the New York Convention.

According to Dr. Kwa, the enactment of the bill offers many benefits. First, it establishes a strong commercial arbitration framework that will boost investor confidence. Second, it improves the regulation of arbitration in PNG. Third, it enables the country to comply with the requirements of the New York Convention and the UNCITRAL Model Law on International Commercial Arbitration, as well as join the global arbitration community. Lastly, it sends the message that PNG is an

investment destination. Dr. Kwa voiced his expectation that this new arbitration legal framework, informed by international best practice, will contribute towards maintaining investor confidence in the country.

The second speaker, **Mr. Kaleb Udui Jr.**, minister of finance of Palau, began by thanking ADB, UNCITRAL, and the previous conference hosts (Mr. Gary Born, Mr. Daniel Meltz, and Ms. Christina Pak) for all their support in modernizing Palau's arbitration regime. He then discussed Palau's accession to the New York Convention, the status of the bill to implement the Convention, and the implications of both Palau's accession and the enactment of said bill on businesses and investments in the country.

On 31 March 2020, Palau became the 163rd country to accede to the New York Convention. On 29 June 2020, the Convention entered into force as to Palau, 90 days after the government deposited its instrument of accession with the Secretary-General of the United Nations (UN). Palau made two reservations in acceding to the New York Convention. First, on the basis of reciprocity, Palau shall only recognize and enforce arbitral awards made in the territory of another state party to the Convention. Second, it also invoked the commercial reservation qualification, which limits the Convention's application to disputes that are commercial in nature under Palau's national laws.

The National Congress is already reviewing the draft Palau International Arbitration Bill. Prior to this bill, Palau did not have an arbitration law in place that establishes a legal framework for supervising arbitration proceedings seated in the country, or that regulates the enforcement of international arbitration agreements or foreign arbitral awards. There were only passing references to arbitration in some laws.

According to Mr. Udui, the draft bill is a comprehensive, state-of-the-art piece of legislation based on the UNCITRAL Model Law on International Commercial Arbitration. It implements Palau's obligations under the New York Convention and provides a modern legal framework for international arbitrations in Palau. He cited three provisions in the bill that reflect well-established international arbitration principles: (i) Article 12 of Part 3, which obliges courts in Palau to refer parties to

arbitration if their dispute is covered by an arbitration agreement; (ii) Article 22, which recognizes the authority of an arbitral tribunal to rule on its own jurisdiction and the separability of a contractual arbitration clause from the other terms of that contract; and (iii) Part 6, which provides for the power of an arbitral tribunal to grant and enforce interim measures.

Mr. Udui also said that the draft bill supplements the Model Law based on international best practices. First, the bill includes a reference to "an emergency arbitrator" in the definition of an "arbitral tribunal." Second, it expressly guarantees the confidentiality of the arbitration proceedings, subject to defined exceptions. Third, it contains a provision that expressly deals with the liability and immunity of arbitrators, appointing authorities, and arbitral institutions. Lastly, the bill contains a provision on representation in line with the prevailing trend of recognizing the parties' freedom to choose their representatives in international arbitration proceedings. Consequently, the enactment of the draft International Arbitration Bill will enable Palau to have one of the most advanced and comprehensive legislative regimes for international arbitration in the world.

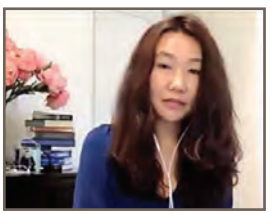
Mr. Udui acknowledged the work needed to implement the New York Convention, particularly in finalizing the adoption of the draft International Arbitration Bill and in building arbitration expertise in the judiciary, private sector, and local bar. He also touched upon the benefits of implementing the Convention—i.e., establishing a stable legal regime for arbitration in Palau will enable the country to reap the economic benefits available to Convention state parties, attract international commerce and foreign investments, and boost investor confidence. Such a regime will also help Palau avert the economic losses that they expect to face as a consequence of the COVID-19 pandemic and their vulnerability to external shocks.[1] The country will also be able to achieve UN Sustainable Development Goal (SDG) 8 (decent work and economic growth) and SDG 9 (industry, innovation, and infrastructure), improve the quality of foreign investments, and restart their economy.

Mr. Born highlighted two points that Mr. Udui made. First, countries acceding to the New York Convention and implementing state-of-the-art arbitration legislation can improve the quality of foreign investments coming in. If countries can assure

[1] According to ADB estimates, Palau's gross domestic product would shrink by 10.3% in 2020 and by 7.8% in 2021. ADB. Palau and ADB (accessed 24 May 2021).

businesses that they can rely on what their contracts stipulate, then they are more likely to attract the right kind of investments. Second, adopting sound legal infrastructure for international arbitration is just the beginning; governments should also make sure that the legal profession and the business community know how to use this infrastructure.

Dr. Manuel Carceres da Costa, minister of justice of Timor-Leste, identified the legal reforms they have undertaken in compliance with the New York Convention. On 2 February 2021, the Timor-Leste National Parliament approved the country's accession to the Convention.[2] A week later, on 12 February 2021, the National Parliament also approved the Law Proposal on the Legal Regime of Voluntary Arbitration, which aims to ensure an objective, impartial, equitable, useful, and efficient resolution of disputes. To attract more FDI and boost the economy, the Ministry of Justice is now preparing other legislative reforms and packages that are in line with the general legal framework of international arbitration.



Dr. da Costa added that Timor-Leste also signed the UN Convention on International Settlement Agreements Resulting from Mediation on 7 August 2019.[3] He ended by thanking and congratulating the organizers for making the conference possible and expressed his hope that all participants will continue working together to promote international arbitration.

Ms. Christina Pak, principal counsel and team leader of the Law and Policy Reform (LPR) Program of ADB, informed the participants about ADB's Promotion of International Arbitration Reform for

[2] As of 31 May 2021, the Government of Timor-Leste has not yet deposited its instrument of accession with the UN Secretary-General.

[3] The Convention entered into force on 12 September 2020 in accordance with article 14(1), stating that the Convention shall enter into force 6 months after the deposit of the third instrument of ratification, acceptance, approval or accession. The entry into force is only with respect to the 6 parties (of the 53 signatories) that have ratified it or acceded to it, namely Belarus, Ecuador, Fiji, Qatar, Saudi Arabia, and Singapore. For the rest of the signatories, their obligation is to refrain from acts which would defeat the object and purpose of the Convention pending its entry into force with respect to these signatories, pursuant to article 18 of the Vienna Convention on the Law Treaties.

Better Investment Climate in the South Pacific technical assistance, under which this conference was held.[4] The program has assisted several South Pacific countries in adopting state-of-the-art international arbitration laws. These countries include Fiji, which enacted its International Arbitration Act in 2017, and Tonga, which passed its International Arbitration Act in 2020. Palau's draft International Arbitration Bill is pending before Congress. However, despite this progress, many other South Pacific countries lack an effective legal framework for resolving cross-border disputes through international arbitration.

Ms. Pak emphasized that South Pacific countries and Timor-Leste should continue implementing legal reforms on arbitration to attract FDI, which constitutes a significant portion of Pacific economies. FDI is essential not just in job creation and private sector growth, but also in post-COVID-19 recovery efforts. She echoed Prof. Dr. Paniagua's recommendation that South Pacific countries should reduce human-made frictions and create a better contractual environment through international arbitration to boost their economy. These countries must also implement other reforms to improve the overall business climate in the region.

Ms. Pak ended by inviting all the participants to join the last session, wherein ADB and PSDI would conduct consultations to see how ADB could advance international arbitration reform in the South Pacific, and answer any questions that the audience might have.

At this juncture, Mr. Born reported on behalf of **Mr. Tatafu Toma Moeaki**, minister of trade and economic development of Tonga, who could not join the session due to internet connection issues. Tonga acceded to the New York Convention on 12 June 2020. On 10 September 2020, the Convention entered into force as to Tonga, 90 days after the government deposited its instrument of accession. The Tonga International Arbitration Act, which implements Tonga's obligations under the Convention, took effect on 3 January 2021.

Mr. Born described the Tonga International Arbitration Act as a state-of-the-art piece of legislation. The law does not only implement and build on the 2006 version of the UNCITRAL Model Law on International Commercial Arbitration, but it also incorporates international best practices in arbitration.

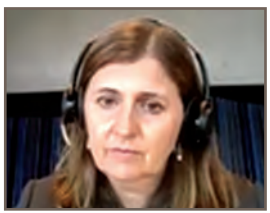
[4] ADB. Regional: Promotion of International Arbitration Reform for Better Investment Reform Climate in the South Pacific.

Lastly, **Mr. Daniel Meltz**, barrister and ADB international arbitration expert, discussed the results of ADB's efforts to build the capacity of the judiciary, private sector, and the legal profession with respect to international arbitration. In Fiji, one of the first countries to have legislation implementing the New York Convention, ADB conducted training for judges, businesses, and lawyers. So far, there is already significant activity on international arbitration reflected in court decisions. A number of commercial contracts also contain arbitration clauses. Local bars now have the opportunity to advise on arbitration clauses and cross-border disputes. Mr. Meltz expressed his hope that South Pacific bar associations can develop their own arbitration bars, have local appointees sit as arbitrators, and form a common pool of qualified arbitrators.

Mr. Meltz observed that many sectors in the South Pacific—particularly mining, oil and gas in PNG and Timor-Leste—are structurally well-suited to have disputes referred to international arbitration. These sectors may even have significant experience already in this field, although not necessarily with the proceedings conducted in their home jurisdictions. He ended by pointing out that even South Pacific countries without any experience or legal framework on international arbitration can quickly build the requisite capacity. International arbitration has become the key dispute resolution mechanism for businesses dealing with foreign parties, so implementing this reform will be very beneficial for adopting countries.

SESSION 3A

CONCURRENT BREAKOUT SESSION FOR LAWYERS: DRAFTING INTERNATIONAL ARBITRATION AGREEMENTS



Ms. Jo Delaney, partner at Baker McKenzie (Sydney), moderated this breakout session for lawyers. The session covered the different types of arbitration, the elements that should be incorporated in an arbitration agreement, and tips to consider and traps to avoid in drafting an arbitration clause.

To begin, Ms. Delaney touched upon the various modes of dispute resolution. Negotiation and mediation involve only the parties themselves, while expert determination, litigation, and arbitration involve third party decisionmakers.

She then enumerated the benefits of arbitration in relation to the benefits discussed by Mr. Gary Born in Session 2. First, the choice of independent tribunal, which goes hand in hand with even-handedness, means that parties get to select a tribunal which will uphold procedural fairness. Such tribunal will also satisfy the expert requirement because parties can appoint arbitrators who are experts in their particular dispute. Second, parties can select a neutral forum with flexible procedures, which is particularly important in cross-border disputes. The tribunal can also use procedures that are suited to the dispute at hand, and thus demonstrate the efficiency and expeditiousness of arbitration that Mr. Born had mentioned. Third, arbitration results in a binding outcome with a limited right of challenge. Parties have no right to appeal based on the facts and the law; this favors commercial parties who want to have a quick decision on their dispute and move on. Fourth, the confidentiality and privacy of arbitration are ensured by the rules of most arbitral institutions. The existence of the dispute and the arbitration—as well as anything produced during the arbitration proceeding—are all confidential. Finally, the key advantage of arbitration is its ease of enforcement, as Mr. Born had likewise said.

Mr. Daniel Kalderimis, a barrister at Twenty Essex, outlined the legal framework of arbitration. At the international level, the New York Convention, which binds 168 member countries, is the

first legal instrument that parties should consider. It provides a solid backing for arbitration agreements because it (i) enjoins members to require the submission of a dispute covered by an arbitration agreement to arbitration, and (ii) facilitate the enforcement of the arbitral award through a simple registration process. There are limited grounds for refusing enforcement either in the seat of arbitration or the jurisdiction where the assets of the debtor party are located. Therefore, to rely on this support, parties should never place the seat of the arbitration in a non-New York Convention member country. Parties should also look at the UNCITRAL Model Law on International Commercial Arbitration, which is designed to operationalize the New York Convention vision of making the enforcement of an arbitral award in a member country as straightforward as possible. The national arbitration law governs the arbitration at the local level. Finally, the terms of the arbitration agreement signed by the parties determine the details of the arbitration proceeding.

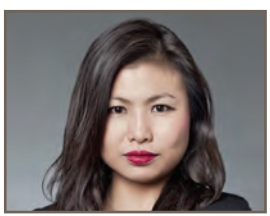
Mr. Kalderimis encouraged the participants to incorporate by reference a set of international arbitration rules—such as the Arbitration Rules of the SIAC and the ICC Rules of Arbitration—in the arbitration agreement. This avoids litigation due to failure to fix the procedural details of the arbitration proceeding. If the parties do not want to incorporate a particular set of arbitration rules, or they choose to incorporate rules that do not enjoy the support of an arbitral institution, then they may apply the UNCITRAL Arbitration Rules as revised in 2010.

Mr. Abhinav Bhushan, regional director for South Asia of the ICC Arbitration and ADR, ICC International Court of Arbitration, discussed the pros and cons of ad hoc arbitration versus institutional arbitration. He said that the main difference between the two types of arbitration is the incorporation of a particular set of arbitral institution rules in the arbitration agreement and, consequently, the availability of support from an arbitral institution.

He identified the key international arbitral institutions in Asia and the Pacific, namely the International Chamber of Commerce (ICC), the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC), the Australian Centre for International Commercial Arbitration (ACICA), the Arbitrators' and Mediators'

Institute of New Zealand Inc. (AMINZ), and the New Zealand International Arbitration Centre (NZIAC). All of these institutions are based—at least in part—on the UNCITRAL Model Law on International Commercial Arbitration.

Parties usually prefer institutional arbitration over ad hoc arbitration because of the much needed framework and supervision provided by many international arbitral institutions. First, the institution facilitates and supervises the proceedings throughout the entire process, i.e., from the moment a party registers a request for arbitration to the time the tribunal finally renders the arbitral award. Second, the institution ensures that disputes are resolved on time and without the claimant having to constantly litigate to resolve procedural complications, such as when the respondent refuses to participate or when the arbitrators incur delay in administering the proceedings or in rendering the award. Third, some institutions, including the ICC, scrutinize arbitral awards to make sure that they are easily enforceable by national courts. Lastly, the institution monitors the financial aspect of the arbitration daily. It can even reduce the fees of the arbitrators for failure to perform their job properly, or its administrative expenses for delays due to its own fault. Mr. Bhushan also said that parties can give the institution additional roles, such as appointing authority, escrow agent, and provider of certified true copies of arbitral awards.[5]



Ms. Koh Swee Yen, partner at WongPartnership LLP, spoke about two special SIAC procedures. The first, early dismissal process, enables the tribunal to quickly dismiss a claim or defense which is "manifestly without legal merit" or "manifestly outside the jurisdiction of the tribunal." The second, expedited procedure, applies to disputes involving at most $4.5 million in claims. The monetary ceiling for expedited procedure under both the ICC and HKIAC rules is $3 million.

Ms. May Tai, partner at Herbert Smith Freehills, identified the exclusive advantage of selecting Hong Kong as the seat of arbitration in disputes involving a China-related contract, a Chinese counterpart, or a China-based project

[5] Under Article 6 of the Rules of ICC as Appointing Authority in UNCITRAL or Other Arbitration Proceedings in force since 1 January 2018, the ICC International Court of Arbitration may appoint (i) a sole arbitrator; (ii) one or more arbitrators, if several arbitrators are to be appointed; (iii) the presiding arbitrator; or (iv) a substitute arbitrator. ICC. 2018. *Rules of ICC as Appointing Authority in UNCITRAL or Other Arbitration Proceedings*. Trappes: Imprimerie Port Royal.

or investment. Regardless of choice of arbitral institution, a Hong Kong-seated arbitration enables the claimant to seek interim relief from mainland China courts.

Mr. Kalderimis mentioned that in 2017, AMINZ adopted its revised Arbitration Rules to accommodate a simpler set of rules for smaller value disputes. NZIAC, on the other hand, has a number of expedited rules mostly suited to construction-related arbitrations but also applicable for any type of dispute.

Ms. Delaney shared that this year, ACICA revised its arbitration rules, especially on consolidation of arbitrations as well as multiparty and multicontract arbitrations.[6] ACICA also released its inaugural Australian Arbitration Report, which presents the results of the first empirical study on commercial arbitration in Australia.[7]

The panelists next talked about how to draft an arbitration agreement. To start, Ms. Koh discussed the six key elements. First, the submission to arbitration must make the reference to arbitration mandatory. She suggested using phrases such as "shall be referred to and finally resolved by arbitration" to avoid a situation wherein parties may elect to either litigate or arbitrate. She also cautioned the participants against using an exclusive jurisdiction clause or providing for both litigation and arbitration in the dispute resolution clause.[8] Second, seat determines the nationality of the arbitral award, or the place where a dissatisfied party may apply to set aside the award. It also determines the law which governs the arbitration, and therefore the grounds for setting aside an arbitral award. Depending on the seat, one may challenge both positive and negative jurisdictional rulings.

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[6] On 1 April 2021, the new ACICA Arbitration Rules incorporating Emergency Arbitrator Provisions and the Protocol for Decisions on Applications for Consolidation and Joinder and Challenges to Arbitrators under the ACICA Rules 2021 took effect. ACICA. 2021. *Arbitration Rules of the Australian Centre for International Commercial Arbitration. 2021 Edition*. Sydney; ACICA. 2021. *Protocol for Decisions on Applications for Consolidation and Joinder and Challenges to Arbitrators under the ACICA Rules 2021*.

[7] ACICA. 2021. *2020 Australian Arbitration Report*. Sydney.

[8] An exclusive jurisdiction clause is an agreement between the parties to submit to the exclusive jurisdiction of a particular court.

Third, the choice of arbitral rules depends on (i) whether parties want to have an ad hoc arbitration or an institutional arbitration, and (ii) in case of the latter, which arbitral institution rules they wish to govern the proceedings. She advised the participants to specifically stipulate any procedure that their clients do not wish to apply to the proceedings.

Fourth, the number of arbitrators can be based on the default provision in the chosen arbitral rules or stipulated in the arbitration agreement. An odd number of arbitrators, usually one or three, allows for the application of the majority rule in decisionmaking.

Fifth, language applies to the entire arbitration proceedings—from the pleadings filed to the hearings before the tribunal. All documents produced must be translated into the chosen language of arbitration.

Lastly, governing law controls the arbitration agreement, which is deemed separable from the main contract between the parties. In the absence of a provision on the governing law of the arbitration itself, the United Kingdom (UK) Supreme Court, in *Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38, affirmed the three-stage process set out by the Court of Appeal in *Sulamérica Cia Nacional de Seguros SA v Enesa Engenharia SA* [2012] EWCA Civ 638. Thus, courts must first look at the arbitration agreement itself to see if there is an express choice of law. Where the parties failed to specify the governing law of the arbitration but they have specified the law of the main contract, then courts must presume that they have have intended, by way of implied choice, that law to apply to the arbitration agreement itself. Absent any express choice of law to govern either the arbitration agreement or the main contract, then courts will apply the law that is most closely connected to the arbitration agreement, which is usually the law of the seat.

Ms. Delaney advised the participants to refer to the model clause used by arbitral institutions in case they have not yet drafted their arbitration agreement or they do not have a precedent. Mr. Bhushan added that arbitral institutions often provide their model clause on their website. He then focused on the ICC Model Clause, which already has two of the six elements discussed by Ms. Koh, namely the submission to arbitrate and arbitral rules. Parties therefore have to supply the other four elements. He also shared that most arbitral institutions also offer other kinds of arbitration procedures—such as expedited arbitrations and emergency arbitrations—which would automatically apply, unless parties specifically carve these out from the arbitration

agreement.[9] Ms. Koh showed the SIAC Model Clause which contains all the key elements except for the choice of governing law clause, which is already contained in the HKIAC Model Clause. She shared that she always advises her clients to add the governing law clause in the arbitration agreement to avoid any uncertainty as to the law applicable to the arbitration proceedings.

Mr. Kalderimis, Ms. Delaney, and Ms. Tai discussed the optional elements of an arbitration agreement and why lawyers should consider adding them to the contract. Mr. Kalderimis talked about inserting provisions on confidentiality for added protection, although certain jurisdictions already recognize an implied term of confidentiality without such clause. He also discussed waivers of appeal on a point of law for faster recognition and enforcement of the arbitral award, regardless of the seat of arbitration. He cautioned participants to think twice about adding all optional elements because parties often do not know enough about the exact arbitration procedures that they will need until after the dispute has already arisen. Ms. Delaney added that lawyers can stipulate that the arbitration process is designed to encourage the parties to reach a cost- and time-efficient resolution and to not go to to court. Ms. Tai spoke about stipulating on (i) the circumstances under which parties may request interim measures and the forum—the courts in the seat of arbitration, an emergency arbitrator, or the tribunal once constituted—which can grant interim relief; (ii) the finality and binding nature of the arbitral award subject to limited grounds for resisting enforcement or setting aside the award; and (iii) joinder and consolidation for efficient and cost-effective arbitration proceedings, especially if the party being requested to join or the other proceeding is related to the existing dispute.

Finally, the panel talked about the tips to consider and traps to avoid in drafting arbitration agreements. Mr. Bhushan stressed that arbitration agreements should not be boilerplate. Lawyers should ensure that it contains accurate, gender-neutral, and sufficiently broad terms. Further, the agreement must have only the elements necessary to make the arbitration work.

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[9] Compared to normal arbitrations, expedited arbitrations provide a faster, more streamlined, and less expensive way of resolving small value disputes. Emergency arbitrations enable parties to obtain urgent interim relief through the appointment of an emergency arbitrator before the formal constitution of the arbitral tribunal.

Ms. Koh suggested using the model clauses of arbitral institutions and walked the participants through seven common defects in arbitration agreements: (i) reference to both litigation and arbitration; (ii) combined mention of two seats of arbitration and a set of non-existing arbitral institution rules; (iii) a scope that is too narrow, such as one that only covers commercial disputes; (iv) non-existence of the specified arbitral institution; (v) non-existence of the specified arbitral institution rules; (vi) arbitration before a particular arbitral institution under the rules of another institution; and (vii) a vague reference to a city as either the seat or hearing venue of the arbitration.

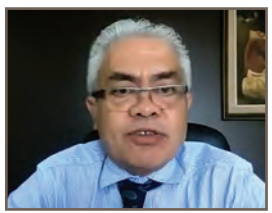
Ms. Tai encouraged the participants to consider the scope of the clause and make sure that it is broad enough to cover all disputes. The obligation to arbitrate must be mandatory. But parties may agree on the particulars of pre-arbitration steps, such as mediation and negotiation; the time frame of these steps so that if discussions fail within a certain period, then parties can proceed to arbitration; and whether a step is dependent on a later agreement. Having too many preliminary steps and triggers is not advisable because the respondent might not necessarily want to arbitrate anymore after a dispute has arisen. She also suggested having clear and specific carveouts from the arbitration clause—especially in mergers and acquisitions involving completion accounts, as well as disputes involving competition law, insolvency, and certain intellectual property issues—which are better resolved through litigation.

Mr. Bhushan again exhorted the participants to keep the arbitration agreement simple and not to overfill it with unnecessary optional provisions. He also told them to be aware of the possible disadvantages of having multitier dispute resolution clauses.[10] Lastly, he asked them to carefully check their drafting and cross-referencing, especially in multiparty, multicontract cases. Time frames between different dispute resolution mechanisms should be accurate and tight. Ultimately, the arbitration agreement must be certain and enforceable.

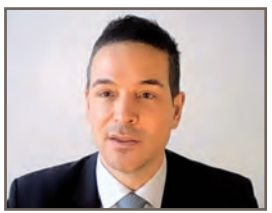
[10] A multitier dispute resolution clause (or multitier arbitration clause) requires parties to take certain steps, which may include negotiation, mediation or conciliation, before invoking the arbitration agreement and commencing the arbitration proceedings.

SESSION 3B

CONCURRENT BREAKOUT SESSION FOR THE PRIVATE SECTOR: CONTRACTING WITH FOREIGN PARTIES AND CROSS-BORDER DISPUTE RESOLUTION



Mr. Jon Apted, partner at Munro Leys, moderated this concurrent breakout session for the private sector. He first invited **Mr. Kevin Nash**, deputy registrar and director of SIAC, to discuss the differences between arbitration and litigation and the pros and cons of choosing either dispute resolution method.



At the onset, Mr. Nash highlighted that deciding between arbitration and litigation is not a binary choice. Often the two go together. Parties involved in arbitration will often need to go to court to enforce an award or to seek interim relief. Other modes of dispute resolution—such as negotiation, mediation, neutral evaluation, expert determination, and adjudication—exist. In the end, parties to a transaction have to answer several questions. What is best for their contract? What is the bargaining power between them? Is their relationship a long-term one that they must preserve? Can they predict the value of the potential dispute? Where are the parties coming from in terms of legal culture?

For Mr. Nash, the various modes of dispute resolution lie on a spectrum in terms of cost and duration. Mediation and expert determination are often the cheapest and fastest, followed by arbitration. Most arbitral institutions offer fast-track procedures. SIAC, for example, has an expedited procedure, wherein arbitrators can render an award in 6 months. Litigation, particularly one conducted in a foreign jurisdiction, can be more expensive than arbitration.

He shared that Singapore aims to be a place where any type of dispute can be resolved. There are six major institutions offering international arbitration in the country: SIAC, ICC, the Permanent Court of Arbitration (PCA) Singapore Office, the International Centre for Dispute Resolution (ICDR), the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, and the Singapore Chamber of Maritime Arbitration (SCMA). Many ad hoc arbitrations also take place in

the country. The Singapore International Mediation Centre offers international mediation, while the Singapore International Commercial Court offers international litigation.

Mr. Nash observed that in many instances, the dispute resolution clause—often called the "midnight clause" because it is drafted at the last minute—reveals that the parties had not been able to properly choose between arbitration and litigation. There could be contradictory terms within the clause. One party might be given the right to submit a dispute to arbitration or litigation. There could also be problems depending on where the award would be enforced.

Arbitration has adopted certain features of litigation—such as joinder, consolidation, and early dismissal of claims and defenses—that enhance its appeal as a dispute resolution choice. However, not all disputes may be submitted to arbitration. Those involving family law, patrimonial property rights, life, and health are usually not arbitrable.

There are also several instances wherein parties might prefer to go to litigation. First, they might want a decision based strictly on law. Arbitrators have considerable flexibility to accept any evidence they deem relevant. They may also make decisions based on perceptions of fairness and equity and not necessarily on evidence or rules of law.

Second, parties might want to have a right to appeal the decision which they would otherwise not have if they pursued arbitration. But they would need to consider the standards of review for appeal in such jurisdiction and the impact of the appellate process on the cost and duration of the proceedings.

Third, parties might need to resort to the court's power of coercion, impairment, and criminal sanction to compel the opposing party to comply with the judgment. Even if the parties submit their dispute to arbitration and obtain an arbitral award, they would still need to go to court to enforce the award.

Fourth, the openness of court proceedings to the public could be seen as an advantage. It not only enhances the transparency of litigation, but it also creates a precedent. In any event, Mr. Nash observed that arbitral institutions are working to increase the transparency of arbitration proceedings and the availability of arbitral awards, particularly in investor-state arbitrations.

Fifth, litigation provides for broader discovery processes, enabling parties to obtain documents and verbal responses from the opposing party or even from third parties, identify the strengths and weaknesses of the opposing party's case, and access information that might not otherwise be available through other forms of dispute resolution. Lawyers in arbitration proceedings usually submit prepared witness statements to obviate a protracted discovery process. But arbitration is also starting to see more robust discovery, which could increase the time and cost of proceedings.

Sixth, parties might find it easier to obtain interim relief—particularly ex parte relief—from courts. Under SIAC rules, a claimant can get an emergency arbitrator to grant urgent interim relief, such as an order to restrain a call on a bond, but this is not ex parte. Very few arbitral institutions allow ex parte emergency arbitration; if parties need ex parte interim relief, they might be better off pursuing such relief from a court. On this note, Singapore could serve as an ideal seat. Under its International Arbitration Act, parties can apply for interim relief from the court, even if they have an arbitration agreement, on the basis that the arbitral institution is unable to act effectively.

On the other hand, parties might prefer to submit their dispute to arbitration based on (i) the enforceability of an arbitral award in any of the 168 state parties to the New York Convention, and (ii) the possibility of conducting remote hearings due to the flexibility of arbitration rules. Parties can customize the arbitration process to allow for a fully remote hearing, or even a documents-only procedure where no hearing is needed.

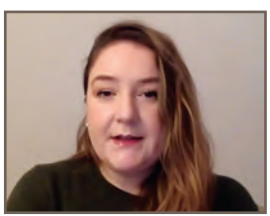
Mr. Nash stressed that not every mode of dispute resolution works in every transaction. Each mode can be suitable depending on the circumstances. Parties simply need to draft their dispute resolution clause carefully.

Mr. Apted asked Mr. Nash to expound on the difference between arbitration and litigation when it comes to right to appeal. The latter replied that there is no standard right to appeal in arbitration—a feature which some might perceive as a huge advantage of arbitration. However, under the Singapore Arbitration Act, the court may, on application of a party to the

arbitration proceedings who has given notice to the other parties, determine any question of law which the court is satisfied substantially affects the rights of one or more of the parties.[11]

Mr. Apted asked about the comparative costs of arbitration vis-à-vis litigation. Mr. Nash explained that legal fees, which increase as proceedings run longer, cost the most either way. Since arbitrations have procedures that allow them to conclude faster, especially given the lack of an appellate mechanism, parties might find arbitrations less expensive. In allocating costs, most arbitrations follow the so-called "costs follow the event" (or "loser pays") rule, wherein the losing party bears all of the costs of the arbitration.[12] By contrast, litigants are typically made to follow a cost schedule or bear their own costs. So, the ability to recoup costs is another advantage of arbitration.

Lastly, Mr. Apted asked Mr. Nash about the weaknesses of arbitration with respect to cross-border disputes. The latter answered that about 10 years ago, arbitration proceedings were becoming somewhat protracted and expensive. Arbitral institutions thus implemented changes to enable arbitrations to proceed more expeditiously and become less expensive. Every improvement has been aimed at getting arbitration back to those principles that made it appealing in the first place—fast and cost-effective dispute resolution, choice of adjudicators, ability to tailor to the parties' needs, enforceability of both the arbitration agreement and the arbitral award, and limited avenues for appeal.



Ms. Fedelma Smith, senior legal counsel at the PCA, spoke next about the advantages of arbitration, specifically speed, expertise, neutrality, and enforcement. First, arbitration can save

[11] Singapore Arbitration Act (Chapter 10), 2002. art. 45.

[12] There are two other approaches for allocating the costs of an arbitration. Under the "English approach" (or "American rule"), parties must bear their own legal and other costs and share equally in the arbitrators' fees and expenses as well as in the administrative charges, regardless of the outcome. M. Savola. 2017. Awarding Costs in International Commercial Arbitration. *Scandinavian Studies in Law*. 63. pp. 275–318. The other approach is to divide costs depending on the specific circumstances of the dispute. ICC. 2015. *ICC Commission Report: Decisions on Costs in International Arbitration*. 2015 (2). p. 19.

time and uncertainy for many reasons. Arbitration centralizes the dispute resolution forum, thereby avoiding protracted disputes in and between national courts over issues such as jurisdiction, forum selection, choice of law, evidence, and recognition of foreign judgments. Arbitration also minimizes the risk of having inconsistent decisions; bars appellate review except in limited circumstances; expedites adjudication through a choice tribunal unlike in litigation, wherein cases could be brought before courts which are already overburdened; gives parties control over the timetable for written pleadings and hearings, if any, and other procedural rules; limits discovery procedures; and allows for fast-track procedures, as well as early dismissal of claims and defenses.

Second, arbitration offers a more expert and experienced means of dispute resolution as the parties participate in the selection of arbitrators and can stipulate on the arbitrators' qualifications. In litigation, cases may be brought before local courts with little experience in complex international transactions or no specialization in the types of disputes that parties might have. Judges are also selected by operation of the court system and not by the parties themselves.

Third, arbitration can provide parties with a neutral forum for dispute resolution, whereas litigation can involve a court that is more convenient and familiar to the hometown party. Parties can appoint either a sole arbitrator or a presiding arbitrator, whose nationality is different from either of them. They can also require prospective arbitrators to actively confirm their independence or impartiality with respect to the parties or the subject matter of the dispute before accepting the nomination, or challenge the arbitrator based on conflict of interest.

For international transactions, parties can adopt internationally neutral rules and procedures to free themselves from unfamiliar local standards and requirements. This is not possible in litigation, wherein national courts must apply local rules and procedures that could be unfamiliar to foreign parties. International arbitration even allows the application of procedures that are rooted in a mix of legal traditions and the tailoring of these procedures to the particular dispute. For example, the PCA Arbitration Rules 2012 are especially suited in disputes involving at least one state, state-controlled entity, or intergovernmental organization.[13]

[13] Permanent Court of Arbitration. 2012. *Permanent Court of Arbitration Arbitration Rules 2012*.

Lastly, parties can rely on the enforceability of their arbitration agreement and arbitral award, owing to the near universal ratification of the New York Convention and the national arbitration laws that implement the Convention. Courts may refuse to recognize or enforce the arbitration agreement and the arbitral award only on limited grounds, whereas they may refuse to apply forum selection clauses in litigation on a more liberal basis. There is no global counterpart to the New York Convention in litigation, and very few regional arrangements exist to allow for the enforcement of foreign judgments. Thus, there is a significantly greater likelihood that a foreign arbitral award will bring an end to a dispute than a national court judgment.

Mr. Apted asked Ms. Smith about the remedies available to the parties to challenge or remove an arbitrator. In response, Ms. Smith said that parties could have recourse to the challenge mechanism under their agreed procedural regime. For example, under the PCA Arbitration Rules 2012, parties may challenge an arbitrator if "circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence" by giving notice of their challenge and the reasons therefor to all other parties, to the arbitrator who is challenged, to the other arbitrators, and to the International Bureau of the PCA.[14] The challenged arbitrator may withdraw from office or be removed by the PCA Secretary-General.[15]

Mr. Apted also asked Ms. Smith about the grounds for non-enforcement of a foreign arbitral award. Citing Article V of the New York Convention, Ms. Smith enumerated seven grounds. The first five can be invoked by the party resisting enforcement, while the latter two can be applied by the court on its own motion. Based on lack of due process, these first five grounds relate to (i) incapacity of the parties or invalidity of the arbitration agreement under the law to which the parties have subjected it; (ii) lack of proper notice to the party against whom the award is invoked of the appointment of the arbitrator or of the arbitration proceedings, or his inability to present his case; (iii) excess of jurisdiction of the arbitral award; (iv) noncompliance of the arbitral authority or arbitral procedure with the arbitration agreement, or absent such agreement, with the law of the seat of arbitration; and (v) failure of the award to become binding on the parties, or the fact that it has been set aside or suspended by a

[14] Footnote 13, art. 12(1), 13(1–2).
[15] Footnote 13, art. 1(4), 13(3–4).

competent authority of the country in which, or under the law of which, that award was made.[16] The remaining two are based on non-arbitrability of the dispute or violation of public policy in the country where the court is seated.

The next speaker, **Ms. Brenda Horrigan**, president of ACICA and partner/head of International Arbitration in Australia, Herbert Smith Freehills, discussed arbitration costs and duration of the proceedings. Over time, arbitration has become a fusion of common law and civil law approaches that differ in style, timing, and processes. To illustrate, she talked about two cases that she personally handled that had identical underlying issues, facts, legal questions, and subject matter. The first one was in Canada, a common law country, where the parties had been in court for a month because most of the testimonies were given through witness evidence. The second case was in Belgium, a civil law country, where the parties spent only 4 hours in court because most of the evidence came in through documentary submissions and pleadings, and she did not have to present witness testimony. Since these cases were subjected to two different styles, they were resolved under different timings and approaches.

As a fusion between common law and civil law approaches, arbitration allows for limited and shorter witness testimony than what is permitted in a common law jurisdiction. It relies more on documentary submissions based on documentary production rules that are not available in most civil law jurisdictions but not nearly to the extent used in common law jurisdictions. As such, arbitration may not necessarily be cheaper and faster than litigation because in some civil law jurisdictions, litigation may be faster and cheaper. Nonetheless, one can presume that the arbitral award is going to be enforceable.

Ms. Horrigan then delved into what parties can do to make arbitration as cost-efficient and fast as possible. First and foremost, they should pay closer attention to drafting the dispute resolution clause, rather than simply incorporating a

[16] An arbitral award may fail to become binding on the parties in a non-binding arbitration. In such an instance, the award is only an advisory opinion and becomes final only if accepted by the parties.

midnight clause. A linguistic inconsistency can easily add months, if not more, as well as hundreds of thousands in monetary cost to an arbitration proceeding. Carelessly adding in qualifications of arbitrators could also be an expensive mistake.

Second, parties can make sure that they streamline the dispute resolution process in terms of preliminary steps, notices, and evidence. Document retention policies also impact the time and cost for producing evidence to prove claims and defenses. In contrast to many companies in the US that are good at retaining documents because of the possibility of a suit, a company without good document retention policies might have to conduct extensive document production exercises to find needed documents.

Third, parties must choose arbitrators who can give sufficient time and attention to the case. An arbitrator who is too busy, not proactive, or otherwise distracted, may delay the proceedings. Citing Mr. Nash, Ms. Horrigan said that there is a direct correlation between how long something takes and how expensive it becomes. As Parkinson's Law states, "work expands to fill the time allotted." Instead of setting artificial deadlines, parties must ensure that their arbitrators are pushing the proceedings forward at a reasonable pace, issuing early procedural orders to implement international best practices, and directing them to take steps to shorten the proceedings and arrive at better results.

Fourth, parties must be disciplined when it comes to identifying what is directly relevant to their dispute. They should focus on what is material to the outcome of the case, rather than go off on expensive tangents.

Fifth, parties and their lawyers must bear in mind the differences between arbitration and litigation. They are free to choose the rules and procedures for arriving at a resolution expediently. So instead of subjecting the arbitration process to tedious litigation rules, they should focus on best practices that allow arbitration to carry on as efficiently as possible.

Lastly, parties should ensure that enforcement of the arbitral award is relatively straightforward by knowing their counterparty and taking steps to secure the latter's compliance with the award. If one party is based in a jurisdiction with questionable courts and likely to resist enforcement, then the other should consider ringfencing that counterparty's assets in a country that has a good enforcement record. This way the former can have greater leverage over the counterparty once they have a dispute and it is time to enforce an arbitral award.

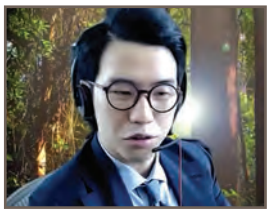
In conclusion, Ms. Horrigan stressed that there is a lot that parties can do to make sure their arbitration runs smoothly and efficiently and results in a faster and cheaper proceeding.

Mr. Apted asked Ms. Horrigan to talk about the international best practices in minimizing costs and duration of an arbitration proceeding. The latter replied that the parties and the arbitrators should hold an early case management conference to allow the arbitrators to get a good understanding of what the parties think their dispute is about. At the onset, the parties should establish a timetable for the entire proceeding, organize early discussions between experts to make sure they are all addressing the same issues, and decide on the format of submissions and proceedings—whether memorials or pleadings—to avoid having submissions that do not respond to each other.

On this note, Mr. Apted asked Ms. Horrigan to explain the difference between memorials and pleadings. Ms. Horrigan said that the memorial approach requires parties to present all evidence and arguments of fact and law upfront, whereas the pleadings approach lets parties offer more skeletal submissions early in the proceeding and hand in their evidence and arguments later. She encouraged the participants to peruse the ACICA website for more information on the distinction between memorials and pleadings.[17]

Mr. Apted also asked Ms. Horrigan to share any other recommendations she might have for parties to help control the duration and cost of arbitration proceedings. In response, she shared that parties should discuss their precise goals with their counsel early on. Sometimes, parties do not need to win everything; they might just want to make a point or accomplish a specific goal. Parties and their counsel must discuss early and thoroughly to make sure that they are working toward the same goals.

[17] The recorded webinar entitled "ACICA Webinar: Written Submissions in International Arbitration — Memorials or Pleadings?" is available at ACICA. ACICA Webinars. ACICA shares more detailed information on the topic in ACICA Practice & Procedures Board. *ACICA Explanatory Note: Memorials or Pleadings?*



Mr. Jonathan Lim, counsel at Wilmer Cutler Pickering Hale and Dorr LLP, talked about the commercial considerations parties and lawyers may have in using international arbitration clauses in a contract. Referring to Ms. Horrigan's exhortation for contracting parties to take ownership over their arbitration to save on time and cost, Mr. Lim advised the participants to take care in crafting the arbitration clause.

Parties should take advantage of the fact that arbitrations can be tailored to their needs. They should anticipate their needs and wants as early as possible and incorporate these into the dispute resolution clause. They should also keep the arbitration clause simple and close to model arbitration clauses published by arbitral institutions, and select a neutral and predictable forum.

Mr. Lim next discussed the critical (or key) elements and optional elements of an arbitration agreement.[18] Critical elements are those that parties and their counsel must carefully think about before incorporating in the arbitration clause. He then discussed five critical elements. The first involves a choice between institutional arbitration—which is administered by an arbitral institution that assists in the selection of arbitrators, acts as repository, arranges the logistics of hearings, deals with deposits and fees, reduces the risk of procedural deadlocks, scrutinizes the award, and does everything to give the parties a business class arbitration experience—and ad hoc arbitration, which can be more flexible, customizable to the parties' needs, and less expensive than institutional arbitration. The decision may depend on the parties' prior arbitration experience or lack thereof.

The second is the choice of arbitral institution and rules to govern the arbitration. Some arbitral institution rules provide for default rules on certain details, such as the appointment of arbitrators, challenge to arbitrators, and fees. They can also offer additional features, including expedited procedures, joinder, and consolidation. Neutrality, track record, cost, and proximity

[18] Ms. Koh, Mr. Kalderimis, Ms. Delaney, and Ms. Tai also talked about this topic in Session 3A Concurrent Breakout Session For Lawyers: Drafting International Arbitration Agreements.

to the parties are main considerations for selecting an arbitral institution. For parties in the Pacific, it might not make sense to select an institution based in Paris, New York, or Chile; they might be better off with any of the institutions already providing excellent service in the area, including SIAC, ACICA, AMINZ, and NZIAC.

Third, parties must clearly specify the kinds of disputes that they want submitted to arbitration. This avoids the situation wherein some disputes go to arbitration, while closely related disputes go to courts. Having multiple decisionmakers rule on effectively the same dispute may not only be more costly and complicated, but it also poses the risk of arriving at inconsistent decisions. Parties should also consider joining third parties and relevant agreements in the same dispute resolution process.

Fourth, the seat is the legal home of the arbitration. Courts in the seat may supervise the process and intervene when necessary to enforce arbitration agreements and either enforce or set aside arbitral awards. The law of the seat also provides the procedural rules and basic standards for fairness in the conduct of the proceedings. Predictability, track record, and neutrality should guide the parties in selecting their seat of arbitration.

Fifth, parties should provide for the number and qualifications of arbitrators, as well as the procedure for appointing them. Although helpful to those in a specialized industry, specifying certain attributes might constrain the parties' ability to select the right arbitrators, once a dispute has arisen. After all, the dispute may not be technical but contractual in nature. Controversies may also arise as to whether an appointee fits the criteria set out in the arbitration clause.

Optional elements, on the other hand, are those that parties do not necessarily have to stipulate in their arbitration clause. But these elements may be important to parties in certain sectors, such as confidentiality for those in the design or pharmaceutical industries. Other optional elements include multitier dispute resolution clauses, as well as provisions on disclosure and fast-track procedures. Mr. Lim advised the participants to start with the model clause provided by their preferred arbitral institution.

Answering a question from the participants on whether he foresees virtual or remote hearings as becoming the default choice of parties to an arbitration, Mr. Nash said that parties have, in any case, the option to stipulate whether virtual hearings are

permissible or not. Several arbitral institutions, such as the London Court of International Arbitration (LCIA), already have express rules on remote hearings, while others have rules that do not prohibit virtual hearings, and thus leave room for flexibility. A hybrid set up—wherein parties must evaluate the need for in-person vis-à-vis remote hearings depending on the evidence that they need to present—will likely arise. In any event, the collaboration among arbitral institutions and the development of new technologies help make arbitration become what everyone wants it to be—fast, cost-effective, and global.

Mr. Lim added that such a hybrid set up as Mr. Nash described will likely emerge. Parties are already aware that they do not have to all be in the same room to have a hearing. So they will decide what is best for them in each dispute, depending on whether the need to present evidence in person justifies the cost of flying to the venue of the hearing.

SESSION 3C

CONCURRENT BREAKOUT SESSION FOR JUDGES: IMPLEMENTATION OF THE NEW YORK CONVENTION – JUDICIAL PERSPECTIVE

Justice Ambeng Kandakasi, deputy chief justice of the Supreme and National Courts of Justice of PNG, served as session moderator. **Ms. Pak**, **Mr. Meltz**, **Mr. José Augusto Fernandes Teixeira** (partner at Da Silva Teixeira & Associados), and **Mr. Julian Cohen** (barrister and arbitrator at Gilt Chambers) served as session facilitators.

Justice Kandakasi highlighted the benefits of arbitration reform for the South Pacific. Aside from attracting FDI, promoting party autonomy, and facilitating a lasting resolution of commercial disputes, arbitration also helps courts manage their case backlog and delayed judgment problems.

Justice Kandakasi also talked about the crucial role that the judiciary plays in making arbitration work. Judges issue stay of court proceedings to give effect to arbitration agreements, and recognize and enforce foreign arbitral awards. But judges face challenges in rendering decisions that conform to international norms and best practices, cater to domestic needs, and promote confidence in arbitration.

He framed this session as a forum for judges from countries that have already adopted arbitration reform to (i) share their respective judiciary's experiences in implementing the New York Convention and deciding arbitration-related cases, (ii) discuss how courts in the region can improve the enforcement of arbitral awards, and (iii) talk about arbitration practice in their jurisdiction and the attitude of superior courts towards enforcing arbitration agreements and providing effective judicial support to arbitration.

Chief Justice James Leslie Bain Allsop of the Federal Court of Australia began by recalling that Chief Justice Sundaresh Menon of the Supreme Court of Singapore once told him that courts and arbitration bodies comprise the international justice system. Arbitrators, whether appointed in institutional or ad hoc arbitration proceedings, uphold the rule of law in international commerce by issuing arbitral awards. Likewise, courts facilitate the effective resolution of disputes worldwide and support the rule of law in commercial disputes either by supervising the seat of arbitration or by recognizing and enforcing arbitral awards.

For this international justice system to work, judges and courts must understand the philosophy underlying the structure and details of the New York Convention and the UNCITRAL Model Law on International Commercial Arbitration. At the same time, parliaments and legislatures must keep legislation consistent with the New York Convention and the UNCITRAL Model Law. The Australian Parliament incorporated these two legal instruments in the International Arbitration Act 1974.

The Federal Court of Australia and the supreme courts of the Australian states and territories are charged with administering the International Arbitration Act. In the last 20–25 years, courts have enforced countless arbitral awards and granted injunctive relief to protect the integrity of arbitration proceedings. In the last 20 years, an increasing number of international arbitration proceedings have been conducted in the country, with courts being called upon to exercise supervision in aid of arbitration. In the last 10–15 years, Australian jurisprudence on arbitration has reflected the courts' pro-enforcement stance—similar to the jurisprudence that developed in Hong Kong and Singapore.

Chief Justice Allsop identified the challenges that Australian courts have faced in the last few years in relation to attempts by some litigants to use public policy as a ground for non-recognition and non-enforcement of an arbitral award. Courts have resisted these attempts and required "demonstrable unfairness" to successfully invoke this ground.

Finally, Chief Justice Allsop described the judiciary's efforts to support arbitration in the country. First, the Federal Court of Australia is developing a practice note to guide the management of applications concerning commercial arbitration. Second,

specialist arbitration judges manage court registries across the country under the supervision of two judges—one based in Sydney and the other in Perth. Remote audio-visual conferencing technology has enabled these judges to work efficiently during the COVID-19 pandemic and assign any arbitration-related case to a specialist arbitration judge. Third, the Federal Court of Australia allows the submission of disputes initiated in courts to arbitration. Parties can opt to have their arbitration governed by a tighter appeal framework than the one under the UNCITRAL Model Law on International Commercial Arbitration. The type of arbitration supervised by the Federal Court of Australia can be a general arbitration governed by the parties' agreement or a bespoke arbitration originating from a court.

The next speaker is **Justice Anselmo Reyes**, an international judge of the Singapore International Commercial Court (SICC). He discussed the implications of the accelerated use of remote technology in arbitration proceedings on efforts by judiciaries in Asia and the Pacific to become international, regional or quasi-regional dispute resolution centers. His main finding is that remote technology makes geography immaterial to international dispute resolution. It also minimizes the carbon footprint of arbitrators and stakeholders in arbitration, and minimizes the costs of arbitration.

Justice Reyes then argued that if geography does not matter, then arbitration is delocalized. It is judicial credibility—that is, whether investors or potential investors perceive the judiciary in a certain jurisdiction to be impartial, efficient, cost-effective, and competent in providing support to alternative dispute resolution, especially arbitration—that determines the parties' choice of seat of arbitration. He identified the problems affecting judicial credibility in the countries that he has worked in. The recent enactment of the Hong Kong National Security Law may lead the public to question the Hong Kong judiciary's ability to deliver impartial decisions where mainland Chinese government entities and state-owned enterprises are concerned. The fact that English is not widely used in Japan makes it more costly to arbitrate there given the need to translate English documents into Japanese, the national language, to get judicial support. Corruption issues, as well as the uncertainty in how

Cambodian courts will react to applications for judicial support and corruption issues, may prevent parties from designating Cambodia as seat, despite the amendment of the National Commercial Arbitration Center's procedural rules. Similarly, the reputation of the Philippines as a corrupt jurisdiction—whether warranted or unwarranted—can affect its appeal as a seat of arbitration, despite the issuance of the 2020 Guidelines for the Conduct of the Court-Annexed Mediation (CAM) and Judicial Dispute Resolution (JDR) in Civil Cases.

Lastly, Justice Reyes identified five areas where judicial support in relation to arbitration, especially international arbitration, is required: (i) enforcement of arbitration agreements, (ii) rulings on jurisdictional appeals, (iii) applications for interim measures, (iv) applications to set aside arbitral awards, and (v) applications for the recognition and enforcement of arbitral awards. The first and fifth areas arise under the New York Convention. The second, third, and fourth areas relate to the UNCITRAL Model Law for International Commercial Arbitration.

On the enforcement of arbitration agreements, Justice Reyes foresees businesses bringing anti-suit injunctions and anti-anti-suit injunctions, where they will try to bring their case to a favorable jurisdiction in breach of their arbitration agreement.[19] In *Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38, the UK Supreme Court upheld the England and Wales Court of Appeals decision to restrain Chubb Russia from continuing with the court proceedings in Russia. For Justice Reyes, the UK courts should have referred the dispute to an arbitral tribunal to first determine whether Russian law applies to the arbitration agreement or not. The question then becomes at what point should a court intervene to say that the arbitration agreement is "null and void, inoperative or incapable of being performed." On the recognition and enforcement of arbitral awards, Justice Reyes expects courts to rule on questions similar to the one raised in *Halliburton Company v Chubb Bermuda Insurance Ltd* [2020] UKSC 48—what would be the effect of arbitrators' non-disclosure on the arbitral award?

[19] An anti-suit injunction is an order restraining a party from instituting or continuing proceedings in a jurisdiction or forum other than the one agreed upon. An anti-anti-suit injunction is an order to stop the proceedings in an anti-injunction suit.

Justice Kamal Kumar, acting chief justice of the Supreme Court of Fiji, discussed the arbitration regime in Fiji.[20] Fiji's International Arbitration Act 2017 took effect on 4 December 2018 and applies even to international arbitration proceedings that began prior to its effectivity. The law is a comprehensive state-of-the-art law based on the UNCITRAL Model Law on International Commercial Arbitration. It also incorporates provisions from Australia's International Arbitration Act 1974, the Singapore International Arbitration Act, and the Hong Kong Arbitration Ordinance (Cap. 609).

Justice Kumar pointed out that under Fiji's International Arbitration Act 2017, a court may refuse to recognize or enforce an arbitral award if doing so would be contrary to Fiji's public policy. An interim measure or award conflicts with, or is contrary to, Fiji's public policy if (i) the making of the interim measure or award was induced or affected by fraud or corruption, or (ii) a breach of the rules of natural justice occurred in connection with the making of the interim measure or award.[21] Justice Kumar explained that a breach of the rules of natural justice may happen if the conduct of the arbitration proceedings is considered unfair or against a Fijian law.

Since the law took effect in 2018, the Fijian judiciary has presided over two applications for a stay of court proceedings. The first—*Stantec New Zealand Limited v Fiji Roads Authority [2018] FJHC 867 HBC324 of 2016 and Fiji Roads Authority v Stantec New Zealand Limited & Ors* [2018] HBC227 of 2017—involves the same set of facts. The Fiji Roads Authority ("FRA") contracted Stantec New Zealand ("Stantec") to provide road management services in Fiji. FRA filed a case for specific performance without following the procedure laid down in their arbitration clause. Stantec filed an application for stay of court proceedings, which it then sought to amend based on the provisions of the International Arbitration Act 2017. The court ruled that the dispute relates to an agreement entered locally. So the Fiji Arbitration Act 1965, and not the International Arbitration Act, governs the dispute. The court also ruled that it has no power to compel the parties to refer their dispute to arbitration and dismissed the summons in both cases.

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[20] Justice Kumar's powerpoint presentation is included in Chapter 13 Accompanying Materials.

[21] International Arbitration Act 2017 (Act No. 44 of 2017). sec. 55.

The second, *South Pacific Fertilizer Limited (Fiji) v Allied Harvest International Pte Limited (Singapore)* [2019] FJHC 400 HBC142 of 2017, involves a contract for Allied Harvest International Pte Limited (Singapore) ("Allied Harvest") to supply South Pacific Fertilizer Limited (Fiji) ("SPFL") with fertilizers. However, Allied Harvest did not release the fertilizers to SPFL. SPFL thus filed a case for interim mandatory injunction for the delivery of the fertilizers, despite ongoing arbitration proceedings in Singapore. Allied Harvest filed an application for stay of proceedings. The court referred the dispute to arbitration and stayed the proceedings.

Lord Chief Justice Michael Whitten QC of the Supreme Court of Tonga presented next on Tonga's arbitration law regime.[22] Tonga's International Arbitration Act entered into force on 3 March 2021—only 2 weeks before the conference was held. Prior to the enactment of this law, Tonga did not have a law governing domestic or international commercial arbitration. The only legislation that partially dealt with arbitration was the Reciprocal Enforcement of Judgments Act, which defined "judgment" as including arbitral awards that had become enforceable in the same manner as a judgment rendered by a court in the place where the award was made.

Lord Chief Justice Whitten talked about *Fletcher Construction Co Ltd & Ors. v Montfort Bros* [1995] TLR 142, which he found to be the only arbitration related case decided by the Supreme Court. Then Chief Justice Robin Maclean Webster applied the English Arbitration Act, 1950 and the applicable English rules of procedure and held that the subject arbitral award was final and binding, and thus enforceable as a judgment by the court. In 2003, Tonga abandoned its adherence to English statutes, where they had been required, but continued to rely on English common law and rules of equity to fill any gap in national legislation.

Tonga receives foreign aid, as well as bilateral and multilateral development support, from more developed donor partners in the Pacific. But, as a developing country, Tonga's future sovereignty, economic prosperity, and ability to cope with changes and challenges depend largely on two things: (i) its level of commercial and other engagement with the proximate international

[22] Lord Chief Justice Whitten's speech is included in Chapter 13 Accompanying Materials.

community; and (ii) its ability to promote trade and investment relationships built on trust and a certain, stable, and secure legal and regulatory environment. Thus, Tonga acceded to the New York Convention and enacted the International Arbitration Act to establish a more reliable and supported legal environment for the conduct of international arbitration and the enforcement of foreign arbitral awards in Tonga.

Lord Chief Justice Whitten described the International Arbitration Act as a comprehensive and cutting-edge piece of legislation. The law exceeds the minimum requirements of the New York Convention and adopts the UNCITRAL Model Law on International Commercial Arbitration. Section 8 gives a very detailed definition of an arbitration agreement. Section 19 empowers the arbitral tribunal to rule on its own jurisdiction and recognizes the separability of an arbitration clause from the main agreement. Section 9 mandates the court, seized of a matter which is the subject of an arbitration agreement, to refer parties to arbitration, unless the arbitration agreement is null and void, inoperative, or incapable of being performed. Sections 21–31 provide for the granting and enforcement of interim measures.

Tonga's International Arbitration Act also incorporates international best practices, trends, and developments in international arbitration. It likewise integrates the rules of leading arbitration seats, such as Australia, Hong Kong, and Singapore. First, the law defines an "arbitral tribunal" as including an "emergency arbitrator" and enables parties to obtain urgent interim relief before the constitution of the tribunal. Second, it allows for representation by recognizing the parties' freedom to choose their representatives in international arbitration proceedings and assures parties that local restrictions on representation will not be applied in such proceedings. Third, it expressly guarantees the confidentiality of arbitration proceedings, subject to defined exceptions.[23] Lastly, it deals with the liability and immunity of arbitrators and their employees or agents, as well as of appointing authorities and arbitral institutions.

[23] Section 45(2) of the Tonga International Arbitration Act 2020 authorizes the publication, disclosure or communication of information relating to the arbitration proceedings or the arbitral award in five instances: (i) to protect or pursue a legal right or interest of the party; (ii) to enforce or challenge the arbitral award in legal proceedings before a court or other judicial authority in or outside Tonga; (iii) to comply with a legal obligation to make such publication, disclosure or information to a government body, regulatory body, court or tribunal; (iv) to comply with the arbitral tribunal's order allowing a party to do so; and (v) to make such publication, disclosure or information to a professional or any other adviser of any of the parties.

Finally, Lord Chief Justice Whitten said that the passage of the International Arbitration Act is only the first step towards implementing the New York Convention in Tonga. The Government of Tonga also needs to raise the awareness and capacity of the public and private sectors to achieve two things: (i) reap the economic benefits of commercial dealings based on the Convention, and (ii) establish the country's reputation as having a predictable and effective arbitration legal regime.

The last speaker, **Justice Jeffery Shepherd** of the Supreme and National Courts of Justice of PNG, briefly addressed the draft Arbitration Bill discussed by Dr. Eric Kwa in Session 2.[24] The PNG judiciary expects this bill to revolutionize the arbitration regime in the country. The PNG legislation when enacted will deal with both domestic and international arbitration.

He then focused on the challenges faced by the PNG judiciary in terms of addressing arbitration-related issues, such as whether public policy considerations can justify the court's refusal to enforce international arbitration agreements. Since the country gained independence in 1975, PNG courts have often stayed court proceedings and referred disputes to arbitration. However, since 2005, a line of cases raised issues which went far beyond the parties' arbitration agreement: Were there good reasons for parties to not go to arbitration? What was the attitude of the parties to arbitration? Was the defendant still ready and willing to go to arbitration? Has the defendant filed a defense in the court proceedings? Did the arbitration agreement make it mandatory for the parties to refer their dispute to arbitration? Has the plaintiff approached the court? These cases ignore the fundamental principle of arbitration: once the parties have agreed, through their commercial arrangements, to submit their dispute to arbitration, they have decided to waive the courts' jurisdiction to resolve their dispute.

Justice Shepherd shared a 2019 PNG Supreme Court decision, penned by Justice Kandakasi, which held that the parties had disregarded their obligation to refer their dispute to arbitration by going to court. Thus, the Supreme Court remitted the case back to the national court, before which the case was first brought, and directed that the entire proceedings in the national

[24] Justice Shepherd's powerpoint presentation is included in Chapter 13 Accompanying Materials.

court be stayed pending the parties' arbitration. In Justice Shepherd's opinion, PNG courts will now start to overturn earlier decisions that introduced extraneous factors into whether the court should enforce domestic and foreign arbitral awards.

At this juncture, Mr. Cohen said that ADB will be circulating the presentations of the speakers and a paper prepared by **Justice Jawad Hassan**—a judge of the Lahore High Court, Pakistan—who attended the breakout session for judges as an observer.

In the interest of time, Justice Kandakasi told the participants to ask questions via electronic mail. He also mentioned that Mr. Meltz and Mr. Cohen would be providing everyone with a copy of the session summary via electronic mail.

Ms. Pak thanked everyone for participating in this breakout session and informed them about ADB's new technical assistance that aims to (i) build judicial capacity on commercial, environmental, and climate change laws, and (ii) strengthen judicial cooperation platforms and knowledge exchanges. She invited them to suggest topics that they would like ADB to cover, consult regarding this new technical assistance, and take part in future events.

Justice Kandakasi expressed gratitude to ADB for offering to conduct judicial training, which helps judiciaries harmonize their approach to arbitration. He then shared that the PNG judiciary is developing a new electronic case management system, which is designed to prevent parties—who are bound by their arbitration agreement—from going to court without first submitting their dispute to arbitration. This filtering process will enable judges to focus on cases involving the enforcement of arbitral awards, instead of applications for stay of arbitration proceedings.

Mr. Cohen thanked Justice Kandakasi for moderating the session, the speakers for sharing their respective jurisdiction's experiences in dealing with arbitration related cases, and the audience for attending the session. He emphasized the importance of learning from cross-jurisdictional dialogues, such as this breakout session for judges.

SESSION 4
CONCLUDING REMARKS AND RECOMMENDATIONS

Ms. Christina Pak moderated this last session, which focused on how ADB will carry out the work done under its *Promotion of International Arbitration Reform for Better Investment Climate in the South Pacific* technical assistance going forward. **Ms. Mary Kim**, ADB's PSDI team leader and senior programs officer, and **Mr. Terry Reid**, PSDI international business law expert and team leader for business law reform, served as co-moderators.

Ms. Pak said that this technical assistance under ADB's LPR Program has spearheaded arbitration reform and supported this annual international arbitration conference in the South Pacific over the last 3 years. PSDI will continue this arbitration reform work and get other Pacific countries on board as well.

Ms. Kim discussed PSDI's work across the 14 Pacific developing member countries of ADB. PSDI's goal is to help them achieve sustainable economic growth by improving their business environment. Based in Sydney, PSDI has a team of consultants that provides technical assistance and capacity building in five focus areas: financing growth, business law reform, state-owned enterprise reform and public-private partnerships, competition and consumer protection, and economic empowerment of women.

PSDI's business law reform work, managed by Mr. Reid, involves collaborating primarily with governments to create a business-enabling environment. It employs a three-pronged approach: (i) drafting and amending legislation, (ii) providing training, and (iii) helping governments implement laws, policies, and regulations. Ms. Kim expounded on the ongoing PSDI study mentioned by Ms. Schou-Zibell in Session 1. The said study will identify the barriers to attracting FDI in six Pacific countries and inform PSDI's work on driving FDI to the region. International arbitration reform falls under the business law reform area.

PSDI will build on its accomplishments since it started operating in 2007 to further arbitration reform in the Pacific. It will do so by promoting the ratification of the New York Convention, enactment of needed arbitration legislation, and capacity building in the region.

Mr. Reid began by congratulating Ms. Pak, Mr. Meltz, Mr. Born, Mr. Lim, and the rest of the team for all that the *Promotion of International Arbitration Reform for Better Investment Climate in the South Pacific* technical assistance has achieved to date. The LPR Program, headed by Ms. Pak, benefits ADB's portfolio of clients. Mr. Reid confirmed that PSDI will continue the immense work already started under this arbitration reform technical assistance, with the support of highly experienced and qualified consultants (including Mr. Meltz, Mr. Born, and Mr. Lim, whom PSDI has managed to retain).

Mr. Reid shared that a work commissioned by ADB's Pacific Department nearly 20 years ago highlighted the importance of arbitration in creating a private sector enabling environment. As a long-term technical assistance, PSDI stands ready and equipped to further arbitration reform in the region.

Ms. Pak acknowledged the contributions of development partners, such as the UNCITRAL, the international arbitration community, and her team of experts (Mr. Meltz, Mr. Born, and Mr. Lim) to the success of this technical assistance. She also thanked PSDI for advancing this work and bringing it to more Pacific countries. She talked about the various technical assistance projects under the LPR Program that aim to create an enabling environment in other areas (such as digital economy and gender equality). She likewise discussed the LPR Program's flagship judicial capacity building initiatives in commercial law, environmental and climate change adjudication, and other sustainable development issues.

Finally, Ms. Pak expressed appreciation for those who helped make this conference a success: (i) the entire technical team, Outbound Asia Inc., managed by Martin Block and Stefanie Leuterio; (ii) the One ADB team, including Ms. Kim, Mr. Reid, and Mr. Jarrod Harrington from PSDI; Ms. Vivian Camille T. Pabelico and her team from the Events Management Unit; Mr. Vladimer Diamonon and his team from the Information Technology Department; and Ms. Maria Cecilia T. Sicangco,

Ms. Ryah Zendra M. Sanvicente, Ms. Gladys Cabanilla-Sangalang, Ms. Imelda T. Alcala, and Mr. Angelo Jacinto from the Office of the General Counsel; and (iii) all the participants. She hoped to continue engaging and working with everyone to help ADB DMCs.

Mr. Meltz thanked Ms. Pak for her excellent leadership and dedication to arbitration reform. On behalf of Mr. Born and Mr. Lim, Mr. Meltz expressed eagerness to work with Ms. Kim and Mr. Reid. He invited the audience to raise questions before closing the conference.

A passenger ferry approaches the Ebeye dock in the Marshall Islands (photo by Eric Sales/ADB).

Upgrading Samoa's power sector provides consumers with sustainable and reliable electricity services and propels the development of other industries (photo by Eric Sales/ADB).

5 INAUGURAL SESSION SPEAKERS

THOMAS MICHAEL CLARK

General Counsel, Asian Development Bank (ADB)

Mr. Thomas M. Clark holds a Doctor of Laws degree from Columbia University, where he was Notes Editor of the Columbia Law Review, and a Bachelor of Arts degree in Government from Harvard University. He has over 30 years of experience in legal and government affairs practice, spanning the financial services, energy and infrastructure sectors.

After a judicial clerkship on the U.S. Court of Appeals for the D.C. Circuit, and legal practice at the law firms of Sullivan & Cromwell in New York and WilmerHale in Washington, D.C., Mr. Clark joined the General Electric Company, one of the world's largest infrastructure and technology companies. His 22-year career at GE included 16 years based in Japan and covering the Asia-Pacific region, as General Counsel for GE's largest Asian financial services arm, and as Executive Counsel for Government Affairs and Policy, working with regulators and governments throughout the region on key legal and policy initiatives, and holding leadership roles in industry associations and private sector advisory bodies for APEC and ASEAN.

Most recently, Mr. Clark was Managing Director and Co-Head of Americas for the Global Public Policy Group of BlackRock Inc., the world's largest asset management firm, where he drove regulatory policy engagement and thought leadership on infrastructure finance, ESG and sustainability, disclosures related to climate risk and energy transition issues, data privacy and fintech. As General Counsel at ADB, he is responsible for driving legal strategy and engagement on public policy reforms to support ADB's mission of achieving a sustainable, prosperous, inclusive and resilient Asia-Pacific region.

ATHITA KOMINDR

Head, Regional Centre for Asia and the Pacific, United Nations Commission on International Trade Law (UNCITRAL)

Ms. Athita Komindr is head of the UNCITRAL Regional Centre for Asia and the Pacific. She manages UNCITRAL's technical assistance and capacity building programming available to over 50 states in Asia and the Pacific, namely least developed, landlocked developing and small island developing states. In that capacity, she coordinates with governments and international and regional organizations with respect to trade law reform activities. She also manages programmes to promote the rule of law in commerce in the context of UN Partnership Framework Agreements with the Lao PDR and Papua New Guinea, aimed at achieving the Sustainable Development Goals.

Ms. Komindr has over a decade of experience in the fields of international trade and economic law, arbitration, multilateral dispute resolution, negotiations and diplomacy, and the rule of law and development. Prior to joining the United Nations, Athita mainly advised and worked with numerous Thai agencies, including the Thailand Institute of Justice, the Thai Ministry of Science and Technology, and the Thailand Arbitration Center, where she managed the Arbitration and Legal Affairs Divisions. She also worked for the Thai Ministry of Commerce in Bangkok (2002–2005) and Geneva (2005–2010), representing Thailand in bilateral, regional, and multilateral trade negotiations, WTO dispute settlement, and treaty drafting.

Admitted to the New York Bar since 2002, Ms. Komindr has experience in both common and civil law traditions in the public and private sectors, and holds degrees from Harvard College, Georgetown University Law Center, and Harvard Law School.

The control tower at Jacksons International Airport, Papua New Guinea (photo by Gerhard Jörén/ADB).

6

KEYNOTE SPEAKER

JOHN W.H. DENTON AO

Secretary General, International Chamber of Commerce

Mr. John W.H. Denton AO is the Secretary General of the International Chamber of Commerce (ICC). He is a global business leader and international advisor on policy and a legal expert on international trade and investment.

He is also a Board member of the United Nations Global Compact and Co-Chair of the Financing Growth and Infrastructure Task Force for Argentina B20 2019, as well as a founding member of the Business 20 (B20), the Australia–China CEO Roundtable and UNHCR in Australia.

Mr. Denton serves on the Board of leading global infrastructure group IFM Investors. Mr. Denton is also the Chair of the Asia Pacific advisory Board of Veracity, a global advisory group based in NYC and Chair of the Moeller Institute advisory board at Cambridge University.

He co-led the Australian Government's 2012 White Paper on "Australia in the Asian Century" and previously chaired the APEC Finance and Economics Working Group.

A former diplomat, Mr. Denton served for two decades as Partner and Chief Executive Officer of Corrs Chambers Westgarth, Australia's leading independent law firm.

In 2015, he was appointed an Officer of the Order of Australia for his services to the business community, the arts and the rights of refugees, including as a founder of Human Rights Watch (Australia) and Teach for Australia.

Mr. Denton is an alumnus of Harvard Business School and the University of Melbourne.

Coffee is Timor-Leste's largest non-oil export. (photo by Luis Enrique Ascui/ADB).

7 MODERATORS

in alphabetical order

JON APTED

Partner, Munro Leys

Mr. Jon Apted is a litigation partner at Munro Leys, Fiji's biggest law firm. He previously held office as Fiji's Permanent (Industrial) Arbitrator and as the Sugar Industry Tribunal arbitrating disputes in Fiji's sugar industry

At Munro Leys, Jon advises and litigates in the areas of general commercial, intellectual property and employment law. He has been an arbitrator in large commercial disputes.

Jon graduated from the University of Auckland with an LLB in 1986 and from Harvard Law School with an LLM in 1994.

He is a well-known commentator on legal issues in Fiji.

A boat docked at Port Denarau Marina in Fiji (photo by Eric Sales/ADB).

A beach in Chuuk, the Federated States of Micronesia (FSM) (photo by Eric Sales/ADB).

GARY BORN

Partner, International Arbitration Practice Group, Wilmer Cutler Pickering Hale and Dorr;
President, Singapore International Arbitration Centre (SIAC) Court of Arbitration; and
International Arbitration Expert (Consultant), ADB

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 675 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 250 institutional and ad hoc arbitrations.

He is the author of International Commercial Arbitration (Kluwer, 3rd ed. 2020), 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.

JO DELANEY

Partner, Baker McKenzie (Sydney)

Ms. Jo Delaney is a partner at Baker McKenzie, focusing on international arbitration. She has extensive experience in commercial, construction, and investment arbitrations under the ICC, LCIA, SIAC, HKIAC, AAA, UNCITRAL, and ICSID arbitration rules relating to different industries.

Ms. Delaney has been involved in a number of investment arbitrations, acting for private parties and states. She regularly advises on all aspects of international arbitration and investment protection planning.

Ms. Delaney regularly publishes and speaks at conferences. She is one of Australia's members on the ICC Court of Arbitration. She is also a member of the ACICA Practice and Procedures Board, the CIArb Procedures and Standards Committee and The Pledge Steering Committee. She is also a fellow of CIArb and ACICA.

Port of Nuku'alofa, the leading port of Tongatapu, is the gateway to Tonga's international trade (photo by Eric Sales/ADB).

DAMIEN J. EASTMAN

Deputy General Counsel, ADB

Mr. Damien J. Eastman is the Deputy General Counsel in the Office of the General Counsel at the Asian Development Bank (ADB). Mr. Eastman joined ADB in 2014 as Assistant General Counsel for Institutional and Administrative Affairs, providing legal advice and support on a wide variety of institutional, operational and administrative matters, including advice on ADB's institutional governance and its legal framework; ADB's privileges and immunities, external litigation and arbitration; government relations; institutional procurement; and ADB staff grievances and disciplinary procedures, HR policies, ADB's internal staff rules and regulations, staff benefits, and pension matters.

Prior to joining ADB, Mr. Eastman spent more than 10 years in the Legal Department at the International Monetary Fund (IMF) in Washington, DC, where he advised on the Fund's legal relations with its member countries and other international organizations and was responsible for the oversight of the Legal Department's internal governance advisory group. He was the Fund's lawyer for a number of European crisis programs, various debt relief operations for IMF member countries in the African and Asian regions, and was involved in developing the Fund's policies in the area of sovereign debt restructuring.

Before the IMF, Mr. Eastman practiced law in Sydney with Allens-Linklaters (1997–2000), and in London with Freshfields Bruckhaus Deringer (2001–2003) where he specialized in corporate and commercial litigation, international law and international arbitration. An Australian national, Mr. Eastman holds a Master of Laws (LL.M) from Harvard Law School, and degrees in Arts (BA) and Law (LL.B, 1st Class Honors) from the University of Sydney and the University of Technology, Sydney. He is admitted to practice law in Australia and the United Kingdom.

HON. DEPUTY CHIEF JUSTICE AMBENG KANDAKASI

Supreme and National Courts of Justice of Papua New Guinea

Deputy Chief Justice Ambeng Kandakasi, CBE, of the Supreme and National Courts of Justice of Papua New Guinea was appointed justice in 2000 and deputy chief justice in 2018. An accredited mediator in Australia, New Zealand, and Papua New Guinea, he chairs the PNG Judiciary's Alternative Dispute Resolution (ADR) Committee, a team of judges, magistrates, and lawyers, in designing and implementing the country's ADR systems and structures, including arbitration and court annexed mediation. He is also the vice president of the Asia Pacific Mediation Forum.

He has a passion for continuing legal and judicial education and is actively involved in mediation skills training. Most of his trainees have been judges, magistrates, lawyers and other professionals in Australia, Fiji, Malaysia, PNG, and the Solomon Islands. He has attended and facilitated at a number of local and international workshops and trainings in a number of areas of law, especially mediation. He has promulgated several judgments on ADR and mediation. Further, he has presented and published several papers at local and international conferences and journals in the areas of ADR, mediation, and human rights.

He holds a Bachelor of Laws degree from the University of Papua New Guinea and a Master of Laws degree from the University of San Diego, USA.

Solomon Islands citizens take part in a sewing course, a project of ADB's Pacific Private Sector Development Initiative (photo by Luis Ascui/ADB).

Moderators

MARY KIM

Senior Programs Officer,
Pacific Liaison Coordination Office, ADB

Ms. Mary Kim is a Senior Programs Officer in ADB's Pacific Liaison Coordination Office in Sydney. She manages two major technical assistance programs: the Pacific Private Sector Development Initiative and the Pacific Region Infrastructure Facility. Mary has extensive experience in development policy, the Pacific region, and climate change issues, with over 10 years' experience in the Australian public service. She has a Master of International Law from the University of Sydney and a Master of Environmental Management and Development from the Australian National University.

CHRISTINA PAK

Principal Counsel and Team Leader, Law and Policy Reform Program, ADB

Ms. Christina Pak specializes in international development finance and law and policy reform. She is currently a Principal Counsel of the Asian Development Bank and is responsible for managing the Office of General Counsel's Law and Policy Reform Program which designs, processes, and implements technical assistance projects directly to developing member countries relating to legal and judicial reforms. She oversees a diverse portfolio in the areas of environment protection and climate change, gender equality, private sector development, public-private partnerships and digital economy. Christina also serves as ADB's Accountability Mechanism Policy Counsel and the Office of the General Counsel's technical assistance, partnerships and knowledge focal point and is a member of ADB's Climate Change and Disaster Risk Management, Environment, Gender and Governance Thematic Groups. In her previous role as a project counsel at ADB, she worked on complex multi-sector projects across the Central West, Southeast and East Asia regions.

Christina specializes in international arbitration reform and has been assisting various countries in the South Pacific region accede to the New York Convention and put in place implementing arbitration law, including Fiji, Palau, Papua New Guinea and Tonga and assisted Uzbekistan with its new Law on International Commercial Arbitration.

Prior to joining ADB, she was a legal counsel and vice president for markets and international banking at a major UK bank in Singapore and a finance associate at a large law firm in New York City.

Christina is a Steering Committee Member of the IUCN World Commission on Environmental Law and a Member of the Chartered Institute of Arbitrators. She is a US-qualified lawyer, admitted in the States of New York and New Jersey.

TERRY REID

Team Leader Business Law Reform, Pacific Private Sector Development Initiative (PSDI); and International Business Law Expert

Mr. Terry Reid has practiced law for the past 25 years and specialized in advising private sector clients on financing and transactional matters. He maintains a select group of large multinational clients and provides specialist services in contract design and implementation. He has substantial international consulting experience with the ADB, multilateral and bilateral donors. He holds an LLM from the University of Melbourne Law School, where his research focused on the regulation of the financial sector in developing economies.

He has led the Business Law reform area of the ADB's Pacific Private Sector Development Initiative which has focused on law reform in the Pacific. The program has helped introduce many laws to support the private sector and create certainty for investors. The work has focused on consultative policy design leading to tailored laws accessible to user communities. He is acknowledged as having international expertise in developing legal frameworks to support technology solutions which ensure laws are implemented effectively. He regularly consults to Governments who wish to introduce technology solutions supporting Government interactions with the private sector.

The Aiwo boat harbor promotes Nauru's maritime trade and connectivity (photo by Eric Sales/ADB).

8 SPEAKERS

in alphabetical order

HON. CHIEF JUSTICE JAMES ALLSOP AO

Federal Court of Australia

From 1981 to 2001, Chief Justice James Allsop AO practised at the Bar in New South Wales and elsewhere in Australia. He was appointed Senior Counsel in New South Wales in 1994 and Queen's Counsel in Western Australia in 1998.

From 7 May 2001 to 1 June 2008, he served as a Judge of the Federal Court of Australia, undertaking the roles of trial and appellate judge on a full range of Federal Court work. From 2 June 2008 to 28 February 2013, Chief Justice Allsop was President of the New South Wales Court of Appeal. He was appointed Chief Justice of the Federal Court of Australia as of 1 March 2013.

From 1981 to 2014, Chief Justice Allsop taught part-time at the University of Sydney as a tutor and lecturer in property, equity, bankruptcy, insolvency, corporate finance and maritime law. From 2015 to 2018, he taught maritime law part-time at the University of Queensland. From 2005-2009, he was a member of the board of World Maritime University in Malmö, Sweden. From 2008 to 2011, he was a member of the Board of the Australian Maritime College. On January 2010, he was elected as an Honorary Bencher of the Middle Temple. On 19 March 2013, he was elected a member of the American Law Institute. He is a Fellow of the Australian Academy of Law. He is President of the Francis Forbes Society for Australian Legal History. From 2018 he was appointed Inaugural Patron of the Australian Insurance Law Association. From 2019, his Honour is Chair of the ACICA Judicial Liaison Committee, a member on Asian Business Law Institute (ABLI) Board of Governors representing the Australian Judiciary and a member of the Commonwealth Magistrates' and Judges' Association.

ABHINAV BHUSHAN

Regional Director for South Asia, ICC Arbitration and ADR, ICC International Court of Arbitration

As Director, Mr. Abhinav Bhushan focuses on helping companies, investors, and attorneys in the region understand how they can efficiently resolve international commercial disputes by raising their awareness on the ICC's Dispute Resolution Services and its commitment to international arbitration, the procedure, and thought leadership.

Prior to serving as Regional Director as the Court's first Indian Director, he was also the first Indian Deputy Counsel of the Court, where he gained first-hand experience working on arbitrations arising out of common law jurisdictions, in particular working with parties from the United Kingdom, India, Singapore and other regions of Asia. Mr. Bhushan is a regular contributor to various publications on developments in international arbitration and Indian arbitration law.

He is also an avid promoter of arbitration-related training opportunities for lawyers, corporate counsels, judges and other important stakeholders. Additionally, Mr. Bhushan is the co-chair of ICC Young Arbitrators Forum (YAF), Asia Chapter. Further, as part of the ICC's initiative to develop arbitration in India and South Asia, he advises and engages with the law firms, practitioners and users on the procedures and practices of international arbitration, especially ICC arbitration.

Before joining the ICC, Mr. Bhushan completed his LLM at the Columbia Law School and earned a certificate in foreign and comparative law in 2011. He was also a member of the Columbia International Arbitration Association and a research assistant. He earned his first law degree from the Government Law College, Mumbai, India in 2008. Upon graduation, he worked as an associate with Mulla & Mulla & Craigie Blunt & Caroe, in Mumbai, India.

RAM BAJEKAL

Managing Director, FMF Foods Group of Companies

Mr. Ram Bajekal is Managing Director of the FMF Foods Group of Companies. He is a Chartered Accountant from India and a Fulbright Fellow in Management Studies from Carnegie Mellon University, USA. He was only the third Indian to receive this prestigious fellowship for management studies. He has over 35 years of work experience in the private sector with diverse organizations such as PricewaterhouseCoopers, Hindustan Photo Films, Unilever Group, Murugappa Group in India, and the Carpenters Group and FMF Foods in Fiji.

In between, Ram took a three-year sabbatical to work with an NGO in rural India, imparting business skills to low-income communities engaged in micro-enterprise. In this role, he had opportunity to work with farmer groups, organizing them into collectives to strengthen their bargaining power in the value chain. In Fiji, he participates frequently in industry consultations on matters relating to trade.

An aerial shot of Suva, the capital and commercial center of Fiji (photo by Eric Sales/ADB).

HON. DR. MANUEL CÃRCERES DA COSTA

Minister of Justice (Timor-Leste)

His Excellency Mr. Manuel Cárceres da Costa is currently the Minister of Justice of the Democratic Republic of Timor-Leste. Prior to this appointment, he was involved in various capacities in the public sector, the private sector, and in the international development space. From 2009 to June 2018, he was the Director of the Legal Division of Timor Telcom. In 2001, he was a Protection Assistant in the UNCHR Representation in Timor-Leste. From 1982 to 2000, he served as the local government representative, the sub-district secretary, and as a member of the district consultative council of Manatuto.

His Excellency Mr. Cárceres da Costa graduated from the Universidade da Paz Dili Timor-Leste with a degree in criminal law. He also holds a Bachelor of Political and Social Science degree from the Open University, Díli Timor Faculty of Public Administration. He speaks Portuguese, English, and Bahasa Indonesia.

A textile worker weaving in a souvenir shop in Dili, Timor-Leste (photo by Luis Enrique Ascui/ADB).

CHANGWAN HAN

Director, International Dispute Settlement Division,
Ministry of Justice
(Republic of Korea)

Mr. Changwan Han is the director of the International Dispute Settlement Division of the Ministry of Justice, Republic of Korea. Before his appointment to the current position, he was the director of the International Legal Affairs Division. Prior to joining the Ministry, he served as a judge advocate for the South Korean Army and then became an associate and later a partner at a large Korean law firm, Bae, Kim & Lee.

BRENDA HORRIGAN

President, Australian Centre for International Commercial Arbitration (ACICA) and
Partner/Head of International Arbitration in Australia, Herbert Smith Freehills

Ms. Brenda Horrigan is Head of International Arbitration – Australia at Herbert Smith Freehills, based in HSF's Sydney office. She is an Australian registered foreign lawyer admitted in Washington DC.

Brenda has some 20 years' experience in international arbitration. Her practice is multifaceted; she works as counsel on complex international commercial and investment treaty arbitration matters at both the arbitration and enforcement stages, and also sits as an arbitrator. She began her career as a transactional lawyer, and that background provides valuable insight for clients into the underlying commercial and contractual aspects of their disputes.

Brenda serves as the President of ACICA, is a Fellow of the Chartered Institute of Arbitrators (Australia), and is listed on the panels of several arbitral institutions. Brenda has practiced in the US, Paris, Moscow, Shanghai and now Sydney, and is consistently ranked in Chambers and in Global Arbitration Review's Who's Who: Legal as a leading arbitration practitioner.

An airplane at the runway of the Hoskins Airport, Papua New Guinea (photo by Gerhard Jörén/ADB).

A staff member works at a water supply facility in Ebeye, Marshall Islands (photo by Eric Sales/ADB).

DANIEL KALDERIMIS

Barrister, Twenty Essex

Mr. Daniel Kalderimis is a leading international lawyer with over 20 years' experience as a proven and effective advocate in complex and cross-border disputes.

In addition to New Zealand, Daniel is admitted to practice in England, Wales and New York. He has particular expertise in international arbitrations across the Asia-Pacific region having acted in UNCITRAL, ICC, SIAC, LCIA, ICSID and SCC proceedings and as an arbitrator. Daniel is New Zealand's national correspondent to UNCITRAL for the New York Convention and the Model Law.

Daniel is also active in commercial and public law disputes, including in the emerging area of legal duties and climate change. Formerly head of the international law team at Chapman Tripp, Daniel is renowned as a leading individual in dispute resolution and recognised in major legal directories such as Chambers Global, *Chambers Asia Pacific and The Legal 500*.

KOH SWEE YEN

Partner, WongPartnership LLP

Ms. KOH Swee Yen is a Partner in the Commercial & Corporate Disputes and International Arbitration Practices of WongPartnership LLP. She is admitted to the Singapore Bar and the Roll of Solicitors of England and Wales.

She has an active practice as counsel, with a particular focus on complex, high-value and cross-border disputes across a wide spectrum of matters from commercial, energy, international sales, trade, transport, technology to investment. She regularly appears before the High Court and Court of Appeal and in international arbitrations under the major institutional rules, including ICSID, ICC, ICDR, LCIA, SIAC and UNCITRAL.

Swee Yen was the former Vice-Chair of the IBA Arbitration Committee. She is currently the Vice-Chair of the IPBA Dispute Resolution and Arbitration Committee, and a member of the Editorial Board of the ICC Dispute Resolution Bulletin and the ICCA-ASIL Task Force on Damages. Swee Yen has also been appointed to the Executive Committee of the Foundation for International Arbitration Advocacy.

Swee Yen is highly recommended for her expertise in resolving complex international disputes by various legal publications including The Legal 500, Chambers Asia-Pacific, Chambers Global, Benchmark Litigation Asia-Pacific and Who's Who Legal: Arbitration. Described as being *"in a league of her own"*, with a *"very deep understanding of the law"* and *"razor-sharp"* in her advocacy, she is regarded as the *"go-to disputes lawyer in Singapore"*, who *"always brings her A-game to everything she does and someone you want in your corner in a life or death situation."*

HON. ACTING CHIEF JUSTICE KAMAL KUMAR

Supreme Court of Fiji

Justice Kamal Kumar acquired his Bachelor of Law from Queensland University of Technology, Australia back in 1999. Upon completion of Bar Practice Course in the year 2000, he was admitted as a Barrister to the High Court of Australia and the Supreme Court of Queensland. From 2000 to May 2013, he practiced as Barrister and Solicitor at Young & Associates, Solicitors, Lautoka, Fiji.

He was appointed as a Judge in the High Court of Fiji from May 2013 to 7 April 2019.

He became Acting Chief Justice on 8 April 2019.

In September 2018, he was appointed Chairperson of the Fiji Human Rights and Anti Discrimination Commission (FHRADC). His appointment as Chairperson of FHRADC was extended on 12 January 2021, for a further term of three years.

In terms of community service, from 2001 to 2006 and again from 2009 to 2012, he served as President of the Lautoka Branch of the Dakshina India Andhra Sangam of Fiji, a society that manages two colleges and five primary schools. He eventually became National President of the said organization in the year 2012 and continues in that position as at to date. He also held various positions in the Rotary Club of Lautoka, served as Assistant District Governor for District 9920 Rotary International, and in the Board of Visitors, Lautoka Hospital, Fiji.

JONATHAN LIM

Counsel, Wilmer Cutler Pickering Hale and Dorr LLP

Mr. Jonathan Lim is a counsel at WilmerHale in London, focusing on complex international disputes. He has represented governments and corporations in commercial and investment arbitrations under all major arbitration rules sited across Africa, Asia, Europe and South America, as well as WTO disputes. 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, Jonathan has a developing practice as an arbitrator, with appointments as sole and party-appointed arbitrator in proceedings seated in Europe and Asia. Jonathan also co-teaches a course on international arbitration at the National University of Singapore each January. He is listed in Who's Who Legal 2018-2021 as a Future Leader in International Arbitration, and has been described by clients and peers as "*a very smart all-round lawyer with a strong work ethic*" and "*a sure bet as a future global leader.*"

A man navigates his small boat in Niue's waters (photo by Eric Sales/ADB).

DANIEL MELTZ

Barrister, 12 Wentworth Selborne Chambers; and
International Arbitration Consultant, ADB

Mr. Daniel Meltz is a Sydney-based barrister with over 20 years' experience in international

commercial arbitration and has practiced in Australia, England and Switzerland. He is recognized internationally as a leader in the field of international arbitration and is listed in Who's Who Legal (Global Edition) and Best Lawyers. He is admitted in Australia, England, and Wales.

Mr. Meltz is an experienced arbitrator and arbitration counsel. He has conducted arbitrations across all major arbitral institutions including ICC, LCIA, SCC, ACICA, HKIAC, and SIAC.

He has advised several governments in the South Pacific on international arbitration reform in his capacity as arbitration consultant with the Asian Development Bank, including the Governments of Papua New Guinea, Fiji, Timor-Leste, Tonga, Palau and Samoa. This includes rendering technical assistance to governments on the drafting of arbitration legislation, advising on accession to the New York Convention and conducting capacity building amongst judiciary, government and private sectors.

Mr. Meltz has particular expertise both in the South Pacific and in the wider Asia Pacific region in the following sectors: oil and gas, mining, construction, commodities, commercial contracts, and shareholder disputes.

Mr. Meltz is currently a fellow of ACICA and was previously Adjunct Professor at the University of Technology, Sydney.

HON. TATAFU TOMA MOEAKI

Minister of Trade and Economic Development (Tonga)

Mr. Tatafu Toma Moeaki is responsible for the trade and economic development portfolio for the Government of the Kingdom of Tonga, and was appointed on 27 January 2021.

Mr. Moeaki was formerly the Senior Country Officer for Tonga at the Asian Development Bank's South Pacific Sub-regional Office (SPSO). He previously worked in the Government of Tonga as CEO for the Ministry of Finance and, before that, the CEO for the Ministry of Trade and Economic Development, his current portfolio. He has executive management experience working in the Government, including the Ministry of Foreign Affairs, the Ministry of Education and the Central Planning Department under the Prime Minister's Office. Particular areas of experience include strategic planning, national budget preparation and reporting, national and local community development, and regional and international development on a broad range of economic and financial issues.

Mr. Moeaki holds a BA from Victoria University of Wellington New Zealand and a Masters of Economics from the University of New England, New South Wales, Australia.

Tapa, an ornamental cloth made of bark tree used during celebrations in Tonga (photo by Eric Sales/ADB).

KEVIN NASH

Deputy Registrar and Centre Director, Singapore International Arbitration Centre

As Deputy Registrar & Centre Director of the Singapore International Arbitration Centre (SIAC), Mr. Kevin Nash assists with the administration of all cases filed with SIAC and the supervision of SIAC's multinational Secretariat.

Since joining SIAC in 2012, Kevin has overseen the administration of thousands of international cases under all versions of the SIAC Rules and the UNCITRAL Arbitration Rules, among others, and has significant experience in SIAC cases involving Expedited Procedure, Emergency Arbitration and the Early Dismissal of Claims and Defences. He worked closely on the revisions to the SIAC Rules 2013, the SIAC Rules 2016, the SIAC Investment Arbitration Rules 2017, and leads the SIAC Secretariat Sub-Committee on the drafting of the seventh edition of the SIAC Rules with an expected release in the third quarter of 2021.

Kevin is a frequent speaker on contemporary issues in arbitration and conducts training sessions for arbitration stakeholders around the world. He is a Member of the Singapore delegation at UNCITRAL Working Group II (Dispute Settlement) and represents SIAC as an observer at UNCITRAL Working Group III (ISDS).

Kevin holds a B.A. from Mount Allison University and a J.D. from Osgoode Hall Law School. Kevin worked at one of Canada's prominent 'Seven Sister' law firms and then went on to study an LL.M. in International Commercial Arbitration at Stockholm University. He is qualified as a Barrister and Solicitor with the Law Society of Upper Canada.

CHRISTINA PAK

Principal Counsel and
Team Leader, Law and Policy
Reform Program, ADB

Please see page 89.

PROF. DR. JORDI PANIAGUA

Assistant Professor, Department of Applied
Economics II, University of Valencia

Prof. Dr. Jordi Paniagua is Assistant Professor at the Department of Applied Economics II at the University of Valencia (Spain). Jordi holds a master's degree in telecommunications and a Ph.D. in Economics. His academic and applied specialization in Foreign Direct Investment (FDI) stems from his prior professional experience in multinational corporations as an engineer and in Valencia's public Investment Promotion Agency as chief economist. His policy-focused academic research, published in leading economics and business journals, and consulting efforts have been proven relevant for several development institutions that promote economic development and institutional reform like NATO, the World Bank, Asian Development Bank, and UNCITRAL.

HON. JUSTICE ANSELMO REYES

Singapore International Commercial Court

Justice Anselmo Reyes practises as an arbitrator. He was Professor of Legal Practice at Hong Kong University from October 2012 to September 2018. Before that, he was a judge of the Hong Kong High Court from September 2003 to September 2012, when he was in charge of the Construction and Arbitration List (2004–2008) and the Commercial and Admiralty Lists (2008–2012). He was Representative of the Hague Conference on Private International Law's Regional Office Asia Pacific from April 2013 to July 2017. He became an International Judge of the Singapore International Commercial Court in January 2015.

Port Vila is Vanuatu's main economic and commercial hub, its port connecting the capital to other countries and more than 80 other domestic islands (photo by Eric Sales/ADB).

MARK RUSSELL

Senior Commercial Officer for
Australia and New Zealand,
U.S. Department of Commerce

Mr. Mark Russell is the Senior Commercial Officer for Australia and New Zealand. He arrived at post in October 2019. Mark's previous international assignments include Karachi, Rio de Janeiro, Lisbon, Cairo, Chennai, and Prague.

Mark joined the U.S. and Foreign Commercial Service after ten years of military and private-sector business experience. He has a B.S. in Management from the University of Maryland and an M.A. in International Affairs from George Washington University.

Streetlights in Majuro, Marshall Islands (photo by Eric Sales/ADB).

LOTTE SCHOU-ZIBELL

Regional Director, Pacific Liaison and Coordination Office, ADB

Ms. Lotte Schou-Zibell's expertise is in leveraging emerging technology to deliver agile solutions for expanding access to finance at the intersection of technology and policy frameworks. She has worked extensively on the practical application of digital financial services.

In her current role, Lotte is focusing on expanding and further developing the private and finance sectors in the Pacific sub-region as well as improving the quality, reliability, and availability of critical infrastructure in both rural and urban areas to boost economic growth, create jobs, and provide access to public and financial services.

Lotte, a national of Sweden, has more than 30 years of professional experience in operational and regulatory policy aspects of developed and developing countries, including 14 years working in ADB.

In her recent role as the Chief of ADB's Finance Sector Group, she led ADB's efforts to innovate in digital financial technology. Projects include integrating cloud technology into core banking and developing a cutting-edge digital ID solution to expand access to finance. Initiatives also helped establish regulatory sandboxes for testing new digital technologies. Essential features of this work have been in integrating cybersecurity into digital financial solutions.

She is currently a member of the Women's World Banking's South East Asia Advisory Council, is Vice-Chair for the Global Impact Fintech (GIFT) Forum, and council member of the Global Fintech Institute.

Lotte previously worked as Director for International Economic Policy at the Swedish Ministry of Finance, financial supervision and regulation expert at the Swedish Financial Supervisory Authority and the Swedish Central Bank, and as a consultant to the International Monetary Fund.

Lotte holds a Master's Degree in Economics from Lund University, Sweden. She also spent a year as a research student in economics at the London School of Economics, London, UK.

HON. JUSTICE JEFFERY SHEPHERD

Supreme and National Courts of Justice of Papua New Guinea

His Honour Justice Jeffery Shepherd holds degrees in law and anthropology from the University of Auckland, New Zealand. He is admitted to practice in the High Court of New Zealand, the Supreme Court of New South Wales, and the Superior Courts of Papua New Guinea. Formerly a senior partner with the litigation and intellectual property teams at the Port Moresby office of Ashurst Lawyers, Justice Shepherd was appointed a judge of the Supreme and National Courts of Justice of Papua New Guinea on 31 October 2016. He commenced judicial duties on 27 January 2017.

His Honour is a founding member with Justice Ambeng Kandakasi of the PNG judiciary's ADR Committee established in 2001. His Honour is a fully accredited mediator under the ADR Rules 2010 of the National Court and is assigned to the ADR Track of the National Court. Apart from his role as a civil judge, His Honour conducts Court-annexed mediations and assists with workshops and training programs for PNG mediators. He is a member of the Rules Committee of the Supreme and National Courts and is adviser to the ADR Committee on matters relating to the implementation of new legislation dealing with international and domestic arbitration in Papua New Guinea.

An aerial view of the business district in Port Moresby, Papua New Guinea (photo by Gerhard Jörén/ADB).

FEDELMA CLAIRE SMITH

Senior Legal Counsel,
Permanent Court of Arbitration

Ms. Fedelma Claire Smith is senior legal counsel at the Permanent Court of Arbitration (PCA). She joined the PCA as a legal counsel in 2011 and served as the PCA Representative in Mauritius from 2012 to 2014. In January 2018, she set up the PCA Office in Singapore, where she served as PCA Representative from 2018 to 2020. She has previously worked at the International Court of Justice (2008-2010), where she was law clerk to H.E. Judge Awn Al-Khasawneh and H.E. Judge Sir Kenneth Keith.

She is a member of the Bar of England and Wales and completed the pupillage at Field Court Chambers, London, in 2011. She holds a BA in English Law with German Law from Oxford University and an Advanced LLM in Public International Law from Leiden University.

The Peace Palace in *Den Haag*, The Netherlands houses the Permanent Court of Arbitration, as well as the International Court of Justice and the Hague Academy of International Law (photo by Rafael Ishkhanyan/Unsplash).

CRAIG STRONG

Chief Executive Officer, Investment Fiji

Mr. Craig Strong, born and raised in Suva, was educated at Kings College in Auckland and Massey University in Palmerston North in New Zealand. Mr. Strong boasts comprehensive Pacific-based senior management and board governance experience in the private, public, and not for profit sectors.

He has a background in commercial roles in New Zealand where he worked for James Hardie Pipelines, Humes Pipeline Systems, and Mico Plumbing & Pipelines. Mr. Strong has held general management positions in significant Fijian trading companies such as the hardware company Vinod Patel & Company, and the supermarket chain RB Patel Group. Mr. Strong also served as the General Manager of the shipping company Pacific Agencies Fiji Limited, and Chief Executive Officer of the Pacific Cooperation Foundation. Mr. Strong has also served the Fijian Government as the Permanent Secretary for the Ministry of Fisheries and the Acting Permanent Secretary for the Ministry of Lands and Mineral Resources.

Mr. Strong is the former President of the Fiji NZ Business Council, former Chair of the Fiji Export Council, former Chair of the Fiji Ship Owners and Agents Association, and the former Chair of the Friends of Fiji Heart Foundation. Mr. Strong has also been involved in Pacific-based business councils, having been a board member of the Fiji Australia Business Council and the Fiji PNG Business Council. Mr. Strong previously held board directorships in the Fiji Commerce and Employers Federation, Pacific Agencies Fiji Limited, Container Services Fiji Limited, Civil Aviation Authority of Fiji, the Housing Authority of Fiji, the Public Rental Board of Fiji, Fijian Holdings Fund Management Limited, and the NZ Institute of Pacific Research.

Mr. Strong holds professional membership in the Australian Institute of Company Directors. In October 2020, the College of Honour bestowed upon Mr. Strong the Order of Fiji 50th Anniversary Medal, in recognition of his contribution to the economic and social development of Fiji in its first fifty years of independence.

MAY TAI

Managing Partner, Asia, Herbert Smith Freehills

Ms. May Tai specialises in cross-border China-related and Asian disputes, as well as contentious regulatory matters. She regularly advises governments, government-owned entities and commercial clients (including financial institutions and energy companies) in Asia, Europe and the United States, including acting as counsel and advocate in arbitrations under various rules and court proceedings. She has acted as arbitrator in SIAC and HKIAC proceedings, and has also sat as an Emergency Arbitrator under the ICC Rules.

May has published several articles on arbitration and dispute resolution, and is regularly invited to speak at conferences on such topics. She has also taught arbitration at Tsinghua Law School.

May speaks five languages fluently, including Bahasa (Malaysian and Indonesian), Chinese (Mandarin and Cantonese) and English. She is a CEDR accredited mediator and an arbitrator in the HKIAC List of Arbitrators. She also sits as a board member at The London Court of International Arbitration and a member of User Council at Singapore International Arbitration Centre. May is qualified as a solicitor in England and Wales, and Hong Kong.

May is based in Hong Kong but also spends time in Herbert Smith Freehills' Shanghai and Beijing offices and has also practised in London, Singapore and Tokyo. She understands the legal and business scenes well in these cities.

HON. KALEB S. UDUI, JR.

Minister of Finance (Palau)

Mr. Kaleb Udui is the new Minister of Finance for the Republic of Palau, having been sworn into office on 8 February 2021. His public service began as the Chief of the Division of Budget and Management in the early 1990s. In the late 1990s, he served as the Financial Advisor to the Ministry and Manager for a UNDP project that covered personnel, tax, and planning reforms. In the 2000s, Mr. Udui worked in banking and also served as the President of the National Development Bank of Palau. His private business activities have been in banking, energy consulting, and real estate. He has also served on various public and private boards including Palau's Banking Supervisory Board and the Palau Chamber of Commerce.

Mr. Udui has a Bachelor's Degree in Finance and Economics from the University of Guam and a Masters of Business Administration from the University of Hawaii.

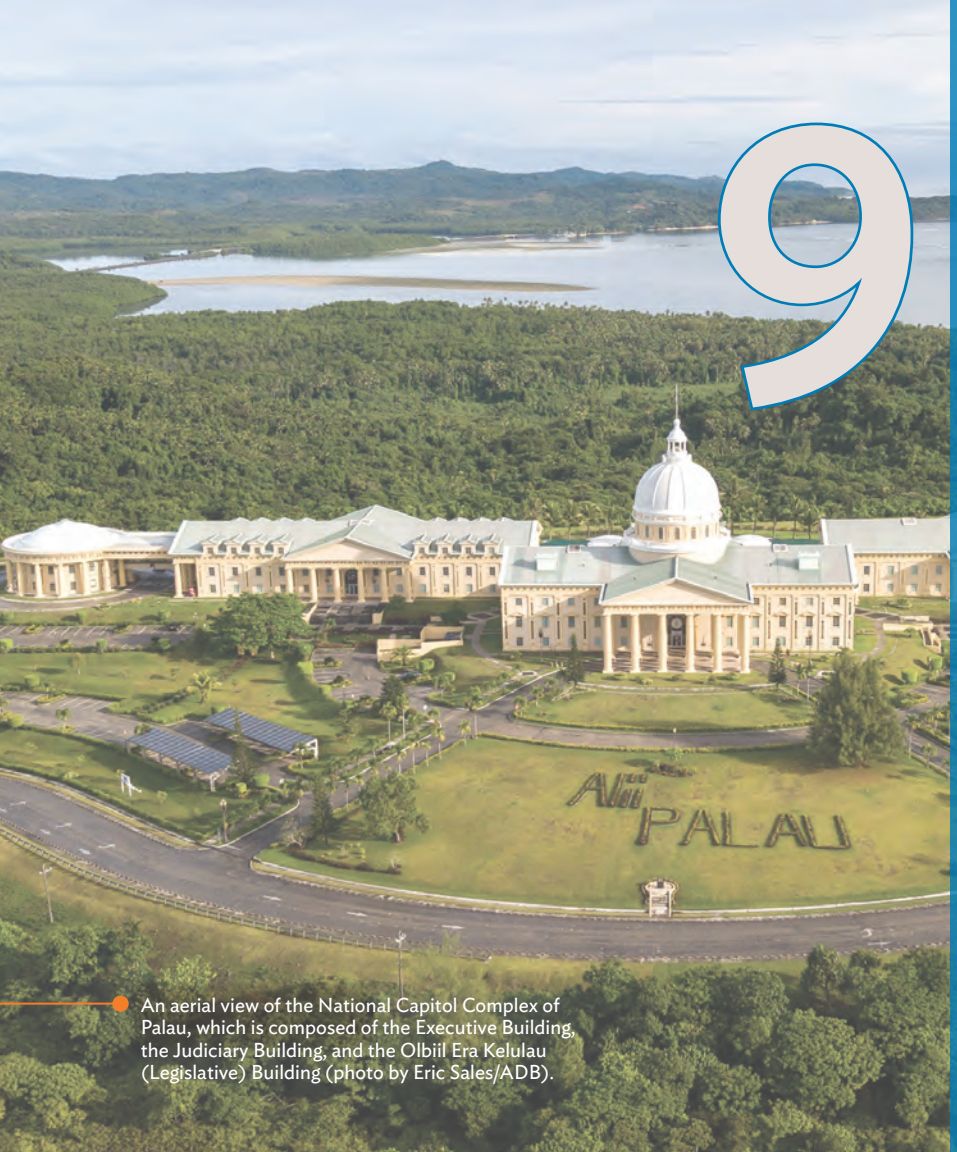
An aerial shot of the Japan-Palau Friendship Bridge (photo by Eric Sales/ADB).

LORD CHIEF JUSTICE MICHAEL WHITTEN QC

Supreme Court of Tonga

Michael Whitten QC is the current Lord Chief Justice of the Kingdom of Tonga. Prior to his Honour's appointment in mid-2019, he was a member of the Victorian Bar and Chancery Chambers in Melbourne, Victoria. There, he practised for more than 20 years in commercial litigation, specialising in building, construction, infrastructure and energy disputes. Prior to that, his Honour's legal career started in Brisbane in the Public Defender's Office, then associate to the late Judge J.P. Kimmins, then as a law clerk at Blake Dawson Waldron, before being called to the Bar there in 1990. He has appeared in all jurisdictions throughout most of Australia and in domestic and international arbitrations.

He is a Fellow of the Chartered Institute of Arbitrators, and was an accredited NMAS mediator. He was one of the founding members of MTECC, a virtual chambers dedicated to promoting its members in the construction law field, particularly, for international arbitration in the Asia-Pacific region, and was its Chair between 2016 and 2019. He was a member of the Australian Bar Association's Arbitration committee until his current appointment in mid-2019. He is a co-author of the 4th, 5th and 6th editions of 'Brooking on Building Contracts" and presented numerous CLE papers throughout his career at the Bar. His Honour's work in Tonga has included consulting on the International Arbitration Bill following Tonga's accession to the New York Convention, the 164th country to do so, on 12 June 2020.



An aerial view of the National Capitol Complex of Palau, which is composed of the Executive Building, the Judiciary Building, and the Olbiil Era Kelulau (Legislative) Building (photo by Eric Sales/ADB).

9 FACILITATORS

in alphabetical order

JULIAN COHEN

Barrister and Arbitrator, Gilt Chambers

Mr. Julian Cohen has more than 30 years of specialist experience of heavyweight international commercial arbitrations in Hong Kong, and across Asia, the Pacific, the Middle East and Europe. Sums in dispute in his cases vary from small to in excess of USD 2 billion. He is particularly well known for large scale construction disputes, and is recognised by directories both as one of the leading constructions lawyers in the world and also as a leading construction counsel in Hong Kong.

In addition to acting as counsel, he also regularly sits internationally as an arbitrator in the Asia-Pacific region, and in the Middle East. He has sat both as a sole arbitrator and member of three member tribunals under ICC, UNCITRAL, LCIA, HKIAC and DIAC rules.

He has conducted arbitrations under a variety of common law and civil code legal systems.

In addition to a substantial Hong Kong practice, Mr. Cohen has been involved in disputes in Macau, PRC, Singapore, Indonesia, Vietnam, Thailand, Guam, Fiji, India, Pakistan, Dubai, Abu Dhabi, Qatar, Saudi Arabia, Oman, Yemen, Egypt, Kuwait, Sierra Leonne, Mali, Turkey, Albania, Czech Republic, France, Belgium, and the United Kingdom.

Mr. Cohen was called to the Bar in England in 1990 and joined the Construction and Engineering Department of Pinsent Masons in 1993. He moved to Hong Kong in 1998 with the firm, eventually leaving as a Partner in 2009. He started his practice at the Hong Kong Bar in 2010.

He writes and teaches regularly on construction law issues, arbitration, and advocacy.

DANIEL MELTZ
Barrister, 12 Wentworth Selborne Chambers; and
International Arbitration Consultant, ADB

Please see page 102.

CHRISTINA PAK
Principal Counsel and Team Leader,
Law and Policy Reform Program, ADB

Please see page 89.

Bauerfield International Airport, located in Port Vila, serves as a hub for Air Vanuatu, the country's flag carrier (photo by Eric Sales/ADB).

JOSÉ AUGUSTO FERNANDES TEIXEIRA

Partner, Da Silva Teixeira & Associados

Mr. José Augusto Fernandes Teixeira joined Da Silva Teixeira & Associados in 2012 after having served as a Member of National Parliament (2007 to 2012) and also a Member of Government (2002 to 2007). His practice focuses on environmental law, renewable energy, domestic and foreign investment, tourism, mining, oil and gas, international commercial arbitration and infrastructure. As a former Minister, Deputy Minister and Secretary of State for Natural Resources, Minerals and Energy Policy and Secretary of State for Tourism, Investment and Environment, Mr. Teixeira was one of the principal architects of Timor-Leste's petroleum laws and regulations, the sovereign wealth fund, the law on commercial companies, and domestic and external investment laws. He also oversaw the completion of the first Timorese Government studies on renewable energy such as solar, hydropower, wind power and biogas and initiated the process for Timor-Leste to become a member of the Extractive Industries Transparency Initiative (EITI). In 2004 to 2006, he led the Timorese Government team in negotiations with the Australian Government over maritime resource sharing arrangements in the Timor Sea which resulted in the signing of the Treaty Concerning Certain Maritime Arrangements in the Timor Sea (CMATS). He also served as a Commissioner representing Timor-Leste in the Timor Sea Joint Petroleum Development Area (JPDA) Joint Commission and later as a member representing Timor-Leste on the Ministerial Council for the JPDA.

Mr. Teixeira holds a Bachelor of Arts (Politics and Economic History) from the University of New England and a Bachelor of Laws from the University of Queensland. Prior to returning to Timor-Leste, he was a lawyer in Queensland, Australia practicing mainly in commercial and property litigation, planning and development law, administrative and constitutional law, tax law, native title and resource law.

Mr. Teixeira is an Associate of the Chartered Institute of Arbitrators (Singapore Branch), holding a Certificate on International Commercial Arbitration from the American University, Washington College of Law. He was admitted to practice in the Queensland Supreme Court and High Court of Australia, is currently admitted as a lawyer in Timor-Leste and is a member of the New South Wales Law Society. He also served on the Timor-Leste Petroleum Fund Consultative Council 2013–2018 and is currently a member of the Supreme Council of the Attorney General.

Dancers perform during a cultural presentation in the Cook Islands. Tourism is the main driver of economic growth in the country, accounting for nearly 70% of its gross domestic product (photo by Eric Sales/ADB).

10 CONFERENCE SECRETARIAT

CHRISTINA PAK
Principal Counsel and Team Leader,
Law and Policy Reform Program, ADB

Please see page 89.

DANIEL MELTZ
Barrister, 12 Wentworth Selborne Chambers; and
International Arbitration Consultant, ADB

Please see page 102.

RYAH ZENDRA M. SANVICENTE
Legal Operations Administrator, ADB

Ms. Ryah Sanvicente has been a staff member of the Asian Development Bank since 2005. She worked with the Office of the General Counsel (OGC) as a Legal Operations Assistant from 2005-2009, and moved to the South Asia Department from 2009-2015 as a Senior Operations Assistant. In 2015, she returned to OGC as the Executive Assistant to the General Counsel. In 2019, she joined the Law and Policy Reform Team of OGC as the Legal Operations Administrator.

She graduated from the University of Sto. Tomas with a Bachelor's Degree in Communications Arts in 2000.

GLADYS CABANILLA-SANGALANG

Senior Legal Operations Assistant, ADB

Ms. Gladys Cabanilla-Sangalang has over 20 years of operations and administrative support experience. Before joining ADB, she worked as a paralegal in a full-service law firm that advises clients in the Banking & Finance, Corporate & Commercial, Dispute Resolution, Employment, Immigration, Intellectual Property, and Tax practice areas. Subsequently she became the Executive Administrator to the Global Chief Operating Officer of a multinational law firm and later as a Global Talent Management Specialist, overseeing the performance management tool of the Firm and managing the election of local partnership to international partnership.

She also worked as an Office Administrator and Purchasing Associate in a subsidiary of the largest media conglomerate in the Philippines that brought the first indoor family educational entertainment center to the Bonifacio Global City, Taguig.

She is currently a senior legal operations assistant in the Office of the General Counsel in ADB, supporting the Law and Policy Reform Program and several loans, grants and technical assistance sovereign projects.

She graduated from the University of the Philippines with a Bachelor of Arts degree in Political Science (with minor in Economics and Psychology) and earned her Certificate as a Paralegal from the University of the Philippines Law Center. She also holds a diploma on Events Specialist that she earned from the School of Professional and Continuing Education of the De La Salle-College of Saint Benilde.

MARIA CECILIA T. SICANGCO

Senior Legal Officer, Law and Policy Reform Program, ADB

Ms. Maria Cecilia T. Sicangco is currently a Senior Legal Officer under the Law and Policy Reform (LPR) Program of ADB. She is involved in the design, processing, and implementation of the LPR portfolio, which covers key areas such as environment and climate change law, international arbitration, gender-based violence and access to justice, commercial law and private sector development, digital economy, renewable energy, and data privacy.

Cecille has worked on legal and policy reform with development partners across Asia and the Pacific. She has in-country experience in Afghanistan, Bhutan, Cambodia, Fiji, India, Myanmar, Pakistan, Philippines, and Samoa.

Her work has been published in the Yearbook of International Environmental Law (Oxford University Press) and the Human Rights Education in Asia-Pacific Journal. She authored the *International Climate Change Legal Frameworks* volume of the Climate Change, Coming Soon to a Court Near You report series. She also co-authored the *National Climate Change Legal Frameworks* volume, which synthesized the climate legal and policy frameworks of 32 countries in the region and analyzed key legislative trends and climate-relevant constitutional rights.

Cecille holds a Bachelor of Applied Economics and Accountancy double degree (cum laude) from De La Salle University and a Bachelor of Laws degree (cum laude, salutatorian) from the University of the Philippines. Thereafter, she pursued a Master of Laws in International Legal Studies degree at New York University, where she was the Starr Foundation Global Scholar, Hauser Scholar, and Thomas M. Franck Scholar in International Law.

Cecille is a Philippine- and US-qualified lawyer (admitted to the bar in the State of New York), and a Certified Public Accountant. She is a member of the World Commission on Environmental Law.

IMELDA T. ALCALA

Senior Project Coordinator (Consultant), ADB

Ms. Imelda T. Alcala has a Bachelor of Science in Business Administration (major in Management) degree. She has been with the Asian Development Bank as a consultant for various projects since 1996. Her 25 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. At present, Ms. Alcala is the Senior Project Coordinator for two technical assistant projects under the Office of the General Counsel's Law and Policy Reform Program: (i) on international arbitration law reform in the South Pacific, and (ii) on capacity building in environmental and climate change law. She is responsible for overseeing and managing the roll-over of project logistics, coordination and administration. She describes herself as the person who helps fit the puzzle pieces together.

A head garland is made in Chuuk, the Federated States of Micronesia (photo by Eric Sales/ADB).

ANGELO JACINTO

IT and Multimedia Specialist (Consultant), ADB

Mr. Angelo Jacinto is a multimedia specialist and web developer who previously worked with the Asian Development Bank's (ADB) Office of the General Counsel (OGC) in producing the Developing Environmental Law Champions (https://www.teachenvirolaw.asia) and the Asian Judges Network on Environment (AJNE) (https://www.ajne.org) websites. He also documented events as a photo/videographer and produced video presentations for the Developing Environmental Law Champions Project.

He has been a multimedia and web development consultant with ADB since 2013, having worked mostly with the ADB's Department of Communications (DOC) on the redesign and maintenance of ADB.org (https://www.adb.org) and the creation of the ADB Data Library (https://data.adb.org). He also developed the Asia-Pacific Road Safety Observatory Website (https://www.aprso.org) with the ADB's Sustainable Development and Climate Change Department (SDCC), and the web version of the Office of Anticorruption and Integrity's (OAI) 2019 Annual Report (https://www.adb.org/multimedia/oai-2019/index.html). He also produced multimedia feature stories such as Green Cities (https://www.adb.org/green-cities/index.html) and Environmental Law Champions for Asia and the Pacific (https://www.teachenvirolaw.asia/story/index.html).

Prior to consulting with the ADB, he worked with multilateral organizations such as UNAIDS, UNICEF, the ASEAN Centre for Biodiversity, the ASEAN Wildlife Enforcement Network, the Green Climate Fund (GCF) and the International Organization for Migration (IOM).

Students ride a truck travelling on an ADB road project in Honiara, Solomon Islands. The project will replace or upgrade about 30 water crossings, reconstruct around 20 kilometers of roads, and relocate some roads for climate change adaptation across three provinces (photo by Luis Ascui/ADB).

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CONFERENCE RAPPORTEURS

MARIA CECILIA T. SICANGCO
Senior Legal Officer, Law and Policy Reform Program, ADB

Please see page 122.

Banco Nacional de Comércio de Timor-Leste (BNCTL) bank tellers attend to clients at their main bank branch in Dili, the capital of Timor-Leste (photo by Luis Ascui/ADB).

FRANCESSE JOY J. CORDON-NAVARRO

Resource Person, Promotion of International Arbitration Reform for Better Investment Climate in the South Pacific Technical Assistance

Ms. Francesse Joy J. Cordon-Navarro is a resource person for the Promotion of International Arbitration Reform for Better Investment Climate in the South Pacific Technical Assistance. She is also a research consultant for ADB's Article 6 Support Facility, which helps ADB developing member countries identify, develop, and pilot mitigation actions under the framework of Article 6 of the Paris Agreement.

From June 2013 to December 2020, Happy served as consultant for ADB's Law and Policy Reform (LPR) Program. Her latest role (February 2019 to December 2020) was consultant senior legal and policy reform specialist. She worked on projects focused on environment and climate change law, gender-based violence and access to justice, international arbitration, and corporate governance.

Outside ADB, Happy worked as an associate at Siguion Reyna, Montecillo & Ongsiako Law Offices; consultant for the University of the Philippines Law Center; lecturer on law, children, and the environment at the Oxbridge Academic Programs in Cambridge; and lecturer on international environmental law for the University of the Philippines Law Center's mandatory continuing legal education program.

Happy has published on international environmental law, sustainable development principles, and children's rights. She also worked with government institutions, development partners, and the academia in Cambodia, Fiji, France, Pakistan, Philippines, Thailand, United Kingdom, and Viet Nam.

She graduated magna cum laude with a Bachelor of Science in 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 then obtained her Master of Philosophy in Environmental Policy from the University of Cambridge in 2017.

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CONFERENCE ON THE GROUND: Photos from the Sydney Opera House

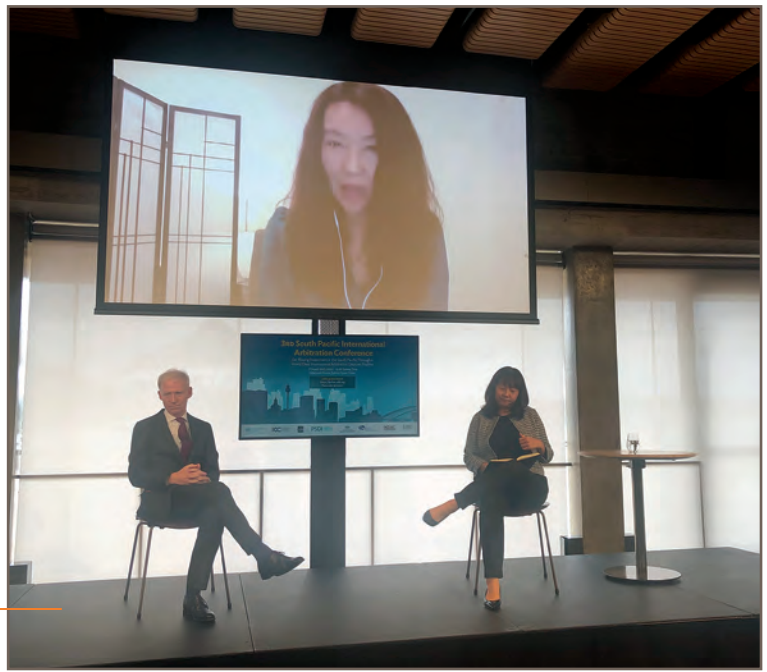
The majestic Sydney Opera House and city skyline (photo by Angelo Jacinto/ADB).

The hybrid conference was held at the Sydney Opera House for Sydney-based participants and via Zoom for everyone else (photo by Sally R. Shute-Trembath/ADB).

The conference began with a Welcome to Country (a traditional opening ceremony) performed by Metropolitan Local Aboriginal Land Council member Aunty Ann Weldon (photo by Erin Harris/ADB PSDI).

Daniel Meltz, overall conference moderator, introduces the Session 1 panel (photo by Erin Harris/ ADB PSDI).

The Session 1 panel, with ADB Deputy General Counsel Damien Eastman connecting from Perth, Australia (big screen); Jordi Paniagua, Craig Strong, Ram Bajekal, and Changwan Han, connecting from Spain, Fiji, and South Korea (small screen); and Lotte Schou-Zibell and Mark Russell on the ground at the Sydney Opera House (photo by Sally R. Shute-Trembath/ADB).



Christina Pak, Terry Reid, and Mary Kim co-moderate the closing session on international arbitration reform (photo by Erin Harris/ADB PSDI).

Terry Reid, joined by Mary Kim on stage, responds to a question from the audience during Session 4 of the conference (photo by Erin Harris/ ADB PSDI).

The construction of a new domestic terminal in Port Vila, Vanuatu helps promote interisland trade and eliminates constraints on shipping services (photo by Eric Sales/ADB).

13 ACCOMPANYING MATERIALS

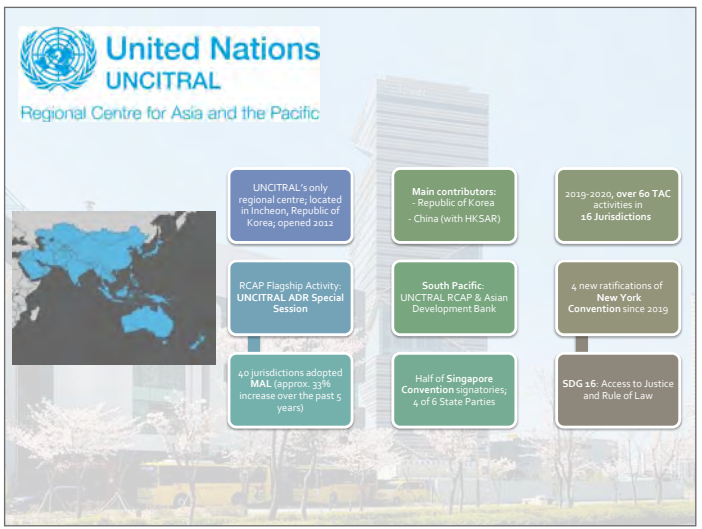
Black pearls account for nearly 85% of the Cook Islands' export industry (photo by Raul Del Rosario/ADB).

A. PRESENTATION SLIDES*

OPENING REMARKS of Athita Komindr

* These presentation slides are available online at the conference's Development Asia page.

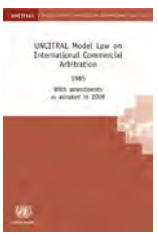
OPENING REMARKS of Athita Komindr *(continued)*



OPENING REMARKS of Athita Komindr *(continued)*

MAL: 85 States in a total of 118 jurisdictions (March 2021)

South Pacific States that adopted the Model Law on International Commercial Arbitration since 2017	
Australia – Australian Capital Territory	2017
Fiji	2017



uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration

UNCITRAL RCAP 2021 Events

UNCITRAL RCAP – BIAC ADR webinar	• Dhaka, Apr.
UNCITRAL LAWASIA virtual seminar	• Sydney, Apr.
Digital Trade Workshop	• Bangkok, June
Incheon Law and Business Forum	• Incheon, Sept.
HK Judicial Summit	• HK SAR, Oct.
UNCITRAL Special Session/ 10th Asia Pacific ADR Conference	• Seoul, Nov.
UNCITRAL Asia Pacific Day	• Universities in AP region (Sept. – Dec.)

OPENING REMARKS of Athita Komindr *(continued)*

SESSION 1
Jordi Paniagua's Presentation

The Economic Impact of
International Commercial Arbitration

Prof. Dr. Jordi Paniagua[1]

University of Valencia (Spain)

3rd Regional International Arbitration Conference
Sydney, March 17th, 2021

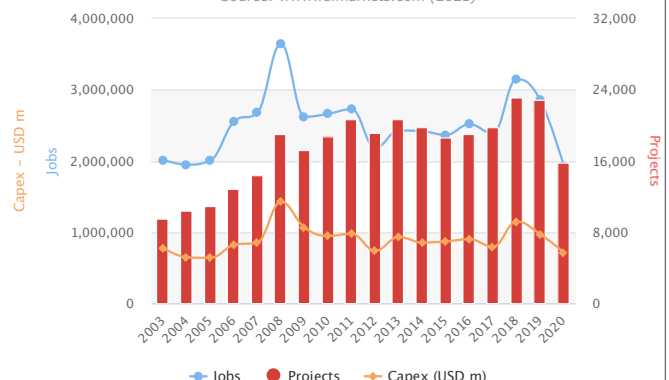
[1] jordi.paniagua@uv.es
http://uv.es/jorpaso2

Jordi Paniagua (Uni Valencia) | Economic Impact of Intl. Arbitration | Sydney via zoom 2021 | 1 / 17

Some economic trends | COVID takes it all

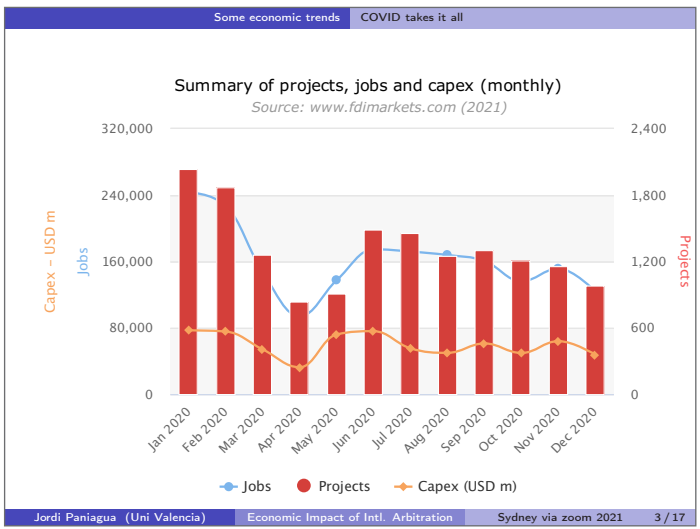
Summary of projects, jobs and capex (yearly)

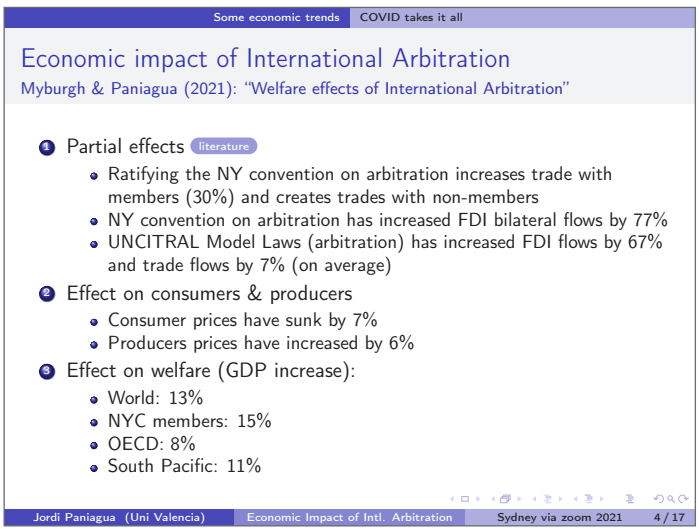
Source: www.fdimarkets.com (2021)



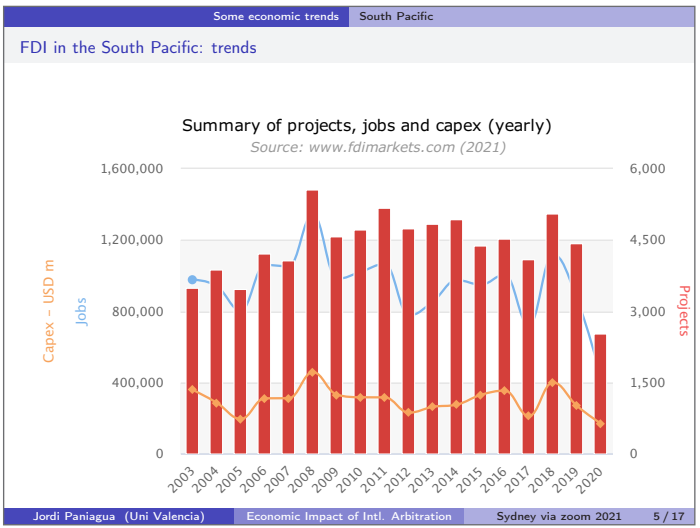
Jordi Paniagua (Uni Valencia) | Economic Impact of Intl. Arbitration | Sydney via zoom 2021 | 2 / 17

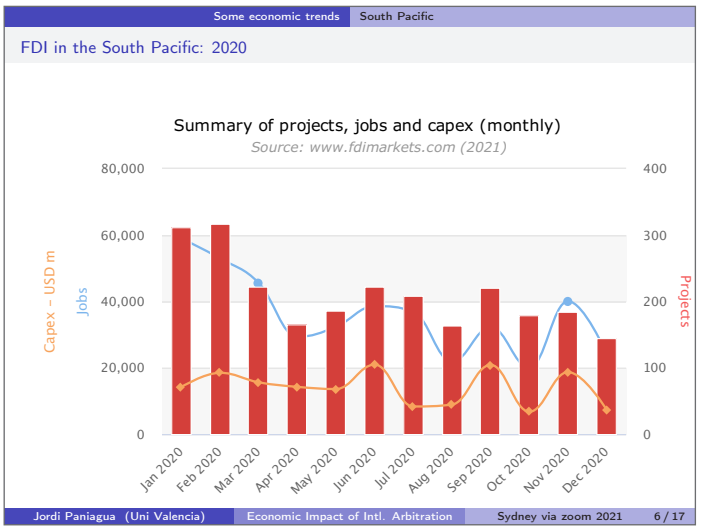
SESSION 1: Jordi Paniagua's Presentation *(continued)*



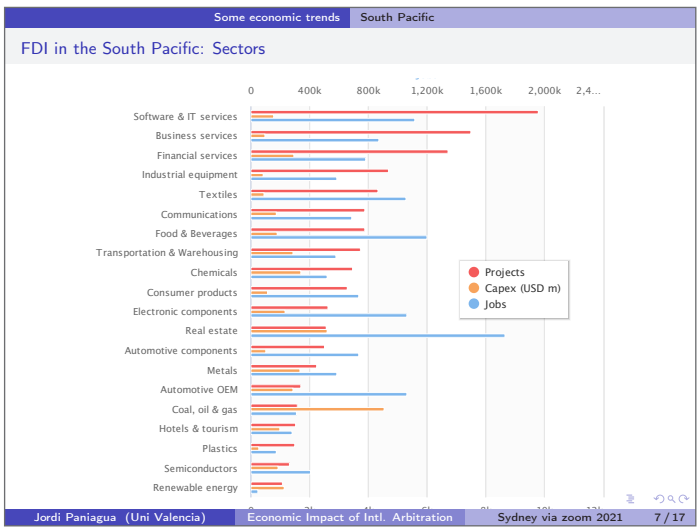


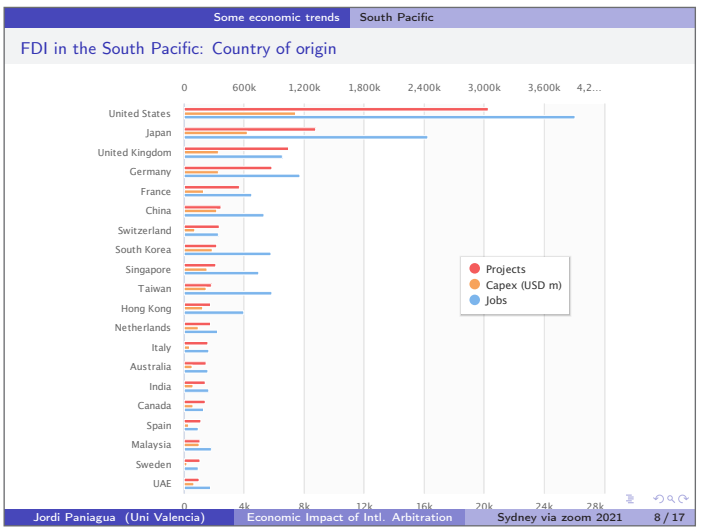
SESSION 1: Jordi Paniagua's Presentation *(continued)*



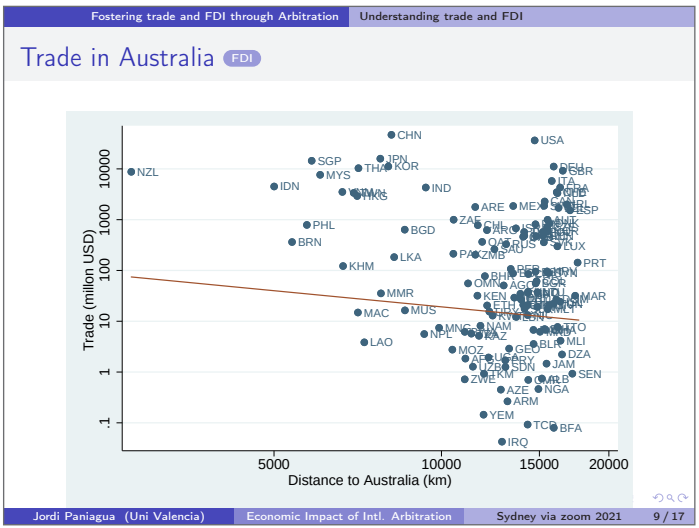


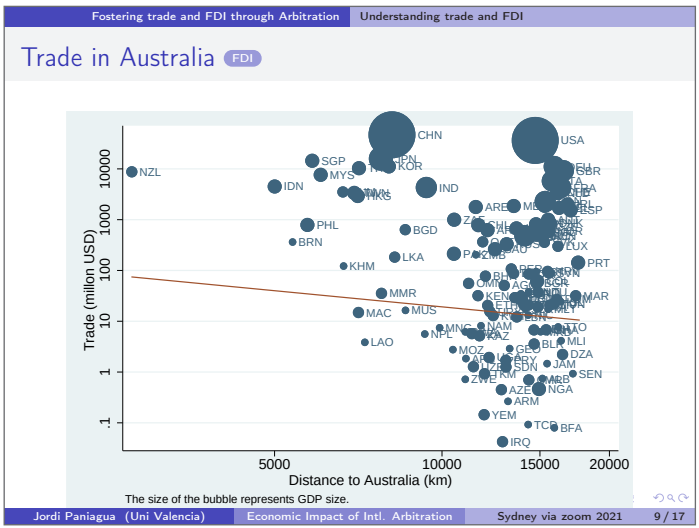
SESSION 1: Jordi Paniagua's Presentation *(continued)*





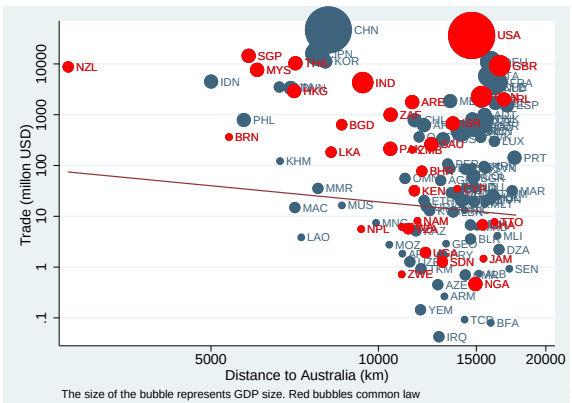
SESSION 1: Jordi Paniagua's Presentation *(continued)*





SESSION 1: Jordi Paniagua's Presentation *(continued)*

Trade in Australia FDI



The Gravity Equation

- Trade volumes follow the law of gravity:

$$FDI_{i \to j} = \underbrace{\frac{GDP_i GDP_j}{GDP_{world}}}_{\text{Economic size}} \times \underbrace{\left(\frac{\text{Contractual environment}}{Distance_{i \to j}} \right)}_{\text{Frictions}}$$

- FDI & trade increase with economic activity (more consumers & producers)
- FDI & trade fall with certain frictions:
  - Natural: Distance & History & Culture & Language
  - Human-made: Contractual & institutional environment

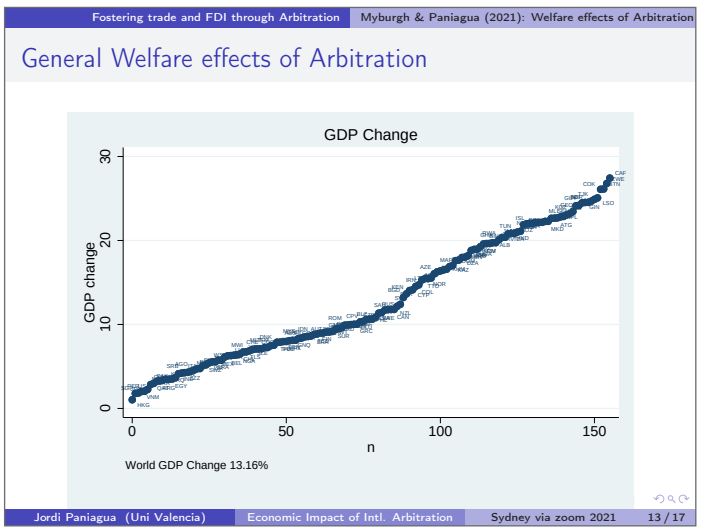
SESSION 1: Jordi Paniagua's Presentation *(continued)*

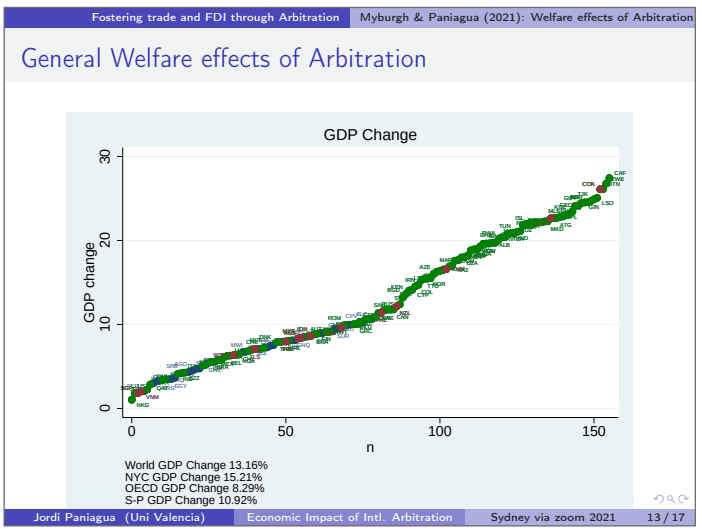
What is International Commercial Arbitration?

Mechanisms by which arbitration affects FDI & trade

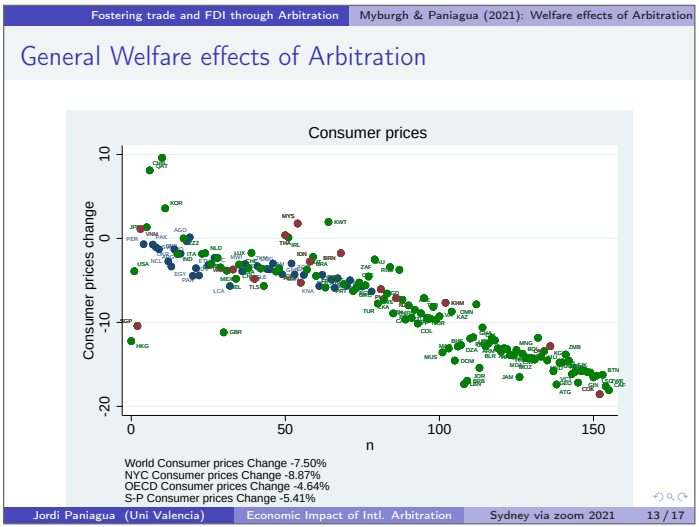
- Arbitration provides an effective and predictable dispute settlement mechanism:
  1. Flexible, confidential & final:
     - Award can be executed worldwide
  2. Increases the trust between parties:
     - High cost of engaging in nuisance suits
  3. Reduces the uncertainty of litigation in domestic courts in trade disputes:
     - Choice of law

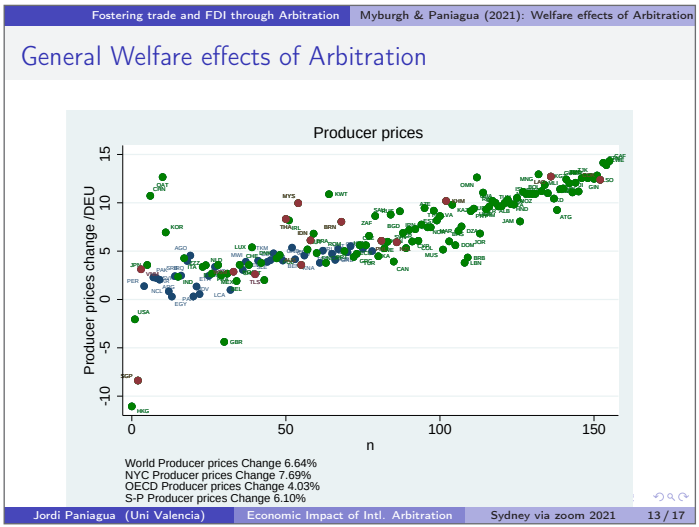
SESSION 1: Jordi Paniagua's Presentation *(continued)*





SESSION 1: Jordi Paniagua's Presentation *(continued)*





SESSION 1: Jordi Paniagua's Presentation *(continued)*

Tips & takeaways

International Business Promotion

Countries have three basic ways to escape the "gravity push" and promote trade and FDI

1. Get closer
   - Play for gravity (not against it): Common language, historical links
2. Grow bigger
   - Seek comparative advantages & economic growth
     - Human capital, knowledge, innovation
3. Be smarter!
   - Reduce human-made frictions
     - Provide a better contractual environment via arbitration

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Tips & takeaways

Thanks!

Thanks and acknowledgments*

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- jordi.paniagua@uv.es

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SESSION 1: Jordi Paniagua's Presentation *(continued)*

Tips & takeaways

Background

Trade

- Casella, A. (1996). "On market integration and the development of institutions: the case of international commercial arbitration" *European Economic Review*
- Berkowitz et al (2006). "Trade, law, and product complexity" *Review of Economics and Statistics*
- Moenius & Berkowitz (2011) "Law, trade, and development" *Journal of Development Economics*
- Gil-Pareja, S., Llorca-Vivero, R. & Paniagua, J. (2020). "Trade Law and Trade Flows". World Economy
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FDI

- Myburgh & Paniagua (2016) "Does international commercial arbitration promote foreign direct investment?" *Journal of Law and Economics*
- Myburgh & Paniagua (2016) "The impact of UNCITRAL on Foreign Direct Investment" *50th Anniversary UNCITRAL Congress*

Back

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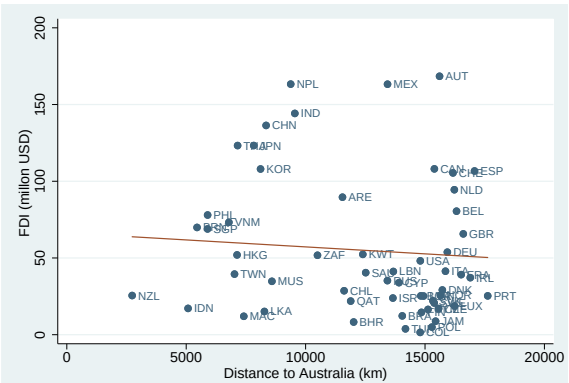
Tips & takeaways

FDI in Australia

Back



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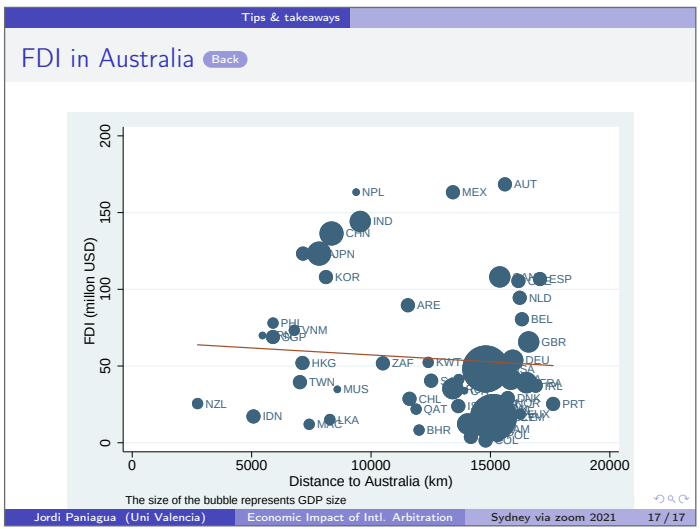
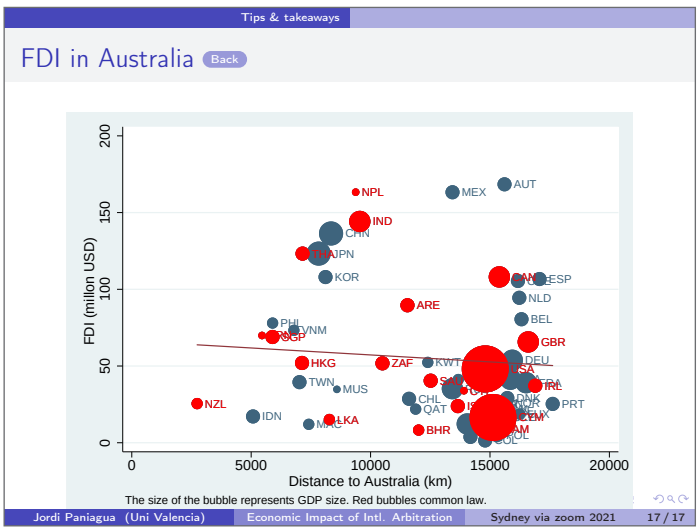
SESSION 1: Jordi Paniagua's Presentation *(continued)*





SESSION 1
Changwan Han's Presentation

THIRD SOUTH PACIFIC INTERNATIONAL ARBITRATION CONFERENCE
Session 1. Promoting Confidence in International Business through a Stable Disputes Regime

Experience of the Republic of Korea

I Foreign Investment Ombudsman

SESSION 1: Changwan Han's Presentation *(continued)*

II Arbitration / KCAB International

- The Korean Arbitration Act was revised to adopt the UNCITRAL Model Law in 1999 and 2016
- The Arbitration Industry Promotion Act came into effect in 2017
- KCAB International was launched in 2018

III Conciliation and Mediation

A. Court-annexed Conciliation

A. Mediation

C. Singapore Mediation Convention ?

SESSION 1: Changwan Han's Presentation *(continued)*

IV Others

A. E-Commerce Mediation Committee

A. Personal Data Protection Center

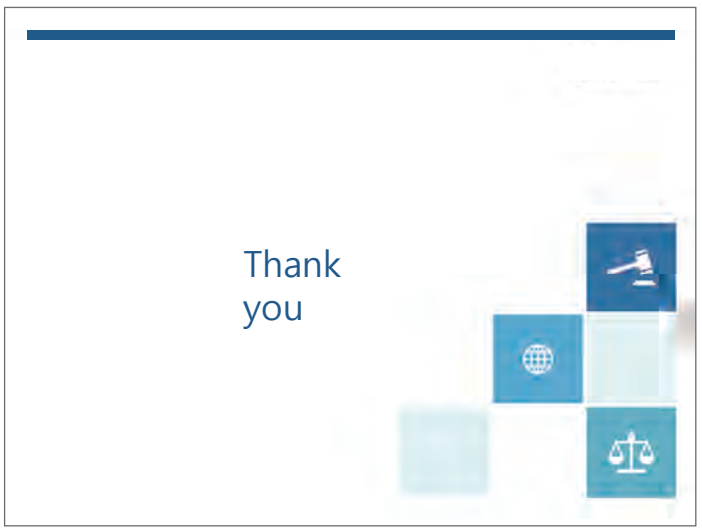
A. Internet Address Dispute Resolution Committee

A. Financial Disputes Mediation Committee

and many others.

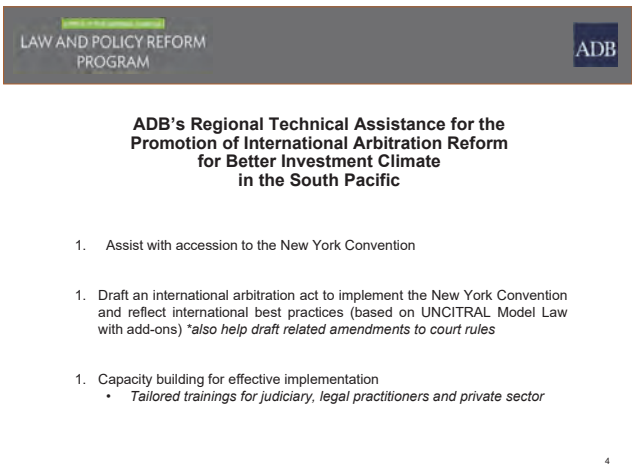
V Enhanced Dispute Resolution Processes

SESSION 1: Changwan Han's Presentation *(continued)*



SESSION 2
Christina Pak's Presentation

SESSION 2: Christina Pak's Presentation *(continued)*



SESSION 2: Christina Pak's Presentation *(continued)*

LAW AND POLICY REFORM PROGRAM

ADB

Enactment of Fiji International Arbitration Act 2017 & Related Amendments to High Court Rules 2018

International Arbitration Act to Boost Investor Confidence

HIGH COURT STRIKES OUT ATSET'S CLAIM AGAINST GOVERNMENT AND ATS

GOVERNMENT OF FIJI GAZETTE SUPPLEMENT

High Court (Amendment) Rules 2018

5

LAW AND POLICY REFORM PROGRAM

ADB

PNG's Accession to the New York Convention *(July 2019)*
Arbitration Bill in Progress ….

Economist hails O'Neill's call to strengthen arbitration rules

Prime Minister Peter O'Neill and Deputy Chief Justice Ambeng Kamboko meeting at the international mediation and arbitration conference in Port Moresby on Monday. – Nationalpic by DEVORILA ALFRED

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SESSION 2: Christina Pak's Presentation *(continued)*

LAW AND POLICY REFORM PROGRAM

ADB

Palau's Accession to the New York Convention *(March 2020)*
International Arbitration Bill Submitted to National Congress (OEK)….

7

LAW AND POLICY REFORM PROGRAM

ADB

Tonga's Accession to the New York Convention *(June 2020)*
&
Enactment of International Arbitration (*Fakatonutonu Fakavaha'apule'anga*) Act 2020

Sione Vuna Fa'otusia, Former Deputy Prime Minister and Minister of Justice Temalesi Manakovi'a Pahulu of Kolomotu'a, CEO of Ministry of Justice Nuku'alofa, Tonga, February 2020

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SESSION 2: Christina Pak's Presentation *(continued)*

LAW AND POLICY REFORM PROGRAM

ADB

Timor-Leste: Arbitration Reform in Progress…

- Approval by the Council of Ministers in October 2019 to accede to the New York Convention and put in place implementing arbitration law (http://timor-leste.gov.tl/?p=23241&lang=en)
- Draft Arbitration Law submitted to Parliament in Q1 2020
- Recommendation for the Portuguese version of the Arbitration Law to track the Portuguese version of the UNCITRAL Model Law
- Recommendation to publish the Arbitration Law in an English version that is as authoritative as the Tetum and Portuguese versions


National Parliament approves Timor Leste's accession to the United Nations Convention on the recognition and enforcement of foreign arbitral awards

9

LAW AND POLICY REFORM PROGRAM

ADB

Current Status in the Pacific

ADB Pacific DMC	Accession to NY Convention	NY Convention Implementing Law	Arbitration Legislation	Basis of Legislation
Cook Islands	Yes (2009)	Yes	2009 Arbitration Act	1985 UNCITRAL Model Law, with amendments as adopted in 2006
Fiji	Yes (2010)	Yes	2017 International Arbitration Act	1985 UNCITRAL Model Law, with amendments as adopted in 2006
Kiribati	No	n/a	1980 Kiribati Arbitration Act	1950 English Arbitration Act
Marshall Islands	Yes (2006)	No	1980 Arbitration Act	Unclear
Federated States of Micronesia	No	n/a	n/a	n/a
Nauru	No	n/a	n/a	n/a
Niue	No	n/a	1908 Arbitration Act	1908 New Zealand Arbitration Act
Palau	Yes (2020)	No *(Arbitration Bill submitted to National Congress)*	n/a	n/a
Papua New Guinea	Yes (2019)	No *(Arbitration Bill in progress)*	1951 Arbitration Act	1889 English Arbitration Act
Samoa	No	n/a	1976 Arbitration Act	1889 English Arbitration Act
Solomon Islands	No	n/a	1987 Arbitration Act	1889 English Arbitration Act
***Timor-Leste** *(categorized as a Southeast DMC at ADB)*	No *(Parliament approval in February 2021)*	n/a	n/a	n/a
Tonga	Yes (2020)	Yes	2020 International Arbitration Act	1985 UNCITRAL Model Law, with amendments as adopted in 2006
Tuvalu	No	n/a	1992 Arbitration Act	1950 English Arbitration Act
Vanuatu	No	n/a	No general arbitration legislation, but the 1983 Trade Disputes Act permits arbitration	n/a

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SESSION 2: Christina Pak's Presentation *(continued)*

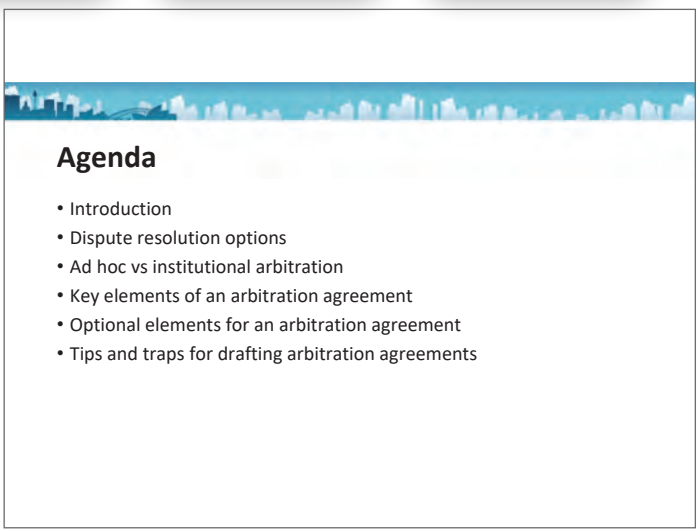
SESSION 2: Christina Pak's Presentation *(continued)*

SESSION 3A

Joint Presentation by Jo Delaney, Swee Yen Koh, May Tai, Daniel Kalderimis and Abhinav Bhushan







SESSION 3A: Joint Presentation *(continued)*

Benefits of arbitration

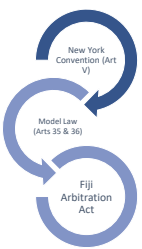
- Choice of independent tribunal
- Neutral forum with flexible procedures
- Binding outcome with limited right of challenge (no appeal)
- Confidentiality and privacy
- Key advantage of arbitration: ENFORCEMENT!

New York Convention

Source: newyorkconvention1958.org

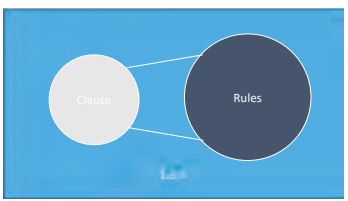
SESSION 3A: Joint Presentation *(continued)*

Legal framework



- Article V of the New York Convention provides a simple regime for recognition and enforcement of arbitral awards
- The Model Law operationalises this regime in Articles 35 and 36
- States (e.g. Fiji) domestically implement these provisions to facilitate the global functioning and enforcement of arbitral awards

Arbitration clause vs arbitral rules vs arbitration legislation



SESSION 3A: Joint Presentation *(continued)*

Ad hoc vs institutional arbitration

Key arbitral institutions in APAC

ICC SIAC HKIAC 香港國際仲裁中心 Hong Kong International Arbitration Centre

ACICA ARBITRATORS' AND MEDIATORS' INSTITUTE OF NEW ZEALAND INC NZIAC

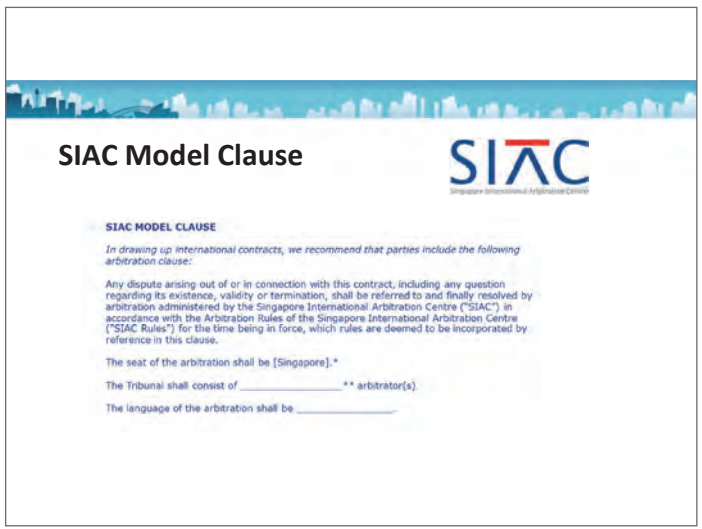
SESSION 3A: Joint Presentation *(continued)*

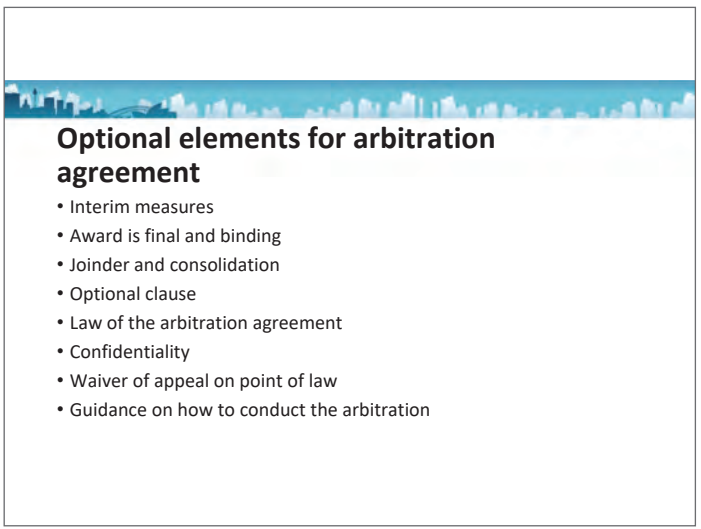
Key elements in an arbitration agreement

ICC Model Clause

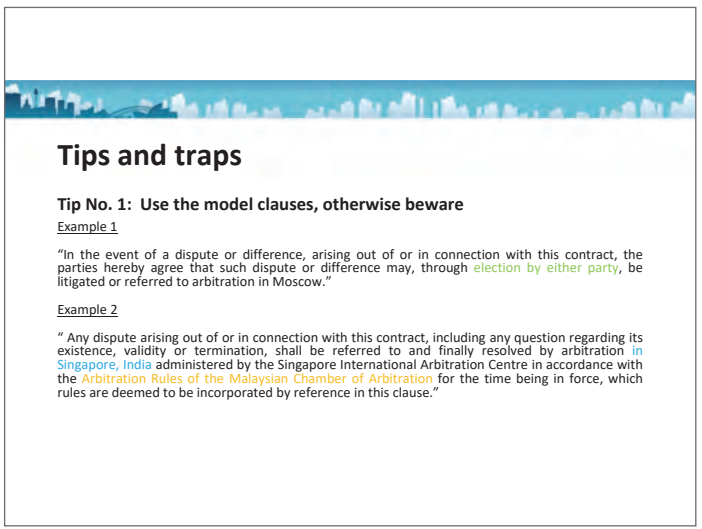
All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

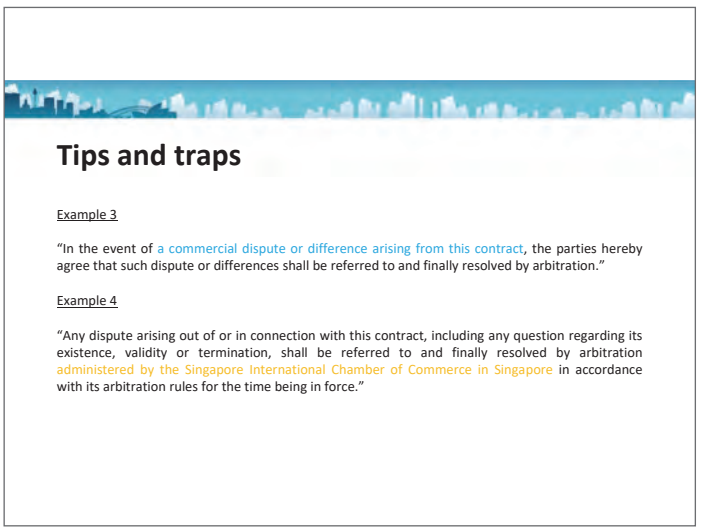
SESSION 3A: Joint Presentation *(continued)*



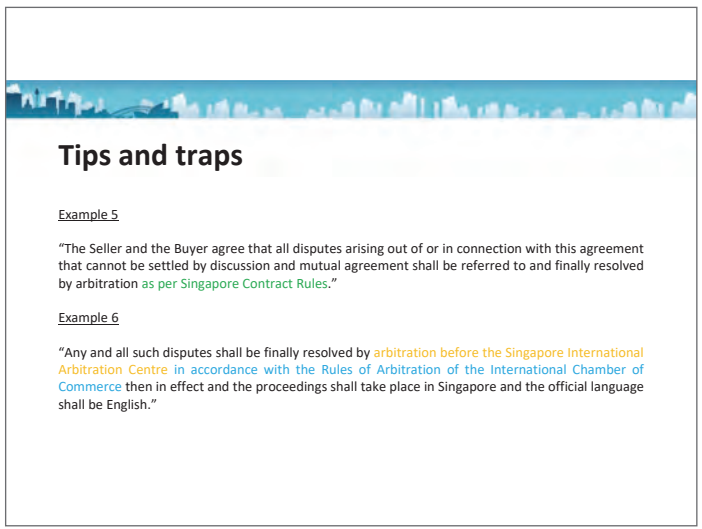


SESSION 3A: Joint Presentation *(continued)*





SESSION 3A: Joint Presentation *(continued)*



SESSION 3A: Joint Presentation *(continued)*

Tips and traps

Tip 2: Consider the scope of the clause

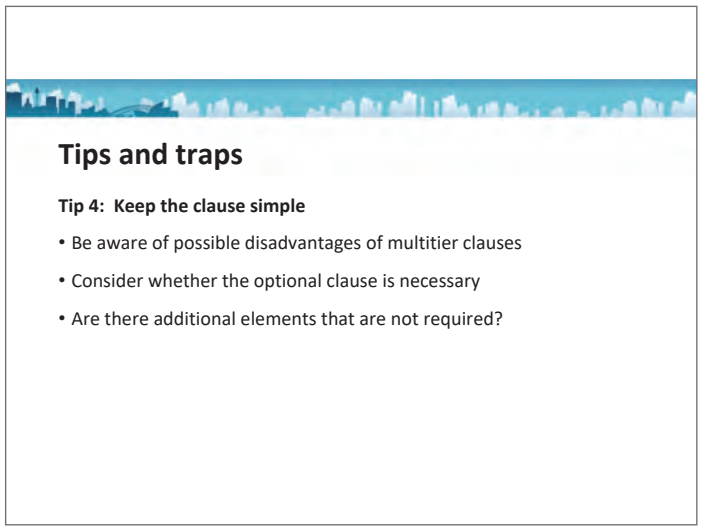
- All disputes?
- Are steps mandatory or permissible?
- Is a step dependent on a later agreement?

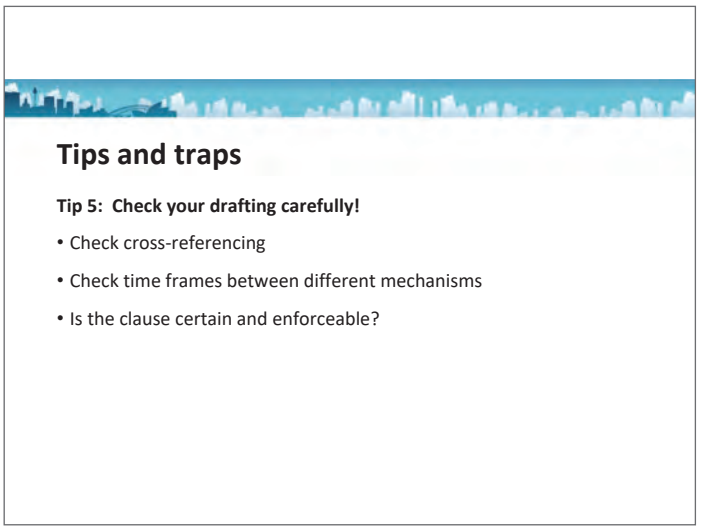
Tips and traps

Tip 3: Consider any carve outs from the clause

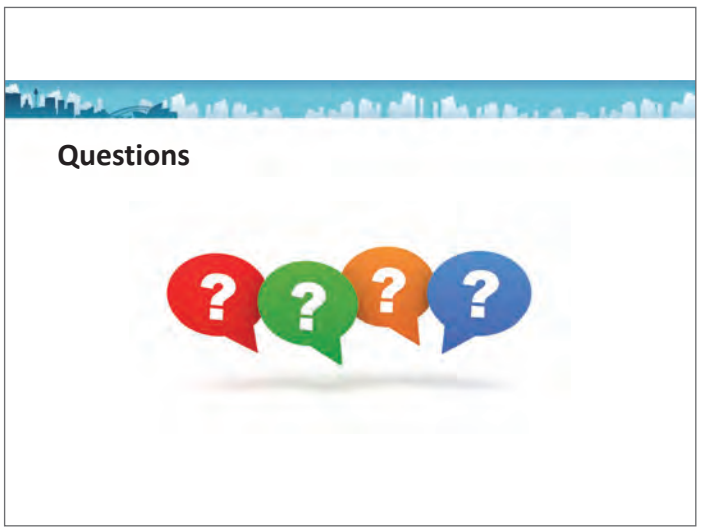
- Have disputes been carved out for expert determination?
- Have disputes been split between arbitration and litigation?
- How is the division to be determined? Is the distinction clear?

SESSION 3A: Joint Presentation *(continued)*





SESSION 3A: Joint Presentation *(continued)*



SESSION 3C
Acting Chief Justice Kamal Kumar's Presentation

Third South Pacific International Arbitration Conference
17 March 2021

Presentation by
Acting Chief Justice Kamal Kumar

International Arbitration Act 2017
Introduction

- Commenced on 4 December 2018
- Act binds the State *(s3)*
- Applies to International Arbitration (IA) commenced prior to or after 4/12/2018.
- Limitation Act 1971 applies to IA proceedings. *s10*

SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*

Definition – IA s4(3)

- Place of business of parties in different States.
- Place of arbitration is different from place of business.
- Place where substantial part of obligation is to be performed or where subject matter is closely connected is different from place of business.
- Parties agree subject matter relates to more than one State.

Definition - Arbitration Agreement has been widely defined in s11 of the Act which in summary are in following terms:

- An Agreement by parties to submit all or certain disputes arising;
- Shall be in writing in the form of arbitration clause in the contract or separate agreement;
- Agreement can be in the form of electronic communications or data messages; *s11(4)*
- Can be by way of allegation in Statement of Claim which is not denied; *s11(5)*
- Reference to a document in a contract which had arbitration clause. *s11(6)*

SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*

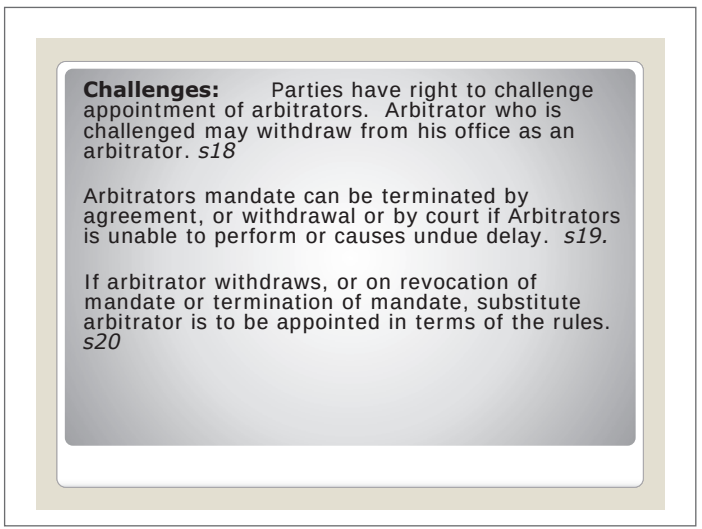
Appointment of Arbitration Tribunal *s15*

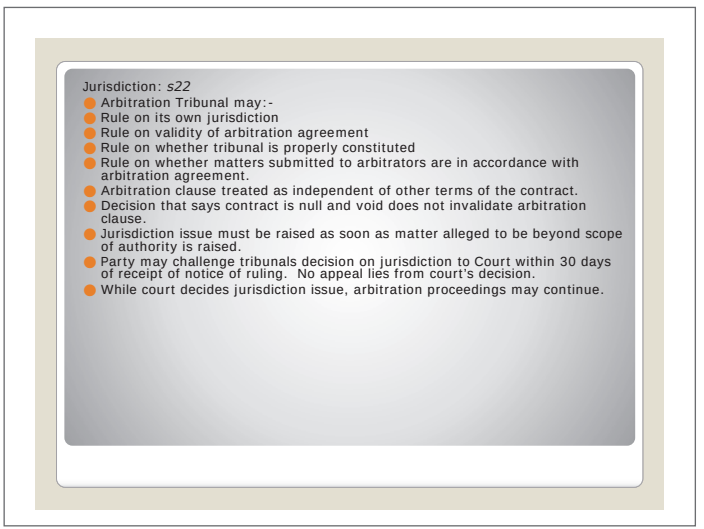
- Parties to determine arbitrators and numbers.
- If parties cannot agree, then:-
  - each party appoints 1 and then 2 Arbitrators appoint 3 Arbitrators.
- If parties fail to take above steps w/i 30 days from due date the party can move Court or any other authority to appoint Arbitrator(s).

Justiciable Impartiality or Independence

- Arbitrator to disclose any doubts as to his/her impartiality/independence.
- Obligation to disclose is from start to finish of Arbitration proceedings.

SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*





SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*

Conduct of Arbitration Proceedings:

- Parties to be treated equally and given full opportunity to present his/her case. *s34.*
- Parties may represent themselves or by person of their choice. *s35*
- Rules of procedures. Parties to agree on failing which arbitral tribunal to make procedures in line with the Act. *s36*
- Place of arbitration is to be agreed to by parties failing which arbitral tribunal to decide having regard to circumstances of the case.
- Arbitral proceedings commences on date of receipt of request to refer dispute to arbitration as received by the Respondent. *s38*
- Language used is that agreed by parties failing with arbitral tribunal to decide. *s39*
- Parties are to file their claim or defence and may amend their claim or defence unless arbitral tribunal considers it inappropriate to allow amendment. *s40*

Hearing and written procedures: Arbitral Tribunal to determine whether to conduct oral hearing or decide dispute or basis of documents and other material. Arbitral Tribunal to hear matters at different stage of proceedings if requested by a party.

- All documents including expert reports and evidential materials should be communicated to all parties. *s41.*
- Default of Party: unless agreed by parties if without showing sufficient cause:-
- Claimant fail to communicate his/her statement of claim arbitral tribunal shall terminate proceedings.
- Respondent fails to communicate his/her defence proceedings shall continue without treating such failure as admission of claim.
- If any party fails to appear at hearing or provide documentary evidence proceeding shall continue and award made on evidence by arbitral tribunal. *s42.*

SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*

Confidential: Unless agreed by parties, all documents are matters relating to arbitration shall be confidential. No party shall publish, disclose or communicate any information in relation to arbitration proceedings or awards. *s45(1)*

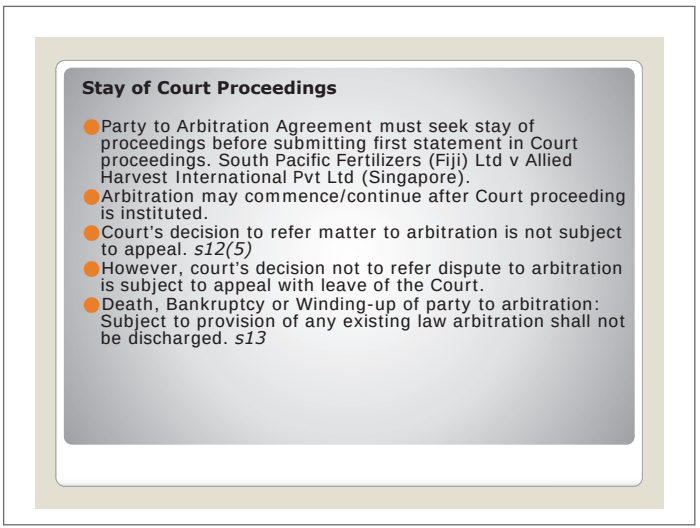
Exception:

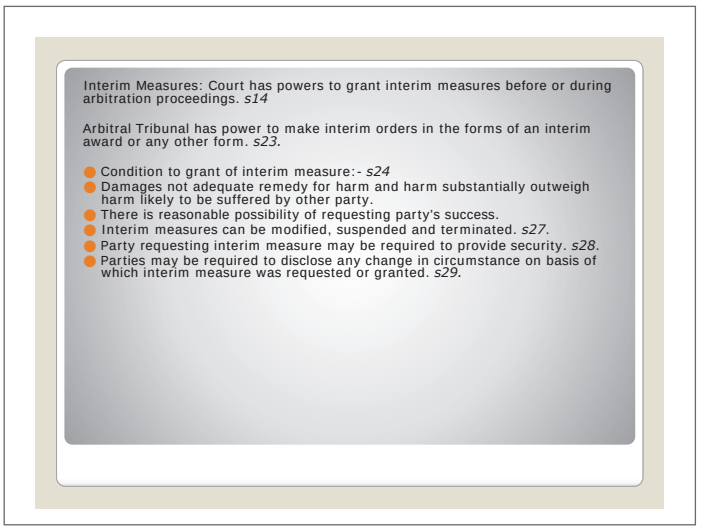
(a) To protect or pursue a legal right or interest of a party; or
(b) To challenge or enforce award; or
(c) Obliged by law to disclose; or
(d) If ordered by arbitral tribunal after hearing the parties;
(e) To any advisors of any of the parties. *s45(2)*

Termination of Arbitration Proceedings s50:

- Final Awards *s50(1)*
- Order of arbitral tribunal
- when claimant withdraws claim without objection by respondent
- Parties agree to terminate
- Arbitral Tribunal finds continuation of proceedings to be unnecessary or impossible. *s50(2)*

SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*





SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*

Enforcement of Interim Measures – can be enforced in the same manner as final award. *s31.*

Grounds of refusing Recognition on Enforcement – Interim measures. *s32.*

- Same grounds for refusing final awards under s54(1)(a)(i) to (iv) and s54(b).
- Arbitral Tribunal decision to provide security not complied with.
- Interim measures has been suspended or terminated by arbitral tribunal, court of state in which arbitration takes place or under law of which interim measures was granted.
- Interim measures is incompatible with power conferred upon the Court.

Courts Power: Court has power to make interim orders in exercise of powers in accordance with its procedures in consideration of the specific features of international arbitration. *s33.*

Application for Setting Aside as Exclusive Recourse Against Arbitral Award. *s52*

- Award may be set aside by Court if:-
  - Party to agreement was under some incapacity; or
  - Agreement was invalid under law it was subject to or if no such indication then under law of Fiji;
  - Party not given proper notice of appointment of arbitrator or arbitration proceeding or was unable to present his/her case.
  - Award deals with dispute not within the scope of submission to arbitration;
  - Composition of tribunal or the procedure not in accordance with the agreement or unless provision of the agreement in conflict with provision of the Act;
  - Subject matter of dispute is not capable of settlement by arbitration under Laws of Fiji;
  - Award is in conflict with public policy of Fiji.

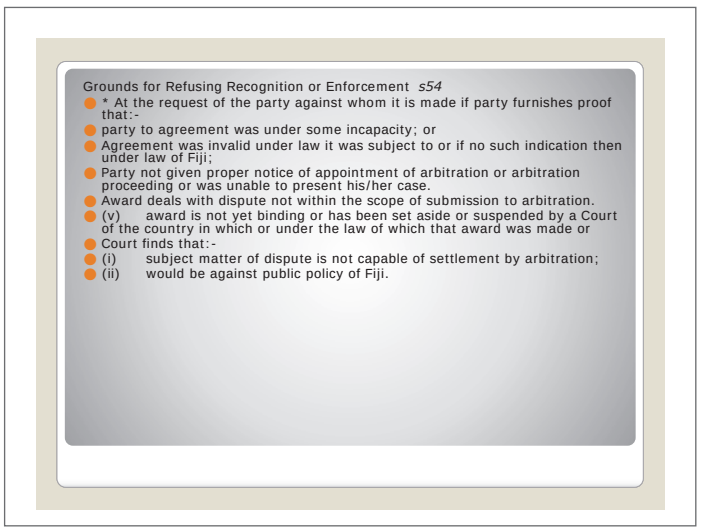
SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*

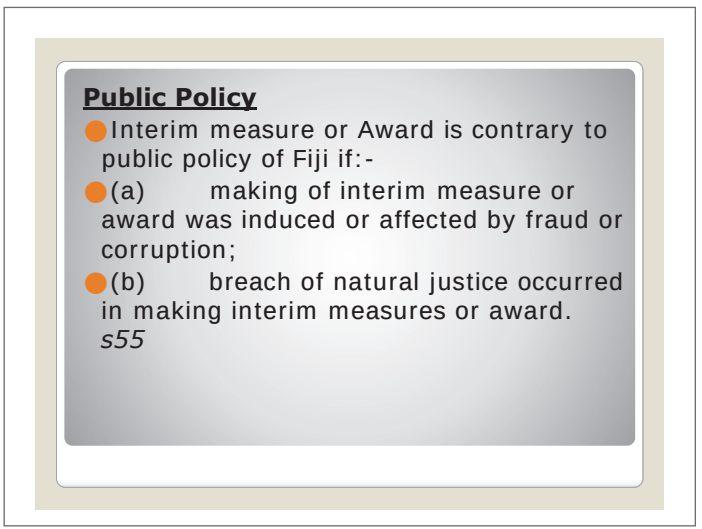
- Application to set aside award is not to be made after 3 months from receipt of award or determination of application to correct award or interpret a point in the award. *s52(3).*
- Court may suspend setting aside proceeding to give an opportunity to tribunal to take action to eliminate grounds for setting aside. *s.52(4).*

Recognition and Enforcement *s53*

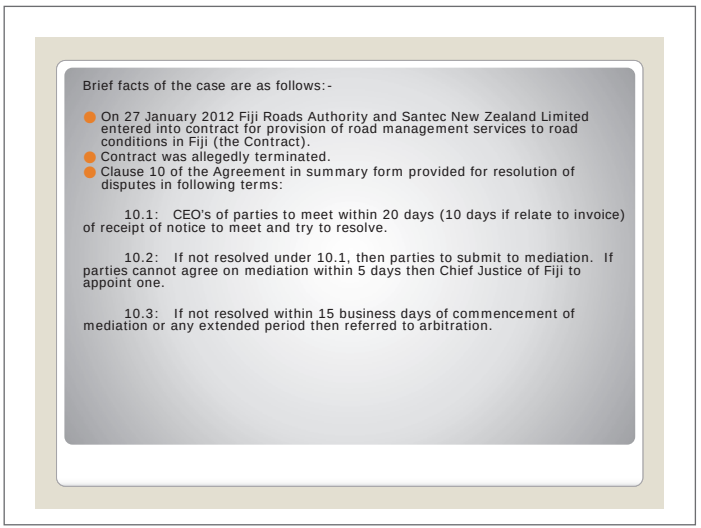
- - Award shall be recognised as binding and enforced upon application to Court irrespective of in which country it was made. (This is subject to s54).
- - If award not in official language of Fiji then translation is to be supplied.

SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*

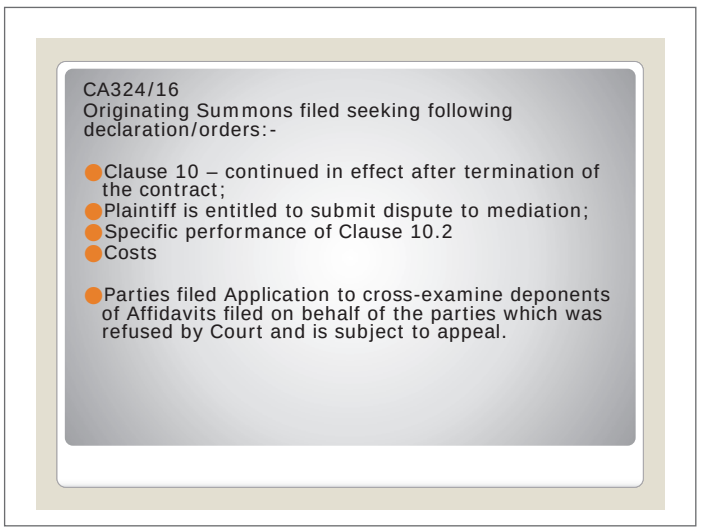


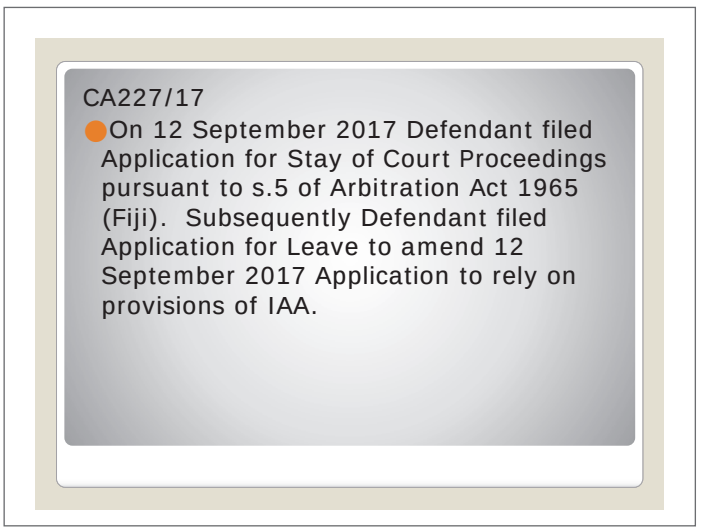


SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*

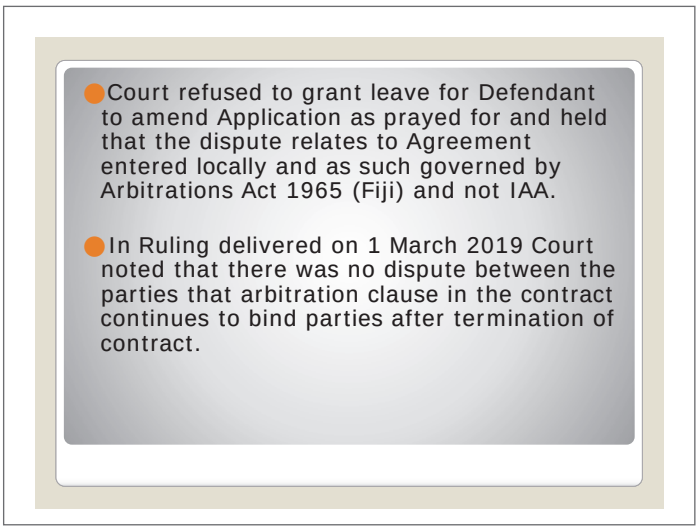


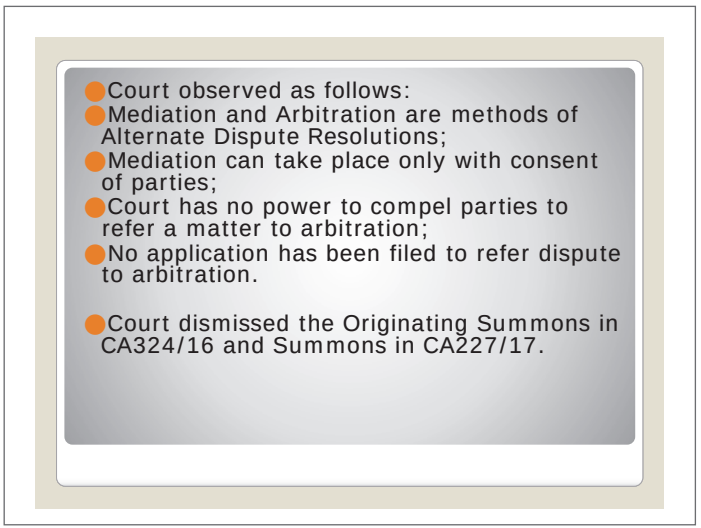
SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*





SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*





SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*

South Pacific Fertilisers Limited (Fiji) v. Allied Harvest International Pvt. Ltd. (Singapore) High Court Civil Action No. 142/17.

Brief facts are as follows:

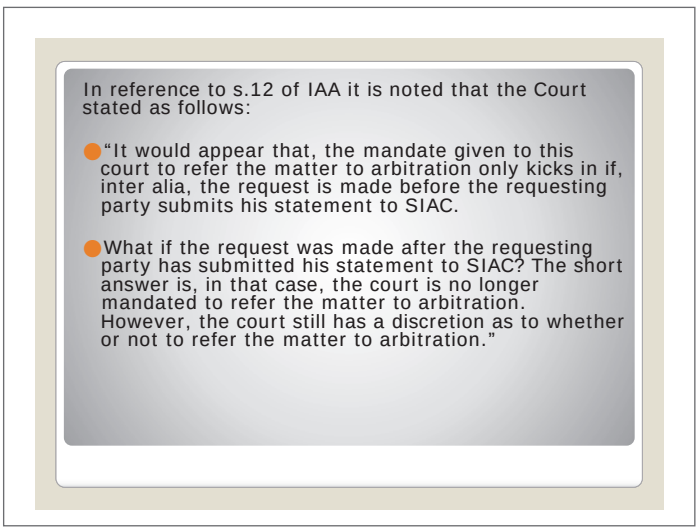
- Defendant supplied fertilisers to Plaintiff from Hong Kong;
- Those fertilisers were not being released to Plaintiff – issue payment of invoice (dispute);
- Court granted interim mandatory injunction for release of fertilisers;
- Defendant filed Application for Stay of Proceedings.

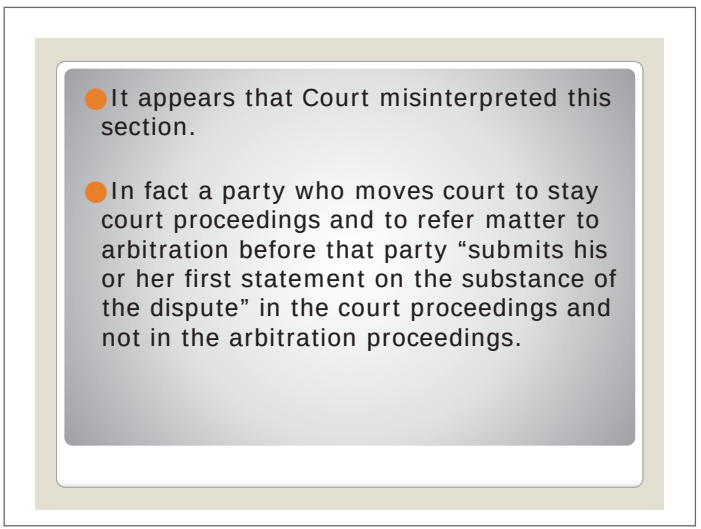
Arbitration Clause was in following terms:

- "Arbitration – In the course of execution of this contract, any dispute shall be informed to the other party within 3 days for negotiation and solution. In case not reaching an amicable agreement, such dispute shall be finally settled by Singapore International Arbitration Centre beside chamber of the commercial and industry whose decision will be regarded as final and binding to both parties. The loosing party will pay arbitration charge and other charges."

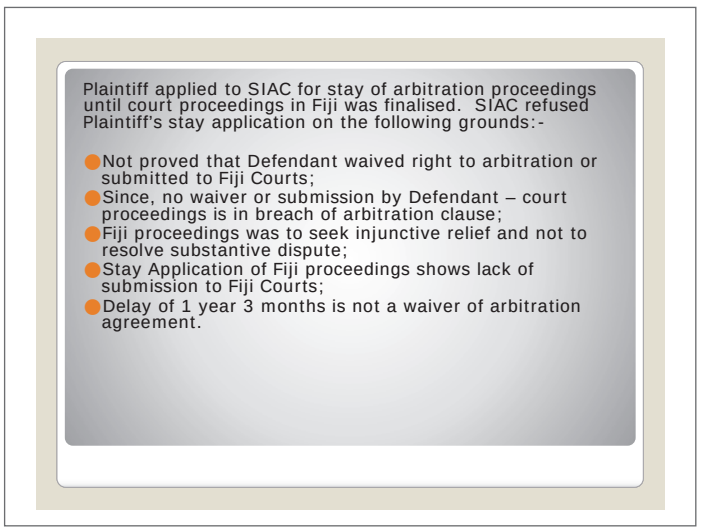
- Court referred dispute to arbitration and stayed the Court's proceedings after considering various provisions of IAA.

SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*

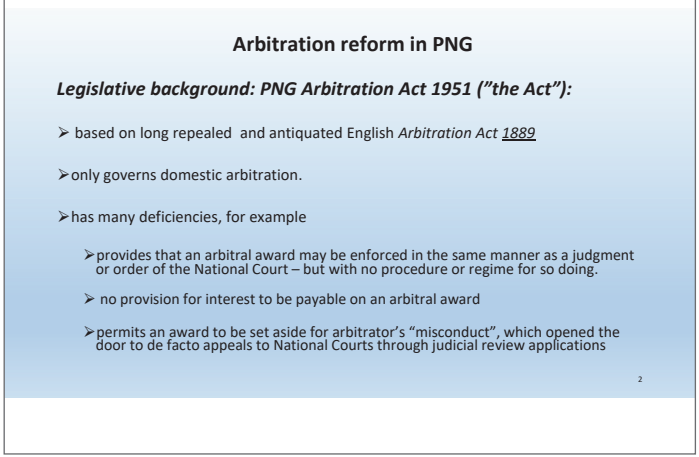




SESSION 3C: Acting Chief Justice Kamal Kumar's Presentation *(continued)*



SESSION 3C
Justice Jeffery Shepherd's Presentation



SESSION 3C: Justice Jeffery Shepherd's Presentation *(continued)*

Legislative background: PNG Court Rules

- PNG Court Rules do not currently remedy the deficiencies:
  - The Act provides for the Chief Justice to make Rules, but no Rules have ever been published
  - Division 8 of Order 14 of *National Court Rules* (NCR) does have some procedural rules, but they only apply to arbitrations which have been expressly ordered to arbitration by the Court under Section 13 of the Act.
  - The procedural rules in NCR do not apply to circumstances where parties have voluntarily submitted to arbitration before litigation.

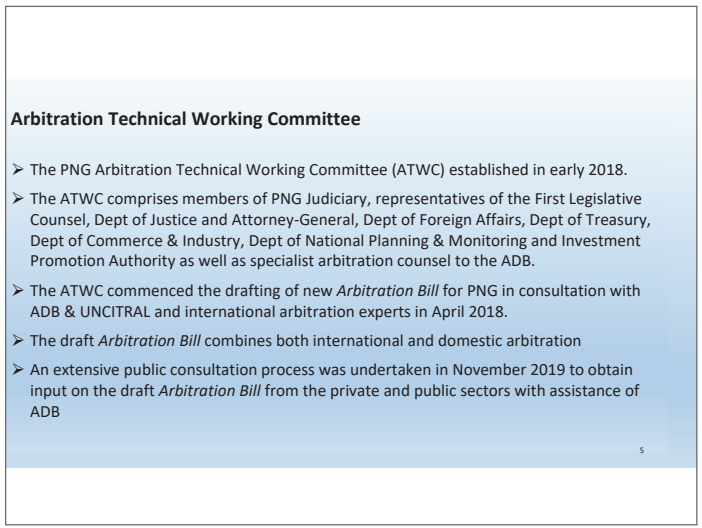
3

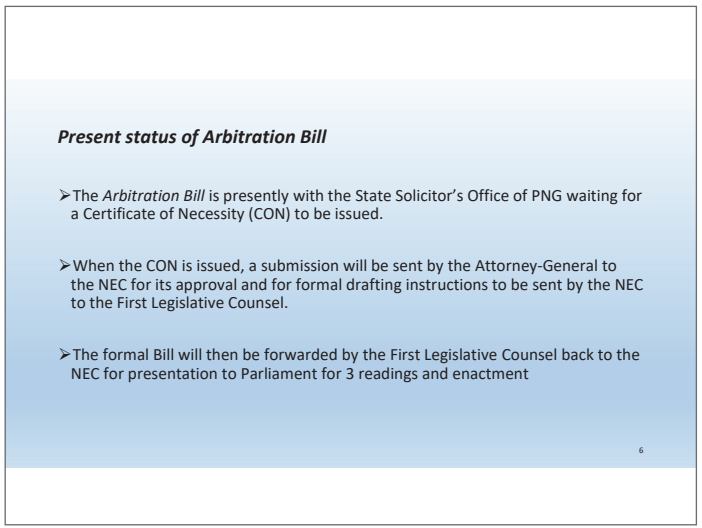
Papua New Guinea's accession to New York Convention

- The need for reform of arbitration law recognised by PNG Government in early 2018.
- Policy submission approved by National Executive Council (NEC) on 18 October 2018
- PNG became 160th nation signatory to *New York Convention* on 17 July 2019.

4

SESSION 3C: Justice Jeffery Shepherd's Presentation *(continued)*





SESSION 3C: Justice Jeffery Shepherd's Presentation *(continued)*

The objectives and purposes of the draft Arbitration Bill 2021

- To implement PNG's treaty obligations under the New York Convention.
- Based on *UNCITRAL Model Law* of 1985 but adapted to PNG circumstances.
- Designed to conform with best modern international law practice.
- Introduces a new regime to promote consistency between international and domestic arbitrations in PNG.
- To increase the attractiveness of PNG as a venue for international and domestic arbitration, including recognition and enforcement of arbitral awards based on the Model Law.
- The Bill redefines and clarifies basis on which arbitral awards can be set aside.

7

Principal Features of Arbitration Bill

- Section 4(4) of *Arbitration Bill* defines an arbitration as domestic if it is not international under Section 4(3).
- Section 3 – Application of *Claims By And Against the State Act 1996*- unless parties otherwise agree:
  - Section 5 Notice under CBAS Act applies to all domestic arbitration where State is a party
  - where the State is a party to an international arbitration, provisions of Section 5 of CBAS Act do not apply. A party is to give notice in writing to designated officer.

8

SESSION 3C: Justice Jeffery Shepherd's Presentation *(continued)*

- Section 59(1) – subject to Section 61, an arbitral award, irrespective of where it is made, shall be recognised by PNG Courts as binding and shall be enforced.
- Section 61(1)(a) – recognition or enforcement of an award, irrespective of country in which award made, may only be refused on grounds of :
  - incapacity of parties
  - breach of due process
  - deals with matters outside scope of arbitration agreement
  - lack of jurisdiction of arbitral tribunal
  - award not yet binding on the parties under the law of the country where award was made

9

- Section 61(1)(b) – a PNG Court can refuse recognition or enforcement of arbitral award wherever made if the Court finds that:
  - The subject matter of the dispute is not capable of settlement by arbitration under the law of the other country where award was made; or
  - Recognition or enforcement of the arbitral award would be contrary to public policy of the State.
- Section 62 – an arbitral award is contrary to public policy of the State if
  - it was induced by fraud or corruption, or
  - if it is repugnant to general principles of humanity.

10

SESSION 3C: Justice Jeffery Shepherd's Presentation *(continued)*

Role of National Court

- Under the new regime for international and domestic arbitrations in PNG:
  - the National Court will exercise a supervisory role if required by parties during the course of the arbitration process prior to making of arbitral award.
  - Upon making of the final arbitral award, no right of appeal or judicial review in traditional sense.
  - Arbitral award may only be set aside under Section 58 of the *Arbitration Bill* if the same grounds as are set out in Sections 61 and 62 for refusing recognition or enforcement also apply.

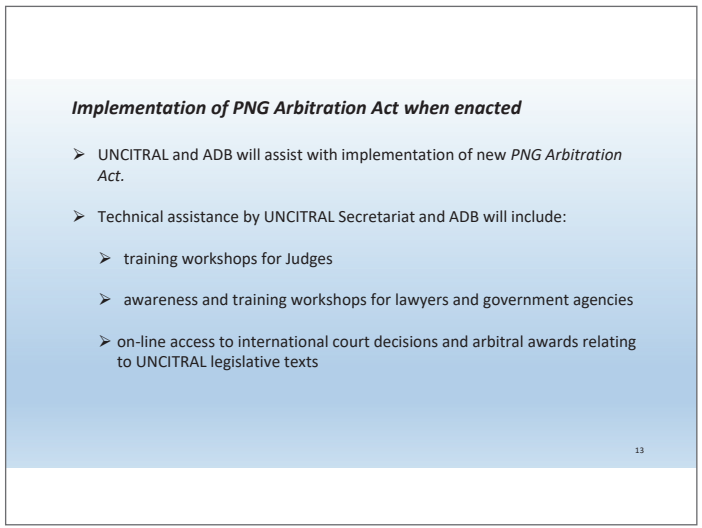
11

➢ *National Court Practice Note 2 of 2018*

- ➢ ADR Service is National Court Registry for arbitrations (voluntary) pending future establishment of PNG's arbitral institutions
- ➢ Registrar of National Court may approve request of parties to arbitration to use Court facilities and Registry services
- ➢ ADR Service to maintain regularly updated list of domestic and international arbitrators and arbitration institutions
- ➢ Arbitration files registered with ADR Service are confidential – not accessible to public
- ➢ Notice of Arbitration Claim to set out agreement between the parties as to procedural matters

12

SESSION 3C: Justice Jeffery Shepherd's Presentation *(continued)*



A scenic beach in Nuku'alofa, Tonga's political and economic capital (photo by Luis Enrique Ascui/ADB).

B. PRESENTATION SPEECHES*

REMARKS by
Michael Whitten QC
Lord Chief Justice of the Kingdom of Tonga

1. In 1967, Tonga enacted the *Reciprocal Enforcement of Judgments Act*. That Act defined 'judgment' as including arbitral awards which had become enforceable in the same manner as a judgment given by a court in the place the award was made.

2. Other than that, and despite a number of statutes referring incidentally to arbitration, until recently, Tonga has not had any legislation of its own to provide for or govern domestic or international commercial arbitrations.

3. In the 1995 decision of *Fletcher Construction Co Ltd v Montfort Bros* [1995] Tonga LR 142, which appears to be the only one of its kind, the Tongan Supreme Court was asked to enforce an arbitral award between parties to a building contract. Then Chief Justice Webster resorted to the English *Arbitration Act* of 1950 and the applicable

* As submitted to the Conference Secretariat.

English procedure Rules to find that the award there was final and binding and able to be enforced as a judgment of the Court.

4. In 2003, Tonga abandoned its adherence to English statutes, where they had been required, leaving only English common law and rules of equity, 'subject to such qualifications as local circumstances render necessary', to fill any so-called 'gaps' in the growing body of domestic legislation.

5. Since 2010, a raft of constitutional reforms have been described by some commentators as the Kingdom's path to democracy. Those reforms and their consequential effects on the legislature have been hoped to continue to advance Tonga's governance in a number of important respects, and to levels of or approaching other established rules based systems in many parts of the Pacific.

6. Despite its relatively small population of approximately 110,000 (excluding a much larger diaspora), Tonga's location affords it a certain geo-political significance in the Pacific. That significance is reflected, in part, by the levels of foreign aid, and bilateral and multilateral development support Tonga receives from more developed donor partners throughout the region. Yet, like many developing nations, Tonga's future sovereignty, economic prosperity and resilience to an ever-growing matrix of changes and challenges, is likely to depend, in large measure, upon its:

   (a) level of commercial and other engagement with the proximate international community; and
   (b) ability to foster and develop trading and investment relationships built on trust and a certain, stable and secure legal and regulatory environment.

7. To that end, on 12 June 2020, Tonga acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), thereby becoming the 164th State party to do so. It's accession was ratified on 10 September 2020.

8. On 3 March 2021, the Tonga *International Arbitration Act* came into force.

9. The Act goes beyond the minimum requirements of the New York Convention. It embodies a comprehensive, state-of-the-art legislative framework for international arbitration based on the UNCITRAL Model on International Commercial Arbitration 1985 as amended in 2006 (the "2006 Model Law").

10. Examples include:

    (a) a more detailed definition of an arbitration agreement (s.8, based on Article 7 of the 2006 Model Law, Option I);
    (b) the separability of an arbitration clause from the other terms of the contract (s.19, based on Article 16 of the 2006 Model Law).
    (c) the obligation on a court seized of a matter which is the subject of an arbitration agreement, to refer the parties to arbitration, unless the agreement is found to be null and void, inoperative or incapable of being performed (s.9, based on Article 8(1) of the 2006 Model Law);
    (d) provisions for the granting and enforcement of interim measures (ss 21-31, based on Articles 17 and 17A-J of the 2006 Model Law); and
    (e) empowering an arbitral tribunal to rule on its own jurisdiction.

11. The Tonga *International Arbitration Act* also contains provisions which supplement the Model Law and are:

    (a) based on international best practice and recent trends and developments in the field; and
    (b) adapted from leading arbitration seats in the region, including Australia, Hong Kong, and Singapore.

12. Such provisions include:

    (a) the definition of an "arbitral tribunal" includes "an emergency arbitrator" (s.2, based on s.2(1) of the Singapore International Arbitration Act). This reflects most institutional arbitration rules which allow parties to obtain urgent interim relief from an emergency arbitrator who can be appointed even before the constitution of the tribunal;
    (b) representation in arbitral proceedings (s.34, based on s.29 of the Australian International Arbitration Act). This is in line with the prevailing trend of recognising the parties' freedom to choose their representatives in international

arbitration proceedings, and guarantees parties, particularly those based outside Tonga, that local restrictions on representation will not be imposed in the context of international arbitration proceedings;

(c) confidentiality of the arbitration proceedings is expressly guaranteed, subject to defined exceptions (s.45, based on s.18 of the Hong Kong Arbitration Ordinance). This reflects the substantial premium that parties who choose to arbitrate place on confidentiality; and

(d) the liability and immunity of arbitrators, their employees or agents, including, arguably, appointing authorities and arbitral institutions (s.18, based on s.28(1) of the Australian International Arbitration Act and s.25A of the Singapore International Arbitration Act). This reflects the importance placed by many modern arbitration regimes on the adjudicative character of the arbitrator's mandates.

13. The standard provisions from the Model Law reflect well-established international arbitration principles. The supplemental provisions now equip Tonga with an advanced and comprehensive legislative regime for international arbitration. The combination presents a more certain and supported legal environment for the conduct of international arbitration and the enforcement of international arbitration awards in Tonga.

14. However, of course, the Act is only the first step towards implementation of the Convention in Tonga. There is much more to be done to achieve practical implementation and demonstrated efficacy.

15. In order to access the economic benefits of commercial dealings based on the Convention and to establish and develop Tonga's reputation as having a predictable and effective supervisory statutory regime for the regulation of international arbitration and enforcement of arbitration agreements and awards in accordance with the Convention, careful planning, design and determination will be required in undertaking key measures such as:

(a) educating Government, businesses and lawyers in Tonga on the use of arbitration;

(b) promotion of the *Act* to businesses in Tonga and international investors;

(c) strengthening local institutional capabilities, i.e. among Tongan lawyers and the private sector to include arbitration clauses in commercial contracts and to resolve disputes by engaging in international arbitration proceedings in

accordance with the Convention and the *Act*;

(d) incorporation of dedicated international arbitration rules within or alongside the existing Tonga Supreme Court Rules to enhance and simplify access to Tonga's courts for applications under the *Act*; and

(e) consideration of other elements within the allied regulatory framework such as foreign exchange control and foreign investment laws.

16. All of these, and more, will be instrumental in Tonga's ability to continue to successfully position itself as a certain and secure international trading partner and investment option in the Pacific.

Fish and seafood vendor by the road in Tuvalu (photo by Eric Sales/ADB).

C. OTHER RESOURCE MATERIALS

SESSION 3C
Justice Jawad Hassan's Paper

Role of Judiciary and Jurisprudence in Domestic and International Arbitration[1]

by **Justice Jawad Hassan**[2]

Introduction

Today I will discuss an aspect of arbitration and its impact in Pakistan. Courts in different national systems throughout the world vary with respect to how interventionist they are in the arbitral process. In recent decades, ever since Pakistan has entered the new world of international trade, the role of judiciary in the matter of arbitration has gradually been the subject of much debate, as a result of a number of various decisions given by the courts. Is the role that has been played by the

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[1] This paper was presented at the International Arbitration Conference jointly organized by the Center for International Investment and Commercial Arbitration (CIICA) and UMT School of Law and Policy. The conference was held at Shalimar Hall, Falletti's Hotel, Lahore, Pakistan on 5 May 2018. The paper is being reproduced in full with the permission and upon the request of Justice Jawad Hassan.

[2] Judge of the Lahore High Court (Pakistan).

judiciary justified? I must confess that my perspective and vision being a counsel in number of international arbitrations (pre, during and post arbitration) has totally changed since my elevation to the Bench. There is a very interesting observation in paragraph 7.01 of Redfern and Hunter on International Arbitration: Sixth Edition: Oxford University Press. The observation is as follows:

> *"The relationship between national courts and arbitral tribunals swings between forced cohabitation and true partnership."*

We shall now look into various arbitration decisions passed by the Pakistani Courts, then venture into the challenges faced by the legal fraternity of Pakistan in arbitration, followed by the need for judicial training and other ancillary matters before concluding this paper.

Role of Pakistan and the International Arbitration since 2005

After ratifying the New York Convention, Pakistan first brought the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance, 2005 ("2005 Ordinance") which was eventually promulgated as an Act in 2011 called the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (the "2011 Act"). When the 2005 Ordinance was introduced, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 "(New York Convention") was attached as Schedule to the said Ordinance and if any person had to enforce the award under the 2005 Ordinance, the grounds to be taken were subject to Article 7 of the New York Convention.

Role of Courts in the International Arbitrations

The 2011 Act defines the Court under Section 2(d) with the exclusive jurisdiction to adjudicate and settle the dispute under Section 3 and enforcement under Section 4. Hence, the Judge of the High Court is ample jurisdiction to enforcement or refuse the foreign award. Also, the High Court deals with the awards under its appellate jurisdictions or under the judicial review filed under Article 199 of the Constitution of Pakistan, 1973. In one of the first cases in Pakistan on the enforcement of a foreign award titled *Shamil Bank vs. Jawad Anwar*, Shamil Bank brought the case to enforce the arbitration of Gulf State,

Gulf Corporation Council (GCC) against Jawed Textile Mills. I defended the award by taking objections under the New York Convention on the basis that (1) no proper notice was given, (2) the award granted was outside the scope of the arbitration agreement and was not in accordance with the language prescribed in the Agreement- which was in Arabic, (3) it was outside the scope of arbitration and (4) it was against the public policy of Pakistan. The Lahore High Court, instead of enforcing the award, since the law in question was substantive law, framed the issues on 12 November 2008. Shamil Bank produced one of the leading experts on international arbitration; Mr. Toby T. Landau, who in fact was one of the Draftsmen of the 2005 Ordinance. Thereafter Shamil Bank further produced another international expert on Arab Arbitration, Dr. Hassan Al-Radi, to give information on Gulf Arbitration. They were cross examined on the public policy of Pakistan since it was the first arbitration proceeding where the matter of public policy was brought up. The case was then finally settled. On the same lines, in *Jess Smith and Sons Cotton LLC vs. D.S. Industries*, Civil Original No. 628 of 2014, the honorable Justice of the Lahore High Court, Mr. Justice Shahid Waheed, has held as follows:

> 7. The above noted points usually involve investigation into the disputed questions but it is not in every case that the Court would be under obligation to frame issues, record evidence of the parties and follow the procedure prescribed for decision of the suit. In my view, the matter has been left to the satisfaction of the Court which has to regulate its proceedings and keeping in view the nature of the allegations in the pleadings, may adopt such mode for its disposal, as in consonance with justice, the circumstances of the case may require. It is thus within the competence of this Court to frame formal issues and record evidence if the facts of a particular case so demand. So far as the case on hands is concerned, inter alia, the questions whether the e-mails/ letters available on record constitute contract containing arbitration; whether Pakistan AXA International was duly authorized to act as an agent of the plaintiff; and, whether the arbitration proceedings were conducted in accordance with the rules of the International Cotton Association Limited, in my view, are the questions which cannot be decided without framing issues and allowing the parties to adduce evidence in support of their respective claims.

The superior Courts in Pakistan have held in number of judgements that procedural laws of Pakistan will prevail over the principles of international law. Back in 2000, I was also the counsel in a case which was decided by the honorable (r) Chief Justice of Pakistan, Mr. Tassaduq Hussain Jillani, who was then the Judge of the Lahore High Court, by passing a remarkable judgment in the year 2000 in *T. Zubair Limited vs. Judge, Banking Court, Lahore*, 2000 CLC 1405 (Lahore). He developed the concept of forum non conveniens, which refers to discretionary power of Court to decline jurisdiction when convenience of parties and ends of justice would be better served if actions were brought and tried in another forum (Sixth Edition Centennial Edition, 1891–1991). Invoking this doctrine in a number of jurisdictions including UK and USA stays were granted where it was found that some other forum was the more appropriate than where the suit was filed. In *Maulana Abdul Haque Baloch vs. Government of Balochistan*, PLD 2013 SC 641 the Supreme Court of Pakistan regarding the proceedings of International Chamber of Commerce ('ICC') and International Convention on Settlement of Investment Disputes (ICSID) held that Pakistani Courts are sovereign and the supremacy of Pakistani Courts was established in this ground breaking judgment and it was also stated that where a contract is entered into with a foreign establishment, it is governed by the municipal laws of where the contract is being executed and where it has been specifically written in the agreement that Pakistani laws applies, then parties must abide by the terms.

Recent case law on Arbitration the Supreme Court of Pakistan

Under Articles 189 and 201 of the Constitution, the judgments of the Supreme Court and the High Courts shall be binding on all the Courts below, if they enunciate the principles of law. In a recent landmark judgment, *Gerry's International (Pvt.) Ltd. vs. Aeroflot Russia International Airlines*, 2018 SCMR 662, the honorable Chief Justice of Pakistan, Mian Saqib Nisar, has settled the law regarding arbitration and powers of an arbitrator. The honorable Chief Justice, in detail, has considered the questions that what is the true scope, import and application of sections 30 and 33 of the Arbitration Act; what is the jurisdiction of the Court while making an award rule of the Court; whether the Court can sit in appeal over the decision of the arbitrators; whether the Court can make a roving inquiry and look for latent or patent errors of law and facts in the award; which flaws and shortcomings, if allowed to remain shall cause failure of justice and vitiate the proceedings before the arbitrator and the award;

what are the questions for determination of arbitration agreement; and what are the grounds/basis on which an arbitrator should be held to have misconducted himself? The honorable Court has expanded and laid down thirty (30) principles governing the law in the country.

Last year, judgment of the honorable Chief Justice of Pakistan Mian Saqib Nisar, *Province of Punjab vs. Muhammad Tufail and Company*, PLD 2017 SC 53, has decided the question that which Court shall have the territorial jurisdiction in terms of Section 2(c) and Section 31(1) of the Arbitration Act, 1940 (the Act) where an Arbitration Award could be filed and the same could be made Rule of the Court. This case was related to arbitration clause in agreement between private company and Provincial Government for performance of civil work, and it was held that Government in the exercise of its core functions viz, its executive, legislative, judicial and quasi-judicial, and administrative roles exercised sovereign powers, but when it engaged in commercial activities it was not exercising sovereign power, rather it was engaging in business/commercial activities and merited no undue advantage over ordinary litigants. When a government entered into the domain of business and commerce it could not be given a premium of its position and must be treated at par with its competitors or near competitors in the private sector. Commercial activities of government must be regulated in the same manner as those of the private sector;

In another remarkable judgment of honorable Justice Saqib Nisar, *Karachi Dock Labour Board vs. Quality Builders Ltd 2016 PLD 121 SC*, the principles of the doctrine of least intervention (by the court) were recognized as valid, but it was held that the court would not apply the same where there had been sheer non-compliance concerning the provisions of the Arbitration Act, 1940 ("the 1940 Act"). It was further provided that if an arbitrator is appointed in contravention of the 1940 Act, then Court may intervene to rule that the said-Arbitrator is incompetent to act as one.

Recently, the Supreme Court of Pakistan, in *Pakistan Railways through AGM (Traffic), Lahore vs. Four Brothers International (Pvt.) Ltd PLD 2016 199 SC*, encouraged the arbitration proceedings where the Respondent had gone to the Civil Court by virtue of Section 20 of the 1940 Act referring the dispute of arbitration. While the lower courts and High Court ruled in favor of the Respondent, the Supreme Court held that proceedings of arbitration shall commence and be concluded within four months.

Whether International Arbitration can be stayed by a Pakistani Court?

As a lawyer, I have also been involved in similar petitions before the Islamabad High Court in the case of *Orient Petroleum vs. OMV* where the sovereignty of Pakistani courts was in question. OMV itself came to Islamabad High Court in 2011 to initiate arbitration proceedings under a local agreement which we challenged. (Please see OMV Energy vs. Ocean Pakistan 2015 CLC 1504 and OMV vs. Ocean Petroleum 2016 MLD 1615). Upon receiving no relief from the Pakistani Courts, OMV on the same agreement chose to invoke the English arbitration clause, and filed a petition before the ICC, London. There, they tried to challenge the proceedings of Pakistani Courts of December, 2014 and simultaneously, on the advice of English barristers and solicitors, filed a claim titled *OPL and others vs. OMV Maurice [2015] EWCA Civ. 1171* in the English Courts where it was held that OMV is entitled to pursue a claim for sums due under the agreement in arbitration against ZPCL under the rules of the ICC and the arbitrators had jurisdiction over arbitration proceedings. During the same time, the Delhi High Court in the case of *McDonald's India Private Limited vs. Vikram Bakshi & ORS*, stayed the English arbitration in London on the principle that the dispute between McDonald's and Bakshi needed to be resolved through arbitration before the London Court of International Arbitration and had the mandate to refer the parties for arbitration, noting that the arbitration agreement between the parties was in place and that the proceedings could not be prevented as they were not null, void, inoperative or capable of being performed. This was then challenged by McDonald's in Supreme Court but English jurisprudence on arbitration is so strong it states that where the arbitration is on-going in UK Courts, only they have the power to stay proceedings in the foreign courts, hence their claim failed.

English Jurisprudence on Hashwani vs Jivraj Case

Similarly, in another case *Jivraj v. Hashwani [2010] EWCA Civ. 712*, UK Court of Appeal ruled that the requirement that arbitrators must be members of the Ismaili community was not severable from the rest of the agreement for arbitration, and for this reason the said agreement was null and void in its entirety. This worked in favour of our party where the UK Court of Appeal made a decision to rule on a matter of arbitration and declared it to be invalid. However, the Court of Appeal's decision was reversed by the *Supreme Court of the United Kingdom in Hashwani v Jivraj (2011) UKSC 40*, where Lord Clarke in

his judgment held that Jivraj's application which requested the court to strike out Mr. Hashwani's arbitration claim form shall succeed; and the agreement was not held to be invalid. This case has gained so much popularity that it is now included in various textbooks. Finally, the matter came to a stop in *Hashwani v Jivraj [2015] EWHC 998 (Comm)*, where Mr. Sadruddin, aggrieved by the decision of the Supreme Court, filed a fresh application in March 2013, but the claim was struck out by Justice Walker of the English Commercial Court stating that the fresh proceedings involved unjust harassment.

Challenges faced by the legal fraternity of Pakistan in arbitration

Generally in Pakistan, it is an evident fact that people think that going to court should be a last resort, whether you are suing or are being sued because commercial, or for that matter, any litigation can be very expensive, stressful and time-consuming in which you have to make sure that you understand and follow the procedures. However, the most common and traditional form of judicial dispute resolution is litigation, in which the proceedings are very formal and are governed by rules, such as rules of evidence (Qanun-e-Shahadat Order) and procedure (Civil and Criminal Procedure Code), which are established by the legislature. In litigation, an impartial judge, based on the factual questions of the case and the application law, decides the outcomes of the cases, by following an adversarial system. The verdict of the court is binding, not advisory; however, both parties have the right to appeal the judgment to a higher court. Moreover, the same set of civil rules applies to all civil cases in court, regardless of the size, complexity, or subject matter of the case, or the amount in controversy.

We should be appreciative of the fact that it is being seen that judges no longer sit back passively and let the lawyers manage their cases. Rather, the judges are now taking control of their cases from the very start. Therefore, starting from the independence of Pakistan and continuing into the present era, a series of amendments have enshrined our judicial system into Civil and Criminal Procedure Code and other laws, formally validating it as a favored practice to encourage and enable the courts to use case management tools in pursuit of justice.

But even though we are nearly fifty years into amending the procedural laws, many practical questions about the real-world effectiveness of judicial system remain at least partly unanswered, and one can think of the possible questions in mind like,

does amending the procedural laws really work? Does it actually reduce expense and delay? Do judges have the right tools at their disposal for complete dispensation of justice? Do judges have the resources they need? Are judges sufficiently and properly using the tools and resources they do have? If judges are not using those tools and resources effectively, why is that occurring and what can be done to change it?

However, one cannot discuss changes to judicial system without considering how those changes might alter the role of judges or whether the changes might conflict with competing international norms. Thus, any proposed amendment would continue to be subject to these critiques even if it was shown conclusively that the proposal in question would in fact improve the trial judge's ability to manage cases. It is also a thought to ponder on that without having the "ownership" of a particular case; the trial judges lack both the ability and the incentive to exercise control. Maybe, the use of a single judge assigned to a case from beginning to end provides the parties in the litigation with a sense of continuity.

The Need for Judicial Training

In Pakistan, the subject of continuing education has so far received only ad-hoc attention amongst the pressures and demands of daily judicial life. However, it is our collective responsibility to ensure that we are equipped to continue to meet the demands of our societies for the timely and efficient dispensation of justice. While we should appreciate that there have been positive results in development of an informed, strong and independent judiciary; but people's lives are on a daily basis affected in the most fundamental and immediate ways by judicial decisions. It is self-evident therefore, that need for continuing judicial education and training must begin by a consideration of the social context for which it is to be applied. A challenge for continuing education and training must therefore be to dispel the age-old criticism that the judicial system remains very much a part of the social hierarchy bent on preserving the privileged.

Perhaps, the judiciary and the litigants should assume the need of the law reform advocates and the types of programs, which need to be developed for Pakistan, must not be limited only to the continuing judicial education and training, but also to identify the previous deficiencies in legal education and training as well as the imperatives of the contemporary and future

global environment. There still are many judicial areas in respect of which many of today's judicial officers were not trained at all at university but which are now or will be part of the everyday legal landscape. Essentially from the very start, the judicial officers should be provided with education about the laws, which are bringing about radical changes at regional and international level. A further area for judicial training should involve the use of information technology as a tool for research because all other countries are also modernizing their systems through the introduction of information technology in their system.

Although, there remains an urgent need to sensitize and train the lower judiciary in the proper application of the new rules, but we must also acknowledge the tremendous role of Federal Judicial Academy in this process. However, there must be more international exchanges, allowing Judges from one jurisdiction to sit with a Judge in another in order to observe the practical operation of the other procedure.

Hence, all new appointees to law service should be given induction training, by providing courses in various subject areas; improving the quality of performance so as to reduce mistakes; examining methods for the more expeditious disposal of cases; strengthening existing training facilities within the region; ensuring that judicial personnel are kept abreast of contemporary developments in the law; promoting best practices in the administration and operation of the justice system; and enhancing the career opportunities of the judiciary.

In pursuit of a Culture of law Education and organized, systematic training under the control of an adequately funded judicial body, it is an objective towards which we are actively working in Pakistan. All this towards the establishment of a regional judicial programme to ensure that our Law Officers are not left behind in the global movement towards assisting judiciaries to respond to the challenges of the new millennium.

Arbitration in Pakistan

My purpose for saying and suggesting all these things was to provide you with the challenges and opportunities to the most traditional dispute-resolution process, the litigation. However, on the other hand, there are also many other options available,

like negotiation, mediation and arbitration, often called alternative dispute resolution. Whether you are involved in a family or neighborhood dispute or a suit involving hundreds of thousands of rupees, these processes have started to be considered in the business course. They often provide a fair, just, reasonable answer for both parties, to allow reaching resolution earlier and with less expense than traditional litigation.

With the growth of international trade and commerce, more and more disputes arise from cross-border transactions involving 'foreign' parties, the businessmen have found that litigating disputes in the national courts of other parties can be an unfamiliar and a difficult, time consuming and costly process with, not always, a satisfactory outcome.

One of the principle advantages of arbitration is the general ease of enforcement of an arbitration award, because of enforcement of the New York Convention. The effect of the Convention is that it lays down a system for the judicial recognition and enforcement of arbitral awards obtained in another country that is a party to the Convention. Given that approximately 120 countries have signed the New York Convention, the result is that arbitration awards are now receiving greater recognition internationally than many national court judgments.

I think it is essential to highlight that while signing any agreement; your first step for choosing the dispute resolution mechanism should be to check the possible dispute that may occur and try to quantify the loss that may arise for each side in the dispute, and you may need to take advice on the legal position in such cases.

Though arbitration was a mechanism introduced to help circumvent the expense and load of the traditional legal process, one of the consequences of arbitration is that the final decision of an arbitrator is not easy to overturn by the aggrieved party of the award given. The arbitration clause, now a part of nearly all the contracts and agreements, allows either party to invoke the clause and settle the dispute among the parties through an entity of their choosing. Retired judges or private lawyers often become arbitrators or mediators; however, trained and qualified non-legal dispute resolution specialists are also growing within this field on account of the technical needs.

What makes a strong Arbitration Center?

The main purpose of arbitration as we know is to accommodate dispute resolution process that best suits a particular case that can only be determined upon an analysis of the dispute itself and the needs and interests of the parties. To establish what makes those arbitration centers strong, it must be considered what makes arbitration attractive to applicants.

One of the main advantages of arbitration is its capacity to have disputes resolved quickly. Even though the majority of court actions settle before trial, this often occurs only after lengthy and expensive trial preparation, including examinations for discovery. Arbitration provides the opportunity to side-step prescribed procedural requirements of litigation. The parties also determine the timeframe for the arbitration, allowing them to bypass delays inherent in litigation. Costs are also a major factor in parties choosing to go into arbitration as litigation can be extremely expensive, although in recent times the cost of arbitration has drastically increased but nonetheless less expensive than litigation.

Arbitration provides the parties with the opportunity to choose the individual(s) who will decide the issues in question by, for example, choosing a neutral person with expertise in the subject matter of the dispute. Those centers with the ability to provide individuals who are experienced in all matters of commercial law will be the most attractive for parties looking for arbitration venues.

Many of the disputes involving federal governments and commercial organizations are technical and complex in nature. Resolution of these disputes is often best served by special knowledge or expertise on the part of the decision maker. Arbitration centers often provide the parties with opportunities to secure the services of an individual experienced in a technical area, or one who has knowledge of the commercial norms relevant to a particular business field. Even otherwise, there are some cases, which by their very nature require a confidential outcome. This may occur because the dispute involves privileged information or issues of particular sensitivity. Hence, Arbitration Centers may provide for confidential information to remain privileged.

Creating a specialist Court to deal with arbitration related matters:

Hong Kong was one of the first known jurisdictions which have appointed a dedicated arbitration judge who hears all cases dealing with arbitration. Singapore has recently followed the same model. Hence, the body of arbitration jurisprudence from these two jurisdictions has been undoubtedly contributing to the growth of understanding and acceptance of arbitration in Asia. Similarly, in September 2013, the Chief Administrative judge of the courts of New York State appointed Judge Charles Ramos of the state Supreme Court to hear all international arbitration disputes arising before the Commercial Division. Furthermore an administrative order issued by the department of justice stated that any international arbitration issue that arises before a judge in the county of New York can be transferred to Judge Ramos. But even the New York Law Journal has admitted that in order for this initiative to be successful, there is a need for a judge who will primarily adjudicate on all matters of arbitration at a Federal level which till now has been lacking.

However, the Lahore High Court has lead the project to establish Alternate Dispute Resolution Centres in Punjab, because of which the ADR Centres have been opened across the province of Punjab and in all the 36 districts with 72 dedicated judges to help parties achieve an amicable solution to their disputes. To refer a matter to the ADR Centre, the parties just have to give an application to the court hearing their case and have to consent to settle the matter through an ADR Centre. The judges in these centres are already trained by the Punjab Judicial Academy to help parties reach a settlement.

The much appreciable step has already started to pay dividends to litigants and they are going in large numbers to the ADR Centres to get the desired results of early disposal and amicable solution to their disputes. As per a report published by the Lahore High Court's website, there were 437 references received by ADR Centres in 36 districts of Punjab in just 3 days, from the 1st of June till the 3rd of June, 2017, out of which 250 have already been settled. This is no doubt a phenomenal figure and a big achievement for everyone involved. ADR centres are without any doubt a blessing for the litigants of Punjab. Where, on one hand, these centres are helping litigants arrive at an early resolution of their disputes, it is also decreasing the workload of the lower judiciary and helping them decide other cases in a justifiable timeframe.

Conclusion

The aims and objectives of the 1940 Act could be met with adequate availability of skilled, trained and honest arbitrators as well as a well-equipped arbitration institution. The need of such arbitrators is also very important. Because if there is an emergent opinion that by choosing arbitration over litigation, parties have substantially diminished their chances of getting good quality of justice, it will obviously darken the future of arbitration. And what is needed is inculcation of a culture of arbitration among the key stakeholders - the Bar, the Bench, the arbitrators and the consumers of arbitration.

Sir LJ Earl Warren once correctly said that "It is the spirit and not the form of law that keeps the justice alive."

A scenic view of the Anibare district, Nauru (photo by Eric Sales/ADB).

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LIST OF DELEGATES

DELEGATES

COUNTRY	NAME	TITLE	ORGANIZATION
Australia	Adam Bell	SC FCIArb	New Chambers
Australia	Alexandra Goddard	External Relations Officer	NSW State Office - Australian Department of Foreign Affairs and Trade
Australia	Anna Siganto	Consultant	Resonant Advisory
Australia	Anthony Lo Surdo	SC, FCIArb	12 Wentworth Selborne Chambers
Australia	Benjamin Sandstad	Legal Consultant	Asian Development Bank
Australia	Brendan Sadgrove	Owner and Director	Innovative Production Services
Australia	Bronwyn Lincoln	Partner	Corrs Chambers Westgarth
Australia	Damian Sturzaker	Partner	Marque Lawyers Pty. Ltd.
Australia	Daniel Allman	Senior Associate	Norton Rose Fulbright
Australia	Deborah Tomkinson	Secretary General	Australian Centre for International Commercial Arbitration (ACICA)
Australia	Emma Salkavich	Senior Associate	Squire Patton Boggs (AU)
Australia	Erika Williams	Independent Arbitration Practitioner	Williams Arbitration
Australia	Erin Harris	Consultant	Asian Development Bank
Australia	Felix T. Eldridge	Consultant	Asian Development Bank
Australia	Geoff Bartels	Principal	Bartels Business Lawyers

Delegates *(continued)*

COUNTRY	NAME	TITLE	ORGANIZATION
Australia	George Kostopoulos	no information given	no information given
Australia	Guillermo Garcia-Perrote	Senior Associate	Herbert Smith Freehills
Australia	Hamish Clark	Principal	HKA
Australia	Harris Gomez	Founder and Director	Harris Gomez Group (HGG)
Australia	Hattie Wilson	Graduate	Norton Rose Fulbright
Australia	Hon. Roger Gyles AO QC	Independent Arbitrator	Chambers in Australia and Singapore
Australia	Horace Ng	Associate	Allens
Australia	James Morrison	Partner	Peter & Kim
Australia	Jane Furniss	Principal	Resonant Advisory
Australia	Jarrod Harrington	Private Sector Development Analyst (Consultant)	The Pacific Private Sector Development Initiative (PSDI)
Australia	John Arthur	Barrister	Vicbar Svenson Barristers
Australia	John Rundell	Managing Principal	John Rundell & Co
Australia	Jonathan Light	Associate	Allens
Australia	Josh Mackenzie	Graduate	Norton Rose Fulbright
Australia	Judith Levine	Independent Arbitrator/ Vice President	ACICA
Australia	Jun Wang	Senior Consultant	Fitzgerald Lawyers

Delegates *(continued)*

COUNTRY	NAME	TITLE	ORGANIZATION
Australia	Katherine Passmore	Private Sector Development Analyst (Consultant)	Asian Development Bank
Australia	Leah Ratcliff	Of Counsel	Jones Day
Australia	Lucy Martinez	Independent Arbitrator and Counsel	Martinez Arbitration
Australia	Maria Lidia Soares Henriques	First Secretary and Consul	Consulate-General of the Democratic Republic of Timor-Leste (New South Wales)
Australia	Mrith Shanker	Associate	Norton Rose Fulbright
Australia	Nicholas Sadhu	Mediator	Oceania Mediation And Arbitration Services
Australia	Nick Longley	Partner	HFW Australia
Australia	Nikita Malhotra	Associate	Squire Patton Boggs (AU)
Australia	Philip Bambagiotti	Barrister and Arbitration Advocate	Tenth Floor St James Hall Chamber
Australia	Phoebe Miley-Dyer	Associate	Norton Rose Fulbright
Australia	Raijeli Tuivaga	Fiji Mediator - Accredited to Fiji Mediation Centre	Monash University

Delegates *(continued)*

COUNTRY	NAME	TITLE	ORGANIZATION
Australia	Sallyanne Shute-Trembath	Senior External Relations Officer	Asian Development Bank Pacific Liaison and Coordination Office (PLCO)
Australia	Tamlyn Mills	Partner	Norton Rose Fulbright
Australia	Thomas Koski	Senior Legal Counsel	UGL Pty Limited
Australia	Tom Moxham	Partner	Peter & Kim
Austalia	Wayne Innis	Legal Manager - Dispute Resolution	CPB Contractor
Australia	Zoe Walker	Associate	Allens
Cook Islands	Catherine Evans	Barrister and Solicitor	Catherine Evans Lawyer PC
Fiji	Alex Singhi	Trade and Investment Officer	Fiji Consulate
Fiji	Amanda Erasito	Legal Counsel, Legal and Regulatory	Digicel Pacific
Fiji	Bhumika Khatri	Solicitor	Munro Leys
Fiji	Daniel Stow	Trade Commissioner	Fiji Consulate General and Trade Commission
Fiji	Ema Lagilevu	Senior Legal Officer	Fiji Development Bank
Fiji	Emily King	General Manager, Legal and Compliance	BSP Life (Fiji) Limited

Delegates *(continued)*

COUNTRY	NAME	TITLE	ORGANIZATION
Fiji	Jenny Seeto	Investment Fiji Chair	Investment Fiji
Fiji	Kristel Whippy	Barrister and Solicitor	no information given
Fiji	Luisa Jiurie Etika	Owner/Lawyer	Veko Pacific (export)
Fiji	Manisha Manshika Nadan	Principal	Nadan Law
Fiji	Manuliza Faktaufon	Postgraduate	QMUL
Fiji	Mary Muir	Lawyer	Siwatibau & Sloan
Fiji	Mere Vasiti	Associate	Waqanika Law
Fiji	Nehla Subramani Basawaiya	Corporate Lawyer	Pacific Islands Forum Secretariat
Fiji	Nishrat Bano	Solicitor	Munro Leys
Fiji	Nunia Vucukula	Protection, Gender, and Inclusion Officer	International Federation of Red Cross
Fiji	Peter Pranesh	Legal Administrator, Legal and Regulatory	Digicel Pacific
Fiji	Poonam Maharaj-Wong	Partner	Neel Shivam Lawyers
Fiji	Prem Lata Narayan	Legal Practitioner	Prem Narayan Legal Practitioner
Fiji	Ratu Orisi Ravuso	Consul	Fiji Consulate General
Fiji	Ronlyn Sahib	Manager Legal	BSP Life (fiji) Limited
Fiji	Rosemary Drau	Legal Practitioner	no information given

Delegates *(continued)*

COUNTRY	NAME	TITLE	ORGANIZATION
Fiji	Salaseini Daunabuna	Practicing Lawyer	Freelance
Fiji	Supreena Naidu	Partner	AP Legal
France	Rolando Avendano	Economist	Asian Development Bank
Hong Kong	Leonel Araujo	no information given	no information given
Hong Kong	Peter Scott Caldwell	Arbitrator and Mediator	Caldwell Ltd
Hong Kong	Stefanie Leuterio	Events and Marketing Consultant	We Hustle Ph
India	Anish Wadia	Independent International Arbitrator, Mediator and Lawyer	Fellowship of CIArb (FCIArb)
India	Biplab Kanti Som	Senior Contract Specialist	Rodic Consultant Pvt Ltd
India	Sanjeev Nirwani	Owner	Nirwani Associates
Indonesia	Dian Noviyanti	Staff of Deputy Civil Chamber	Supreme Court of Indonesia
Indonesia	I Gusti Agung Sumanatha	Chairman of Civil Chamber	Supreme Court of Indonesia
Malaysia	Right Honorable Chief Justice of Malaysia, Tun Tengka Maimun binti Tuan Mat	Chief Justice	Federal Court of Malaysia
Maldives	Hon. Justice Aisha Shujune Muhammad	Justice	Supreme Court of Maldives

Delegates *(continued)*

COUNTRY	NAME	TITLE	ORGANIZATION
Maldives	Hon. Justice Dr. Azmiralda Zahir	Justice	Supreme Court of Maldives
New Zealand	John Green	Director	New Zealand International Arbitration Centre (NZIAC)
Pakistan	Hon. Justice Jawad Hassan	Justice	Lahore High Court
Palau	Ernestine Rengiil	Attorney General	Ministry Of Justice
Palau	Vance Polycarp	Vice President - COO	Polycarp International Enterprise
Papua New Guinea	Herman Kromnong	Lawyer	Papua New Guinea Defence Force (PNGDF)
Papua New Guinea	Hon. Justice Elizabeth Suelip	Acting Justice	Supreme Court and National Court of Papua New Guinea
Papua New Guinea	Hon. Justice Iova Geita	Justice	National Court of Justice
Papua New Guinea	Hon. Justice Les Gavara-Nanu	Justice	Supreme Court and National Court of Papua New Guinea
Papua New Guinea	Hon. Justice Paulus Dowa	Justice	Supreme Court and National Court of Papua New Guinea
Papua New Guinea	Hon. Justice Robert Lindsay	Justice	Supreme Court and National Court of Papua New Guinea

Delegates *(continued)*

COUNTRY	NAME	TITLE	ORGANIZATION
Papua New Guinea	Hon. Justice Vergil Narokobi	Justice	Supreme Court and National Court of Papua New Guinea
Papua New Guinea	Jacqueline Marubu	Lawyer	Marubu Lawyers
Papua New Guinea	Lanna Assaigo	Lawyer and Mediator	SL Kami Consultants
Papua New Guinea	Stephanie Alopea	Lawyer	ExxonMobil PNG Limited
Papua New Guinea	Tema Buatoka	Principal Solicitor	Volavola Lawyers
Philippines	Ali Loraine Manrique	Attorney V	Office for Alternative Dispute Resolution, Department of Justice
Philippines	Amiko Sudo	Senior Counsel	Asian Development Bank
Philippines	Anthony Lo Surdo	Communications Coordinator	Asian Development Bank
Philippines	Baurzhan Konysbayev	Principal Counsel	Asian Development Bank
Philippines	Celeste Saniel-Gois	Senior Legal Operations Officer	Asian Development Bank
Philippines	Cesario M. Da Silva Amaral	Consultant	United Nations Development Programme

Delegates *(continued)*

COUNTRY	NAME	TITLE	ORGANIZATION
Philippines	Imelda T. Alcala	Senior Project Coordinator (Consultant)	Asian Development Bank
Philippines	Francesse Joy J. Cordon-Navarro	Consultant	Asian Development Bank
Philippines	Gladys Cabanilla-Sangalang	Senior Legal Operations Assistant	Asian Development Bank
Philippines	Gregorio P. Galang	Senior Legal Officer	Asian Development Bank
Philippines	Gregorio Rafael Bueta	Consultant	Asian Development Bank
Philippines	Hershey Homol	Communications Coordinator	Asian Development Bank
Philippines	Irene Alogoc	Executive Director	Department of Justice - Office for Alternative Dispute Resolution
Philippines	Judge Mona Lisa V. Tiongson-Tabora	PHILJA Chief of Office for PMC	Philippine Mediation Center Office, Philippine Judicial Academy
Philippines	Lancaster Uy	Legal Officer	Asian Development Bank
Philippines	Mari Jennifer Bruce	Consultant	Asian Development Bank
Philippines	Ma. Christina Abalos-Naig	Director III	Department of Justice - Office for Alternative Dispute Resolution
Philippines	Maria Agatha Depra Sindico-Nacario	Senior Legal Officer	Asian Development Bank

Delegates *(continued)*

COUNTRY	NAME	TITLE	ORGANIZATION
Philippines	Maria Cecilia T. Sicangco	Senior Legal Officer	Asian Development Bank
Philippines	Ryah Zendra Sanvicente	Legal Operations Administrator	Asian Development Bank
Philippines	Sarah Mae S. Cruz	Senior State Solicitor	Office of the Solicitor General
Philippines	Sygrid Malabanan Promentilla-Pablo	Senior Legal Officer (Procurement Unit)	Asian Development Bank
Saudi Arabia	Hassan Idris	Senior Legal Counsel	Islamic Development Bank
Singapore	Atsuko Hirose	Fellow	Singapore Institute of Arbitrators
Singapore	Azmin Jailani	Judicial Officer	Legal Service Commission
Singapore	Hannah Lim	Head of Rule of Law and Emerging Markets, Southeast Asia	LexisNexis Legal & Professional
Singapore	Michael Peer	Head of Dispute Advisory, South East Asia	PricewaterhouseCoopers (PwC)
South Korea	Eun Young Nam	Legal Expert	UNCITRAL Regional Centre for Asia and the Pacific (RCAP) United Nations Commission on International Trade Law International Trade Law Division, Office of Legal Affairs

Delegates *(continued)*

COUNTRY	NAME	TITLE	ORGANIZATION
South Korea	Jenny Hui	Legal Expert	UNCITRAL RCAP
South Korea	Nora Choi	Intern	UNCITRAL RCAP
Timor-Leste	Carmen Araujo	Executive Director	Invest People
Timor-Leste	Nelinho Vital	Advisor	Ministry of Justice
Timor-Leste	Nuno Nuno Miguel Dos Santos Marrazes	Associate	Da Silva Teixeira & Associates
Timor-Leste	Sahe Loli da Silva	Partner	Da Silva Teixeira & Associates
Tonga	Christine 'Uta'atu	Owner	‘Uta’atu & Associates and Accounting Consultant
Tonga	Distaquaine Tu'ihalamaka	CEO	Ministry of Trade and Economic Development
Tonga	Linda Folaumoetu'i	Attorney General	Crown Law Department
Tonga	Rose Kautoke	Senior Crown Counsel	Crown Law Department
Tonga	Yu Hongmiao/Benjamin Yu	First Secretary	Chinese Embassy in the Kingdom of Tonga
Tuvalu	Hon. Charles Sweeney QC	Chief Justice	Court of Appeal
USA	Harout Ekmanian	Visiting Attorney	Alston & Bird

SPEAKERS AND MODERATORS

COUNTRY	NAME	TITLE AND ORGANIZATION	ROLE
Philippines	Thomas M. Clark	General Counsel, ADB	Opening remarks
South Korea	Athita Komindr	Head, Regional Centre for Asia and the Pacific, United Nations Commission on International Trade Law (UNCITRAL)	Opening remarks
France	John WH Denton AO	Secretary General International Chamber of Commerce	Keynote address
Philippines	Damien Eastman	Deputy General Counsel, ADB	Moderator - Session 1
Australia	Lotte Schou-Zibell	Regional Director, Pacific Liaison and Coordination Office, ADB	Speaker - Session 1
Spain	Prof. Dr. Jordi Paniagua	Assistant Professor, Department of Applied Economics II, University of Valencia	Speaker - Session 1
USA	Mark Russell	Senior Commercial Officer for Australia and New Zealand, U.S. Department of Commerce	Speaker - Session 1
Fiji	Craig Strong	Chief Executive Officer, Investment Fiji	Speaker - Session 1
Fiji	Ram Bajekal	Managing Director, FMF Foods Limited	Speaker - Session 1
South Korea	Changwan Han	Director, International Dispute Settlement Division, Ministry of Justice	Speaker - Session 1

Speakers and Moderators *(continued)*

COUNTRY	NAME	TITLE AND ORGANIZATION	ROLE
United Kingdom	Gary Born	International Arbitration Practice Group, Wilmer Cutler Pickering Hale and Dorr LLP President, SIAC Court of Arbitration ADB International Arbitration Expert	Moderator - Session 2
Tonga	Hon. Tatafu Toma Moeaki	Minister of Trade and Economic Development	Speaker - Session 2
Palau	Hon. Kaleb Udui	Minister of Finance, Palau	Speaker - Session 2
Papua New Guinea	Dr. Eric Kwa	Attorney General, Department of Justice and Attorney General, Papua New Guinea	Speaker - Session 2
Timor-Leste	H.E. Dr. Manuel Cãrceres da Costa	Minister of Justice Timor-Leste	Speaker - Session 2
Philippines	Christina Pak	Principal Counsel/Team Leader, Law and Policy Reform Program, ADB	Speaker - Session 2; Facilitator - Session 3C; Moderator - Session 4
Australia	Daniel Meltz	Barrister, 12 Wentworth Selborne Chambers/ADB International Arbitration Expert	Conference Moderator; Speaker - Session 2; Facilitator - Session 3C
Australia	Jo Delaney	Partner, Baker McKenzie, Sydney	Moderator - Session 3A
Singapore	Koh Swee Yen	Partner, WongPartnership LLP	Speaker - Session 3A
Hong Kong	May Tai	Partner, Herbert Smith Freehills	Speaker - Session 3A

Speakers and Moderators *(continued)*

COUNTRY	NAME	TITLE AND ORGANIZATION	ROLE
United Kingdom	Daniel Kalderimis	Barrister, Thorndon and Richmond Chambers (New Zealand) and Twenty Essex	Speaker - Session 3A
Singapore	Abhinav Bhushan	Regional Director for South Asia, International Chamber of Commerce (ICC) Arbitration and Alternative Dispute Resolution, ICC International Court of Arbitration	Speaker - Session 3A
Fiji	Jon Apted	Partner, Munro Leys	Moderator - Session 3B
Singapore	Kevin Nash	Deputy Registrar and Centre Director, SIAC	Speaker - Session 3B
Netherlands	Fedelma Claire Smith	Senior Legal Counsel, Permanent Court of Arbitration	Speaker - Session 3B
United Kingdom	Jonathan Lim	Counsel, Wilmer Cutler Pickering Hale and Dorr LLP	Speaker - Session 3B
Australia	Brenda Horrigan	President, Australian Centre for International Commercial Arbitration (ACICA) and Partner/Head of International Arbitration in Australia, Herbert Smith Freehills	Speaker - Session 3B

Speakers and Moderators *(continued)*

COUNTRY	NAME	TITLE AND ORGANIZATION	ROLE
Papua New Guinea	Hon. Deputy Chief Justice Ambeng Kandakasi	Supreme and National Courts of Justice of Papua New Guinea	Moderator - Session 3C
Australia	Hon. Chief Justice James Leslie Bain Allsop	Chief Justice, Federal Court of Australia	Speaker - Session 3C
Singapore	Hon. Justice Anselmo Reyes	Singapore International Commercial Court	Speaker - Session 3C
Fiji	Hon. Acting Chief Justice Kamal Kumar	Supreme Court of Fiji	Speaker - Session 3C
Tonga	Lord Chief Justice Michael Whitten QC	Supreme Court of Tonga	Speaker - Session 3C
Papua New Guinea	Hon. Justice Jeffery Shepherd	Supreme and National Courts of Justice of Papua New Guinea	Speaker - Session 3C
Timor-Leste	José Augusto Fernandes Teixeira	Partner, Da Silva Teixeira & Associados	Facilitator - Session 3C
Hong Kong	Julian Cohen	Barrister and Arbitrator, Gilt Chambers	Facilitator - Session 3C
Australia	Mary Kim	PSDI Team Leader/Senior Programs Officer, ADB	Moderator - Session 4
Australia	Terry Reid	International Business Law Expert/Team Leader Business Law Reform, PSDI	Moderator - Session 4

About the Asian Development Bank

ADB is committed to achieving a prosperous, inclusive, resilient, and sustainable Asia and the Pacific, while sustaining its efforts to eradicate extreme poverty. Established in 1966, it is owned by 68 members —49 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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