

Final

The Standing International Forum of Commercial Courts (SIFoCC)

SIFoCC Work Themes

to SIFoCC's 5th full meeting

Doha, 2024

("the Roadmap")

Context¹

1. The greatest challenges that confront the world today are global challenges that demand further transnational collaborative responses.
2. In all types of jurisdiction, business - especially where driven by technology - will cross borders more than ever. Consistency and certainty will be more valuable than ever.
3. Whatever shape the future of globalisation takes and where, the law - and the rule of law - will remain a critical part of the infrastructure of commerce.
4. As suggested in the SIFoCC keynote address in 2022 in Sydney by Menon CJ², a renewed focus on a transnational system of commercial justice (procedurally and substantively) will be essential in a globalised world.
5. Commerce will need a 'culture of problem solving'³ that goes beyond black letter law and discrete processes and instead focuses on the sensible and effective resolution of disputes as part of a system. This in turn strengthens the rule of law.
6. Climate change (see Theme 4 below) is a challenge that will call on each of Themes 1-3 below. The issues and consequences are global and transcend borders and jurisdictions.
7. The world may have to reconsider its understanding of the usual patterns of legal rights and obligations, and concepts, in national and transnational commerce; and more may be demanded of the law's structures such as corporations.⁴
8. Where procedural and substantive law is developed, transparency, understanding and stability will be important.

Theme 1: Developing the Relationship between Commercial Courts⁵, Arbitration and Mediation

Objectives:

¹ Throughout this Roadmap please see generally the SIFoCC Keynote Speech by CJ Sundaresh Menon at SIFoCC's fourth full meeting on 20 October 2022 in Sydney: "SIFoCC playing its part as a cornerstone of a transnational system of commercial justice", available on www.sifocc.org.

² See fn 1 above.

³ Attributed by CJ Menon to CJ James Allsop at para 32 of the SIFoCC Keynote Speech at fn 1 above.

⁴ See in particular

⁵ The term "Commercial Courts" includes appellate courts.

1. To bring about a set of shared perspectives through regular dialogue among judges, arbitrators and mediators and others, including referees and assessors.
2. To engage the professions in building capacity and in developing a culture of creative, imaginative, problem solving, and practical dispute resolution and facilitation.
3. To establish with General Counsel an effective path to the integrated use of litigation, mediation and arbitration.
4. More generally, to examine what is needed to achieve confidence across litigation, mediation and arbitration, improving appropriate use and enforcement.
5. To frame standards and expectations for a common or harmonious approach between judiciaries to procedural fairness in arbitration and in mediation respectively.
6. To consider whether, and if so how, digital justice systems can integrate mediation, pre-action portal dispute resolution, arbitration and judge-based dispute resolution⁶.
7. For the most complex cases, including multi-party cases, to develop and publish (where appropriate with arbitrators and mediators) guidelines or principles for (a) enhanced case management and other techniques, (b) best use of digital, and (c) integrated dispute resolution⁷.

Theme 2: Towards greater transnational judicial cooperation

Objectives:

1. To strengthen SIFoCC's role as a forum for exchange between Commercial Courts (including courts dealing with appeals), supporting efforts at cooperation and collaboration between national courts.
2. To bring about more systemised and recognisably familiar systems of and approaches to dispute resolution, with the best assistance SIFoCC can give, especially through (a) international judicial dialogue and (b) dialogue between commercial judges, international adjudicators and third party neutrals.
3. To find means (including the development of international commercial law) for the development of common approaches to manage and reduce jurisdictional conflicts, towards order, understanding and predictability within the international commercial dispute resolution system.
4. To set about writing a Multilateral Memorandum on jurisdiction disputes, along the lines of the SIFoCC Multilateral Memorandum on Enforcement of Commercial Judgments for Money.

⁶ See also Theme 3.

⁷ See also Theme 3.

5. To prepare the ground for including within the above, but not limit the above to, particular features that relate to particular areas of law, including finance, insolvency, insurance, intangible assets, intellectual property, jurisdiction, major construction, maritime matters, and technology.

Theme 3: Technology and AI in Dispute Resolution

Objectives:

1. To explore what AI means for human society.
2. To explore and hear views on (a) the kinds of subject matter that are likely to be comprised in commercial disputes in an age of digital assets, blockchain technologies and smart contracts, (b) how integrated data sets can be shared between arbitration, litigation and associated mediated interventions, (c) how technology can allow mediation to be more flexibly integrated within commercial dispute resolution, (d) what kinds of rule-making are appropriate for digital commercial dispute resolution, and (e) how asynchronous interactions between courts and parties, artificial intelligence and algorithmic technologies can best be used in digital commercial dispute resolution.

Theme 4: Climate change: ESG, corporate activity and the rule of law

Objectives:

1. To identify where scientific matters have been accepted as common ground, and consider to what extent it is possible to identify a baseline body of scientific aspects that do not have to be relitigated in each case.
2. To increase the understanding of Commercial Courts in all parts of the world and all types of jurisdiction of the legal issues (substantive and procedural) that are present and emerging.
3. To set out the ways in which SIFoCC can assist in keeping Commercial Courts worldwide informed of developments, to ensure that the rule of law plays its part.
4. To encourage and facilitate further exploration of and an exchange of information on corporate legal responsibility, purpose and governance.⁸

Special Focus (1): Corporations

Given the Context, described above (see especially 7), and Theme 4 Objective 3, convene a stand-alone debate on the development of directors duties, to include General Counsel.

⁸ See further Special Focus (1) below.

Special Focus (2): Litigation funding and arbitration funding by third parties

To monitor the impact and relationship of litigation funding and arbitration funding on and to the course, location, complexity and outcome of commercial disputes

The SIFoCC Observation Programme

Objectives:

1. To offer a further iteration of the Programme in 2023.
2. To develop participant and host relationships further through alumni events.
3. To take further steps to involve alumni across all Themes 1-4 and Special Focus (1) and (2).