Standing International Forum of Commercial Courts

International Best Practice in Case Management

Extended Edition: April 2024

2020 Working Presumptions with further practical commentary from SIFoCC's Observation Programme 2023 (OP23)

The Standing International Forum of Commercial Courts (SIFoCC) was established in 2017. SIFoCC has three objectives:

- *First to serve users – that is, business and markets – better, by sharing best practice between courts and by courts working together to keep pace with rapid commercial change.*

- *Second, to assist courts to work together in order to make a stronger contribution to the rule of law, and through that contribute to stability and prosperity worldwide.*

- *Third, to support developing countries long encouraged by agencies such as the World Bank to enhance their attractiveness to investors by offering effective means for resolving commercial disputes.*

SIFoCC's First International Working Group was established in September 2018, to develop Working Presumptions on International Best Practice in Case Management. The Working Group of judges was chaired by Hon. James Allsop AC (then Chief Justice of the Federal Court of Australia) and Rt. Hon. Sir Peter Gross (then a Lord Justice of Appeal in England and Wales). Its membership is listed at the end.

The Working Group consulted first with a panel of expert judges (also listed at the end) and then with the judiciaries of all member jurisdictions of SIFoCC. The document was endorsed by SIFoCC as a whole in May 2020.

The Working Presumptions sought to state, at an appropriate level of generality, the fundamental elements of, and approach to, case management. The purpose was and is to provide a principled framework for individual courts to develop more particular approaches, rules or practice notes suitable for their individual requirements, situations, legislative contexts and circumstances.

This extended edition combines the Working Presumptions with a practical additional commentary and examples developed by the participant judges from SIFoCC's Judicial Observation Programme 2023 (OP23), its fourth such programme. These judges, drawn from six emerging market jurisdictions and each nominated by their Chief Justice, are also listed at the end. Further, the cross headings used in this edition to help ready use of the original Working Presumptions have been proposed by them.

During SIFoCC's fifth full meeting in April 2024, in Doha, the practical commentary and examples were presented at a roundtable session attended by judicial delegations from 56 jurisdictions. This session, chaired by Judge Nallini Pathmanathan (a Justice of the Federal Court of Malaysia, and a member of the original Working Group), saw all six judges from the 2023 Observation Programme sharing real-life case management experiences from their respective jurisdictions.

April 2024
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SIFoCC

International Best Practice in Case Management

Working Presumptions 2020

(Extended Edition, including further practical commentary and examples from SIFoCC's Observation Programme 2023 (OP23))

The Rule of Law and Commerce

1. SIFoCC objectives include sharing best practices in commercial dispute resolution and promoting the Rule of Law. The Rule of Law is essential in this area, as in all others. The stability, fairness and equality before the law that come with the Rule of Law protect and encourage investment. Commercial law exists to facilitate commerce, but its development promotes best practice and the Rule of Law in other areas too. Timely judicial decisions by independent judiciaries that can effectively and predictably resolve a dispute at a reasonable cost will contribute to commerce and promote public trust in the Rule of Law.

Case Management as Means to an End

2. Case Management, largely judicially developed, exists (in this context) to assist in the resolution of commercial disputes. It is not a process for its own sake. The mindset, culture or ethos is central. It should be seen as a means to an end to resolve disputes, that is, to solve problems recognizing that problems are mutual.

OP23 additional commentary:

An effective case management system greatly enhances judicial efficiency.

Case management should not be perceived solely as a step to prepare a case for trial. A pre-trial conference should not merely serve as a platform to gather material for successfully fighting the battle in court, but rather to minimise or eliminate the need for a battle in court.

The case management conference should not just be a mechanical process.

OP23 examples:

(Zambia) At the end of the grace period for appearance by a Defendant but before the scheduling conference, I have been calling for a progress report to meet Counsel and sow the seeds of a problem-solving culture, including advising them on the benefits of dialogue and downside of full-term litigation which I label as a last resort. I also urge them to come prepared for a comprehensive Bar-Bench consultation on the agreed future date for the scheduling conference. I politely remind them that any deferment of the scheduling conference on account of unpreparedness or unjustified non-attendance shall attract costs and hearing fees.

(Sierra Leone) We do have case management legislated in our rules but before now, we considered it to be an insignificant part of the process. Many judges and practitioners considered it to be more of a time-wasting mechanism than a tool for speedy trial. In Sierra Leone, most judges and practitioners would rather skip it and go straight to trial instead. However, with understanding of its uses and advantages, it can be seen not only as a tool to narrow down issues as we prepare for trial but also as a dispute resolution mechanism. My recent experience has been that having gone through case management, parties are more likely to see the outcome of the matter and in that circumstance more amenable to cut costs and resolve the matter.

(Bahrain) In 2018 we established a specialized office called the "Case Management Office" in the Ministry of Justice, that has a head who is at least a High Court Judge and a number of members/ case managers (judges, jurists/ legal researchers, or other professionals) who make up the composition of that office (although currently it is composed of a Judge acting as the head of the office and a number of legal researchers acting as case managers).

All case managers are rigorously trained prior to their appointment in the office and their main role is to prepare the case file for trial. This process has ensured that at least 80% of the cases that reach the court are already ready for the court to pass its judgement.

Judicial Grip at All Stages

3. Case Management entails a judicial "grip" on the proceedings at all stages: pre-trial, trial, appellate and enforcement.

   OP23 additional commentary:

   Judicial grip extends to ADR processes. Case management also encompasses court time management.

   In commercial litigation, time is of the essence. The Court must ensure that tasks are completed, and deadlines are honored by all stakeholders, including the judge, the parties, and support staff, to maintain the pace of proceedings.

OP23 examples:

(Pakistan)[1] The plaintiff and the defendant are required to file with their plaint and written statement respectively duly filled in case management questionnaires in the prescribed form.

(Rwanda) A court registrar in charge of the cases concerned prepares a draft pretrial conference report to be used in the conduct of the pretrial conference. The registrar examines the draft report and related documents and sends them to parties in advance of the hearing of the pretrial conference.

(Zambia): I inform Counsel at first meeting that since Judges are accountable not just for the quality of decisions but also turnaround time then upon commencement in the fast-track commercial court, they lose control and must run at our pace as Judges. The 'grip' is enforced by sanctions that include costs, hearing fees and threats of dismissal of applications (and entire cases) for want of prosecution.

(Sierra Leone): A proper application of case management and its principles have made me better equipped to decide a matter. I am better informed before going to trial of the matter generally, knowing what to expect and this makes understanding the testimony of witnesses a lot easier as well as the arguments of the parties. It also gives me as a judge the opportunity to fully understand seeming ambiguities in testimony and facts and in the final analysis, acts as a guide in the nature of the orders I give at the end of a trial.

(Bahrain): It was recognized right from the beginning that for a case management procedure to succeed in achieving its goals, it was important to have specialized commercial courts at all levels (trial courts, Appeal Courts and the Cassation Court).

What I think made the difference in ensuring the parties' compliance with the case management rules was the approach of the Appellate court in upholding the decisions of the first instance/ trial court judges when it comes to applying the rules of case management. This understanding and support between courts was achieved through the continuous training programs for judge and through the various roundtable discussions among colleagues on the topic of case management.

(Sri Lanka) It is crucial to shift our attention beyond the pre-trial phase for expediting trials. Often, we consider the case concluded once the judgment is

[1] The Punjab is the largest province of Pakistan by population and is home to almost 53% of the population of Pakistan. Its High Court, known as the Lahore High Court, is the oldest High Court in Pakistan. The examples in this paper attributed to Pakistan are taken mainly from the province of the Punjab. However, generally speaking, they are also representative of the practice of the other provincial High Courts and the Islamabad High Court.

delivered, but this is a misconception. More time is often spent post-judgment to achieve finality in a matter.

There is a need to introduce provisions for "post-trial conferences" to streamline appellate and enforcement procedures, including settlements at this stage. This area has been overlooked, neglecting the potential for settlements at the appellate level. There is a prevailing belief that settlements are only suited for original court judges, but this mindset needs to change. If a proper mechanism is established, post-trial settlements could be facilitated as, by that stage, parties have a clearer understanding of their case strengths.

(Pakistan) Lahore High Court judges as well as Commercial Court judges, rather than registrars, get actively involved with case management from the earliest stages, maintaining a judicial grip on the process at all times.

Side by side with changes brought about through primary and delegated legislation, the judges of the Lahore High Court are also developing and entrenching some useful principles and practices to aid efficient and timeous disposal of cases while maintaining a judicial grip on the process of litigation.

Finding Common Ground and Identifying Real Issues Early On

4. Fundamental to Case Management is the early identification of what is common ground and what are the real issues. This streamlines the proceedings (pre-trial, mediation, other ADR and at trial) and facilitates the effective, efficient and expeditious resolution of disputes – thereby helping the objectives of achieving proportionate and fair dispute resolution and doing justice in the individual case. It further permits the isolation of discrete issues for early determination or out of the usual order, where appropriate.

OP23 additional commentary:

Accordingly, the conventional notion that all issues must be resolved at the conclusion of the trial needs to be revisited.

OP23 examples:

(Zambia) Using powers to create Rules vested in the Chief Justice, the Judiciary of Zambia has made changes to the High Court Rules to fast-track case disposal and increase accountability. The relevant changes include enhanced Court powers at scheduling conference allowing for (a) closer interaction and Bar-Bench consultation; (b) narrowing down of issues in controversy; (c) procedural orders to rectify technical issues including questions as to parties (non-joinder and mis-joinder) and influencing recasting of bad pleadings that obscure the parameters of a case; and (d) terminal disposal of cases such as by summary judgment on admission or on a point of law.

The scheduling conference is essentially a Bar-Bench consultation (off record), then for the record we embody the core issues for interrogation into an order for directions for either preliminary hearing or preparatory steps for trial. We also discuss cause for amicable resolution and once there is buy-in we run Counsel through a mediation protocol on the advantages over litigation (which include cost, time, party autonomy on outcome and finality since no appeal can lie against a settlement). The resultant court annexed mediation runs parallel to the order for directions.

(Sierra Leone) During a case management conference, because the focus is on finding common ground and identifying the real issues in dispute, I have observed that the parties are more likely to make a clean breast of their arguments. But without judicial "grip" this can lead to attempts to argue the whole case at this stage. because if they succeed, there might not be a need for trial.

(Bahrain) The process of preparing the file for trial at the Case Management Office ensures that the disputed matters are clear and final by the time the case file is sent to the trial court. Submission of any new documents/arguments are not permissible except in very limited circumstances. Having a Judge presiding over the Case Management Office ensures the proper application of the rules.

(Rwanda) The draft pretrial conference report must include a list of matters at issue which must be clarified by parties.

(Sri Lanka) Let me give an example of the first sentence of Principle 4. Recently an appeal came up before me where the plaintiff filed action in the District Court for ejectment and damages on the basis that the defendant is an overholding lessee. The defendant took up different positions to prolong the trial as he was in possession. The Court dismissed the plaintiff's action on non-identification of the subject matter although there was no issue raised at the trial on that point. Some evidence had been led at the trial which confused the Judge regarding identity of the premises. It became evident on appeal that there were letters sent by the defendant's Attorney identifying the premises in suit. Judicial time had been unnecessarily wasted by calling various witnesses and marking documents. A proper pre-trial conference could have prevented these inefficiencies by identifying core issues between the parties and streamlining the trial accordingly, or even facilitating a settlement during pre-trial conference.

The judge should take the leadership role to make the parties understand the objective of the case management conference. When parties attend the case management conference for the first time, they may not have the mindset to identify the contentious issues. Each party thinks that they are right, and the other party is wrong. The judge should change this mindset.

But the judge who handles pre-trial conference should understand that he should not give the impression to the parties that his mind is prejudiced or rather the judge has pre-judged the case. That will be counter-productive and against the rule of law and lead to system collapse.

Approach should be firm but not rigid.

5. Save exceptionally, delay is the enemy of justice and Case Management requires that applications for adjournments should be subjected to rigorous scrutiny. Case Management, however, is not about process for its own sake and should permit sufficient flexibility to accommodate relaxation of court-imposed timetables where appropriate in the interests of justice.

   OP23 additional commentary:

   Adjournments should be granted as the exception rather than as a matter of course.

   OP23 examples:

   (Zambia) Further reinforcement is in the prescription of a cut-off period for receiving interlocutory applications (i.e. not less than 14 days before trial).

   (Rwanda) Under Article 17 Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labor, and administrative procedure, the adjournment of a case for reasons specific to parties is subject to consideration and approval by the court and can only occur in case of unforeseen and special reasons. The adjournment of a case for reasons specific to parties cannot occur more than twice.

   (Sierra Leone) Case management was disparaged as an opportunity for lawyers to fish for evidence in preparation for the trial. In recent times, the perception has changed. It is not such a bad thing if time is needed to ensure that the courts and the parties are equipped with sufficient information to reach a just conclusion of the matter. It is important to guard against disadvantage to the opposing party and unduly delaying justice, but it is valuable if opportunity is given to the parties to have a controlled opportunity to understand the questions of each other so that they may get answers or evidence to address them.

   (Pakistan) Lahore High Court judges are increasingly using imposition of costs to curb frivolous litigation as well as unnecessary adjournments.

Shared Responsibility under Judicial Leadership

6. Judicial leadership is necessary for successful Case Management. Its exercise will depend on the legal culture and system of each jurisdiction. But Judicial leadership alone is not *sufficient*. The disputes are those of the parties and they and their

representatives should approach Case Management as part of the problem-solving engagement, not as the venue or medium for process directions.

OP23 additional commentary:

A sense of shared responsibility can be achieved through greater consultation and collaboration between the judiciary and the parties and their representatives, in the form of regular case conferences and other joint problem-solving efforts.

OP23 examples:

(Sierra Leone) Our rules give judges extensive authority to ensure that they have full control over the proceedings to ensure that the judge has a grip on the proceedings. Parties who do not attend the case management proceedings or participate in good faith could be sanctioned and could even have their matter dismissed. I have never had to do this but just having that at the back of their mind ensures cooperation from the lawyers and the parties.

(Bahrain) There is a huge emphasis on the importance of training for judges, lawyers and legal professionals regarding Case Management approaches and goals. Therefore, the Judicial and Legal Studies Institutes as well as the Supreme Judicial Council in Bahrain has conducted many training programs, roundtables, seminars, and workshops on the subject and has that topic on their continuous training program curriculum. The target groups of these training extend to professionals from different fields and even laypeople.

(Sri Lanka) Before we expect lawyers and litigants to have a "proper mindset, culture and ethos" (see Principle 2) in the resolution of commercial disputes, we as judges must have a proper mindset, culture, and ethos. At least until I got involved in the SIFoCC programmes I viewed "pre-trial proceedings", "pre-trial conferences" and "case management conferences" as a waste of time and that the time spent on them should be dedicated on trials proper for speedy disposal of cases. This perception stemmed from our inclination to work swiftly with dedication and commitment. But now I have realised that all the time we cannot confine our work to trials and also that all the Judges should not do so.

Cooperation of the legal profession is crucial

7. The cooperation of the legal profession/s is fundamental; judicial time spent achieving it is time well-spent. It can be secured by way of a duty on parties and their representatives to cooperate in complying with an "overriding objective". This should not be seen as radical. It is no more than requiring the parties through their representatives to identify common ground and issues, and to behave honestly, reasonably, constructively, and proportionately so that problems are identified and then resolved. As between representatives, such cooperation is to be viewed as professional best practice. It can be assisted by judicial "knocking of heads together". It can also be developed by encouragement and the supporting of parties and representatives who

show that they recognize the value of the approach, especially if they are fighting intransigence.

OP23 additional commentary:

The Court should acknowledge and show appreciation for cooperative behaviour.

OP23 examples:

(Zambia) I acknowledge and commend Counsel who display a high degree of cooperation. I endorse it on the court record as befitting of the nobility of our profession. If the same Counsel appears in a later case but is uncooperative, I remind them of their previous standard which they should not depart from.

I verbally reprimand uncooperative Counsel and remind them that they are designated by statute as officers of the Court and that the Legal Practitioners' Practice Rules expressly enjoin them to ensure proper and efficient administration of justice; avoid conduct that is prejudicial to the administration of justice; fulfil professional engagements and avoid wasting the Court's time; and act diligently, with reasonable competence and avoid unnecessary expense for their clients.

(Pakistan) One major challenge is to ensure presence of all counsel in cases involving multiple parties. Counsel, especially senior counsel, often have multiple cases listed before various courts and tribunals, sometimes in different cities, on any given day. Non-availability of counsel is one of the main causes of adjournments. Judges need to be especially innovative and persistent in finding ways to ensure presence of all concerned during a hearing. In some courts, video-link facilities have been made available to enable counsel to attend hearings remotely. Sometimes, courts have to make special time arrangements to enable all concerned to attend. Sometimes, arguments of one party are heard in absence of the other counsel, who are then given a future date to come and make their arguments. These and other arrangements are used in view of the objective ground realities obtaining in the country.

Service of notices of dates of hearing to the parties and their counsel proved to be an impossible task in the past. However, with the advent of technology, it has become much easier. Cause lists are made available on the Lahore High Court website well in time. In addition, mobile SMS service is used to send messages in standard format directly to the counsel's mobile phone. This has proven to be especially useful in removing an overused excuse for adjournments.

(Sri Lanka) In Sri Lanka the judicial culture is such that, generally, no penal costs are ordered even if frivolous applications are made. We tend to think that access to justice should not be thwarted by indirect ways. However, we understand that the parties cannot be allowed to abuse the process of justice to achieve their ulterior motives. This culture needs to be changed.

(Bahrain) The Civil and Commercial Procedures Law of 1971 had many rules ensuring the timely disposal of cases. However, in practice these rules were sometimes neglected. But then in 2018 an amendment to the law was passed with an emphasis on case management rules.

Since then, the application of these rules was strictly adhered to by all judges (first instances courts judges, Appeal courts judges and Cassation/Supreme court judges). And with that difference in approach lawyers as well as litigants soon understood the consequences of not complying with the rules and the effects of such noncompliance on their cases, which resulted in a more organized and comprehensive cases' filing which noticeably enhanced the productivity of judges. During the regular Bankruptcy meetings (Reorganization/Restructuring or Insolvency) that are conducted in my court, and where all the parties along with the trustee are invited to come, I always take the time to explain the important issues that we are there to discuss and identify the issues that need to be specifically addressed during that meeting. I invite the parties and their representatives to participate by identifying common grounds on that issue and to behave reasonably when deciding whether to settle or object or give an opinion, keeping in mind that the bankruptcy process is there to protect the interests of all parties (debtor, creditors and everyone who will benefit from resolving these issues and matters promptly and without delay). I found that with this encouragement a lot of the issues can be resolved quicker than if I don't take the time to address them beforehand.

Overriding Control should remain in Judicial Hands

8. It is important that the Court retains overriding control over Case Management matters, including timelines, notwithstanding any agreement between representatives. The underlying aim is to meet the proper needs of the commercial community. This means using procedure, backed by appropriate firm timetabling and appropriate sanctions where necessary (ideally empowered by legislation or rules), to prepare to solve the substantive problem and not to increase the dispute.

OP23 additional commentary:

It is crucial for such timetables and sanctions to be proportionate and tailored to the specific needs of a case.

OP23 examples:

(Zambia) Time tabling is done at scheduling conference through a very consultative process factoring the peculiar circumstances of Counsel and litigants to frame realistic timelines. Liberty to apply is included to take care of unforeseen eventualities. Sanctions embedded in our rules for default include

costs orders; condemnation in hearing fees; and striking out defence and entry of judgment in default.

Case management is an Integral Part of the Judicial Function

9. Case Management must be seen as an integral part of the judicial role in commercial disputes. It forms a part of the judicial leadership mission. Sufficient time must be allowed by presiding Judges and administrators for the proper performance of this role.

    OP23 additional commentary:

    Primarily, judges need to adjust their attitudes and move away from their traditional detached and passive arbiter positions. The sincerity of judges in problem-solving must be felt by parties and their representatives.

    Judges and Court administrators should also receive continuous training in case management to stay updated on best practice and trends.

    OP23 examples:

    (Zambia) Case management is a recurring topic at periodic trainings and conferences for the Judiciary.

    (Bahrain) Case Management is a matter of continuous training for judges and professionals. With every advancement in technology and commerce it is vital to evolve the process to ensure the expeditious disposal of cases specially for time sensitive cases such as commercial cases.

Each Jurisdiction has its Unique Requirements

10. National jurisdictions will strike their own balance as to the number and mode of pre-trial hearings – i.e. whether pre-trial disputes are dealt with by oral hearings with the parties present, telephone or skype (or similar "virtual") hearings conducted electronically, or applications made and considered on documents. Decisions as to the number and mode of pre-trial hearings have costs consequences, best resolved by national jurisdiction rules. It is to be expected that such costs should be proportionate, having regard to the nature and size of the dispute (at least save where there is good reason for some different order). Wherever the procedure followed, Case Management will be necessary. Case Management tools (for example, case memoranda, lists of issues and the like) can be utilized to ensure that any pre-trial hearings are productive and that the parties are engaging with the real issues in the case. It is a requirement of effective Case Management that legal representatives attending pre-trial hearings should be appropriately instructed with the requisite authority to ensure proper engagement by the parties. Parties may be held accountable for non-compliance with Case Management requirements.

    OP23 additional commentary:

While emphasis is placed on time saved during trials by an efficient Case Management conference, one must not overlook the significance of efficiently managing time during the very conferences to avoid negating the real gains of the potential time saved later.

Further, Courts must ensure that Case Management conferences are not exploited, particularly by legal representatives, as opportunities inappropriately or unnecessarily to prolong proceedings.

OP23 examples:

(Sierra Leone): Our case management rules are quite scanty. This is understandable considering that the Commercial Court in Sierra Leone is comparatively young and still developing. It is for this reason that Judges are given wide authority to be used judiciously to ensure that the system is productive. The idea of setting up the commercial division was based on speedy resolution of commercial disputes but the court would not be faulted where it takes time that is needed to resolve a dispute efficiently.

(Bahrain) In the Bankruptcy court a pre-trial hearing although not stated in the law is sometimes used as a tool when documents are insufficient or need clarification.

(Rwanda) From early January 2016 to date, the Judiciary is gradually migrating to the new electronic system called The Integrated Electronic Case Management System for Rwanda (IECMS). This is an automated information management system, which is designed within the initiative of modernizing Rwanda's Justice, Reconciliation, Law and Order Sector (JRLOS). It helps parties to exchange documents between themselves and to communicate with courts' help desk registrars; it eases communication and file transfers between courts, and it allows follow up and monitoring of the whole process of handling cases and to generate real time court reports.

(Sierra Leone) In Sierra Leone, requiring sufficiently detailed written argument to be filed with an application has helped reduce the need for the judge to take down oral submissions long hand.

Early Involvement of Commercial Judges in Case Management is advantageous.

11. While some jurisdictions may see benefit in deploying Case Management Judges or Registrars to conduct pre-trial hearings, the handling of such hearings by trial (Commercial Judges (rather than by more junior Judges) has demonstrable advantages. The number of Commercial Judges deployed to undertake Case Management is a matter for each jurisdiction. In appropriate cases, there may be advantages in considering "docketing" to assist with continuity.

OP23 examples:

(Zambia) Each Commercial Court Judge has an exclusive portfolio of cases such that the case starts and ends with the same Judge unless there is a recusal or other compelling reallocation circumstance. Further, the rules dictate that all interlocutory applications shall be dealt with by Judges such that Registrars are only involved post conclusion, typically in enforcement proceedings.

(Sierra Leone) In Sierra Leone, it is the trial judges that conduct the case management conference. This has the effect of ensuring that the judge is himself prepared and au fait with the matter should it proceed to trial.

(Bahrain) The Law in Bahrain allows for judges to act as case managers as well as others.

(Sri Lanka) In Sri Lanka, pre-trial conferences in the Commercial High Courts are conducted by the Commercial High Court judges.

(Pakistan) Just like Commercial Courts at the lower level, the Lahore High Court has also seen a recent trend of specialisation by various judges. Judges with special expertise in commercial law are assigned commercial cases.

The Ethos of Case Management transcends National Boundaries and Traditions.

12. Approaches may well vary as to discovery/disclosure and other matters. The important point is not the differences between systems but the mindset/ethos/culture of Case Management as a problem-solving tool, not process-driven, and its shared attraction to both Common Law and Civil Law systems.

Case Management Conference should be seen as a step towards ADR

13. The extent to which Commercial Judges involve themselves directly in ADR is a matter for individual jurisdictions. However, consideration of ADR can have real value as part of the judicial engagement, again as part of the problem-solving approach. Settlement can thereby be facilitated in appropriate cases without loss of face to the parties. Even apart from ADR, a Case Management Conference furnishes an opportunity for canvassing settlement prospects. A Court may wish to consider, in appropriate cases, inviting the parties themselves, or their corporate representatives, to attend a Case Management Conference to facilitate these objectives.

OP23 further commentary:

We should view the Case Management Conference as an integral component of Alternative Dispute Resolution (ADR), rather than considering it entirely separate or foreign to ADR practices.

However, it may not be possible to settle complex commercial disputes by the judge himself.

If the judge thinks that there is a likelihood of a settlement, but the matter needs further deliberations, with the consent of parties, the matter can be referred to a formal ADR process. But the judge should look closely to ensure that this is not a delaying tactic but is a genuine effect to settle the matter.

OP23 examples:

(Zambia) At court of first instance in commercial matters, the rules expressly provide for court annexed mediation, which is typically invoked as discussed in the example under presumption no. 4 above. There is also provision for referral to arbitration if a litigant invokes a valid and operable arbitration clause. At appellate level, there is no specific provision for court annexed mediation or other ADR. Instead, amicable resolution in appeals is encouraged under the wider procedural framework for compromise and settlement of any court case.

(Rwanda) At a pretrial conference presided over by the registrar and with counsel attending, the court registrar, using the pretrial conference report, reads to the parties each point of the draft report and asks each party if he/she wants to make any modification thereto, and makes corrections if necessary. The court registrar, after agreeing with parties on all elements of the case, asks the parties if they agree to conciliation and indicates in writing whether or not they agree thereto. A report on the failure to reach a compromise is jointly signed by all parties and the registrar having presided over the pretrial conference. If parties agree to reach a compromise, a written statement is made to that effect and signed by all parties as well as the registrar.

The registrar may also refer them to private mediators or ask the president of the court to designate a judge to mediate between them if they so wish.

(Bahrain) The parties are always encouraged to reach a settlement and the Law is designed to allow them to do so at any stage. There is a dedicated division in Bahrain's Chamber for Dispute Resolution (BCDR) to that and with supporting laws.

The parties may, at any time during the hearing of the case before the case manager, request that the dispute be settled amicably. If they agree to that, what they agreed upon shall be recorded in a report that has the force of an executive document after it is signed by them or by their representatives and by the case manager. If the parties agree to settle the dispute amicably during the case management stage, only half the prescribed fee is then calculated.

(Sierra Leone) By our rules, the mandatory ADR process is conducted prior to the case management conference. My experience is that the parties hardly make a clean breast of their evidence and strategies at this stage. Lawyers

would rather listen to understand the case of the opposing party and use this information to prepare for trial. In most instances, this mandatory ADR has failed to resolve the matter between the parties. Case management leading to ADR on the other hand interestingly has, in my experience since I started its implementation, had a higher turnout of settlements and judgment by consent than the mandatory ADR which was designed specifically for amicable resolution.

(Sri Lanka) In Sri Lanka several progressive steps were taken in the recent past in relation to pre-trial conference. Exhaustive provisions in relation to pre-trial conference were introduced by the Civil Procedure Code (Amendment) Act, No. 29 of 2023. By section 142A(2)(a), it has now been made the statutory duty of the Judge to make every effort to persuade the parties to arrive at a settlement at the pre-trial conference.

Small Claims Courts' Procedure Act, No. 33 of 2022, which deals with small claims of less than Sri Lankan rupees of three million, also contains such a mandatory provision before fixing the case for trial.

Mediation Board Act, No. 72 of 1988 provides that if the dispute is in relation to movable or immovable property or a debt, damage or demand, which does not exceed one million rupees in value, the court has no jurisdiction to entertain unless there is a certificate of non-settlement issued by the Mediation Board is filed in court.

(Pakistan) A new Order IX-A has been added dealing with Alternative Dispute Resolution making it mandatory for the Court to refer the matter to mediation except in rare cases involving intricate questions of law.

Harnessing Technology for Effective Case Management

14. Technological developments should be harnessed to improve Case Management, as in all areas of commercial proceedings – a matter compellingly demonstrated as justice systems have sought to cope with the Covid-19 pandemic (and discussed in the SIFoCC May 2020 Note, ("Delivering justice during the Covid-19 pandemic and the future use of technology").

OP23 additional commentary:

Embracing technological developments requires not only financial backing but also a shift in mindset, especially among senior lawyers.

OP23 examples:

(Bahrain): The work in the commercial courts in Bahrain was not disrupted by the pandemic because of the electronic filing system that was adopted prior to the pandemic and the quick actions taken during that time that allowed the parties and their representatives to register their attendance electronically.

Appellate case management is equally important

15. Case Management does not end at the conclusion of the trial. It applies as well to appellate proceedings, with the aim of ensuring the timely disposal of appeals by appellate Judges with appropriate expertise. ADR may also be an option for some appellate matters: an unsuccessful attempt at ADR or an unwillingness to attempt ADR in the course of the first instance proceedings does not preclude ADR from being re-visited at the appellate stage in appropriate cases.

    OP23 additional commentary:

    Nor does case management end when the trial or equivalent substantive hearing begins.

    At trial it is crucial to avoid distractions: as the trial commences, Court should be on guard against efforts of the parties or their legal representatives to divert attention from the main proceedings towards peripheral issues. Such distractions are common when a proper case management mechanism is lacking. This is especially true for some jurisdictions that may have bottlenecks in their appellate processes which may also be prone to abuse through dilatory tactics.

    For example, in some jurisdictions, challenges to interlocutory orders before higher Courts are prevalent. They are often used as a dilatory tactic but sometimes they do arise out of genuine grievances. Either way, they are a major cause for delay in trial proceedings.

    We practically concentrate on pre-trial proceedings and pre-trial conferences which by nomenclature itself confines to matters before trial. Case Management Conferences might cover both pre-trial and post-trial procedure. I am just wondering whether a new concept can be introduced by our group to the SIFoCC general body which targets specially on post-trial procedure – i.e., "post-trial proceedings" and "post-trial conferences" (as opposed to popular "pre-trial proceedings" and "pre-trial conferences").

    OP23 examples:

    (Sierra Leone): There is no provision in our laws for case management on appeals. I hold the view that it is a welcomed idea though.

    (Sri Lanka) Our justice system allows for two appellate tiers from an order or judgment of any original court: first, to the Court of Appeal, and then to the Supreme Court. However, for the swift resolution of commercial disputes, Act No. 10 of 1996 introduced Commercial High Courts, providing for only one appeal from their orders and judgments. This is to the Supreme Court, which serves as the apex court in Sri Lanka. The Court of Appeal does not have

jurisdiction over orders and judgments delivered by the Commercial High Courts.

Enforcement Proceedings and Case Management

16. Case Management remains relevant to enforcement proceedings. A variety of issues may arise at this stage (by way of examples only, jurisdiction and public policy) where the discipline of Case Management would be necessary or, at the least, beneficial.

    OP23 additional commentary:

    Dilatory tactics and technical objections to enforcement of decrees are prevalent. In such instances, the principles of case management become essential to maintain order and efficiency at enforcement stage.

    OP23 examples:

    (Zambia): I have found case management very useful at enforcement stage where there is a money judgment and proceedings are brought for either interpleader or for payment in instalments. After engaging Counsel in a candid consultation, many such applications end up in a consent order to govern the payment mechanics of the judgment debt. This spares the limited resource of judicial time that would have been expended to hear and determine the applications. It also spares the litigants further expense in legal fees etc. Further, the amicable end to the enforcement process steered by case management greatly reduces the possibility of escalation of the litigation to the appellate tier.

    (Sierra Leone): I have never had an experience in this regard and it is not provided for in our rules. When judgment is delivered, any settlement between the parties is done outside the court system and it is entirely up to them. However, it is something I would love to try should an opportunity arise.

    (Bahrain) Case management remains relevant to enforcement proceedings in Bahrain where a special electronic system was developed specifically to insure speedy and efficient enforcement procedures that helps avoiding unnecessary delays and costs. Reconciliation is also encouraged at this stage.

    (Rwanda) IECMS is intended to help to standardize case record information storage and to streamline current processes, and, thus, ensure more effective follow-up at different levels. The Judgement Execution portal is an online auctioning portal enabling auction participants to bid for moveable and immoveable properties distrained in the margins of the judgement execution cases.

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