

**GLOBAL POUND CONFERENCE SERIES 2016 – SINGAPORE**  
**“SHAPING THE FUTURE OF DISPUTE RESOLUTION &**  
**IMPROVING ACCESS TO JUSTICE”**

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**Introduction**

1 It gives me great pleasure to deliver the opening address for the 2016 Global Pound Conference Series. More than a century ago, in 1906, at the 29th Annual Convention of the American Bar Association, Professor Roscoe Pound delivered a speech titled “The Causes of Popular Dissatisfaction with the Administration of Justice”.<sup>1</sup> In that speech, the then 36-year-old dean of the University of Nebraska College of Law spoke of the “real and serious dissatisfaction with courts and lack of respect for law” which he thought existed in the United States at that time.<sup>2</sup>

2 Seventy years later, in 1976, a group of judges, government officials and practising lawyers gathered in St Paul, Minnesota, to address the causes and

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<sup>1</sup> Roscoe Pound, “The Causes of Popular Dissatisfaction with the Administration of Justice” (1906) 29 Annual Report of the American Bar Association 395 at 395.

<sup>2</sup> *Ibid* at 396.

remedies of popular dissatisfaction with the administration of justice.<sup>3</sup> That marked the birth of the Pound Conference, which was named in honour of Roscoe Pound. At the inaugural Pound Conference, Professor Frank Sander of Harvard Law School proposed that alternative forms of dispute resolution could be used to reduce reliance on conventional litigation, and he explored ways to overcome the reluctance to use such other options.<sup>4</sup> That first Conference had an immense impact on how we have come to think about the way in which disputes should be resolved and it has widely been credited for the emergence of modern dispute resolution systems.<sup>5</sup>

3 Today, some four decades later, one might contend, perhaps with some force, that the legal landscape has changed dramatically. Some might say that we no longer live in an era where people take a widespread disenchanted and disaffected view of the administration of justice in courts. Others might acknowledge the rise and entrenchment of alternative dispute resolution processes such as arbitration and mediation, popularly known today by the acronym “ADR”. Taken together one might conclude that a reasonable balance

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<sup>3</sup> See “1976 Pound Conference”, online: [http://www.globalpoundconference.org/about-the-series/1976-pound-conference#.VsKW\\_CvoRO0](http://www.globalpoundconference.org/about-the-series/1976-pound-conference#.VsKW_CvoRO0).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

has been struck in many jurisdictions which feature strong judicial institutions co-existing alongside thriving ADR communities.

4 However, whether or not this view is well-founded, the foundational aim of the Pound Conference – to further the development of ideas to enhance access to justice by improving dispute resolution processes – remains wholly relevant today as it was at the time of the first Pound Conference or even at the time Dean Pound gave his seminal address. We must continue to analyse the major shifts in the global landscape and to anticipate new movements, particularly those relevant to the resolution of legal disputes. This morning, I propose to touch on three such shifts and thereafter to share some thoughts on possible systemic responses to them in order that our legal systems might remain relevant in changing times. These responses might help us to better shape the future of dispute resolution and improve access to justice in the years to come.

### **Major shifts in the global landscape**

#### ***Increased economic openness, mobility of labour and capital***

5 We are, today, witnessing unprecedented growth in transnational trade and economic partnerships. This is the effect of “globalisation”, a term that describes

the increased international integration in commodity, capital and labour markets.<sup>6</sup> In this context, the first major shift that we can readily identify is a movement towards increased economic openness and increased mobility of labour and capital.

6 This is well illustrated by a series of initiatives in Asia and the Pacific. I begin with the establishment of the ASEAN Economic Community on 31 December 2015. This is a major regional economic integration effort that aims to unify South East Asia's diverse economies into a single market and production base so as to facilitate the seamless movement of goods, services, investment, capital, and skilled labour within ASEAN.

7 Further afield in Asia, many would have heard of China's plans to develop a "New Silk Road", otherwise known as the "One Belt One Road Initiative", which was unveiled just a few years ago. Through this development strategy and framework, China aims to create multiple economic corridors encompassing more than 60 countries throughout Asia, North Africa and East Africa, and in the

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<sup>6</sup> There is no universally settled definition of "globalisation", but most definitions revolve around similar concepts. The definition in the main text is from the World Trade Organization's *World Trade Report 2008* at 15. Other definitions include, for instance, "the interconnectedness and interdependence of peoples and countries" (World Health Organization; online: <http://www.who.int/trade/glossary/story043/en/>).

process linking the dynamic East Asian Economic Zone with the advanced European Economic Zone.

8 The One Belt One Road Initiative consists of two main components, namely, the land-based “Silk Road Economic Belt” and the ocean-going “Maritime Silk Road”. It seeks to build “five connectivities”, which comprise policy consultation, infrastructure connectivity, free trade, free circulation of local currencies, and people-to-people connectivity. China has pledged to invest more than US\$200 billion in Silk Road projects across the globe involving the development of roads, rails, oil and gas pipelines, ports and other infrastructure.<sup>7</sup> This will increase connectivity and cooperation amongst the community of nations, develop regional infrastructure and improve trade and relations.

9 Alongside the One Belt One Road Initiative is another brainchild of China – the Asian Infrastructure Investment Bank.<sup>8</sup> The specifics of this financial framework are a topic for another day, but for now, it suffices to say that both the Asian Infrastructure Investment Bank and the One Belt One Road Initiative seek

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<sup>7</sup> Pearl Forss & Anthony Morse, “In Pictures: China’s New Silk Road”, *Channel News Asia*, online: <http://www.channelnewsasia.com/news/asiapacific/in-pictures-china-s-new/2167304.html>.

<sup>8</sup> See online: <http://www.aiib.org/>.

to enhance economic integration among countries by improving connectivity and strengthening the supporting infrastructure of trade.<sup>9</sup>

10 A final example of increased economic openness is the Trans-Pacific Partnership Agreement (“the TPP Agreement”), which was signed very recently on 4 February 2016. The twelve signatories, including Singapore, together represent an estimated 40% of global GDP, one-third of world trade, and a combined population of about 800 million. The TPP Agreement is a multi-lateral investment treaty that touches on matters concerning regional economic policy, trade and investment. It will come into force if all 12 member countries ratify it within 2 years, or if the United States, Japan and 4 other TPP countries ratify it after the 2-year timeframe. If and when it comes into force, we will see the birth of what has been described as one of the most ambitious free trade agreements ever,<sup>10</sup> and the largest regional trade arrangement to date.

11 With the shift towards increased economic openness and increased mobility of labour and capital, we can expect cross-border trade to continue growing. Correspondingly, we should anticipate that this will be accompanied by an

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<sup>9</sup> See, eg, “China’s Rise as a Regional and Global Power: The AIIB and the “One Belt, One Road”, (2015) 4 *Journal of International Relations and Sustainable Development* 162.

<sup>10</sup> “5 things to know about Trans-Pacific Partnership (TPP) free trade pact”, *The Straits Times*, online: <http://www.straitstimes.com/world/united-states/5-things-to-know-about-trans-pacific-partnership-tpp-free-trade-pact>.

increase in transnational commercial disputes that span an ever-expanding range of subjects and involve parties from a growing number of jurisdictions. It is inevitable that legal systems will have to deal with the reality that cross-border business disputes are going to be increasingly commonplace.

***Increased cross-cultural convergence in transnational commercial dispute resolution***

12 The second major shift is closely related to the first: namely, a shift towards cross-cultural convergence in dispute resolution.

13 Globalisation has brought with it a sharp increase in the incidence of transnational commercial disputes; however, national legal systems, which were primarily designed to deal with intra-jurisdictional disputes, have struggled to deal efficiently with transnational ones.<sup>11</sup> Indeed, the very existence of different legal systems significantly increases the transactional costs of doing cross-border business. Parties in cross-border business will inevitably have to expend resources in attempting to secure compliance with a web of national laws and regulations. When disputes arise, they then have to invest further resources to navigate unfamiliar foreign legal systems, often having to rely on unfamiliar

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<sup>11</sup> Sundaresh Menon, "Origins and Aspirations: Developing an International Construction Court" (2014) *The International Construction Law Review* 341 at 341.

foreign counsel, as well as to bear the additional risks that accompany the cross-border enforcement of judgments. On the one hand, these constitute barriers or obstacles to transnational trade. On the other hand, this is the backdrop against which there has been a drift towards cross-cultural convergence in the resolution of these disputes.

14 The rise of international commercial arbitration is perhaps the best illustration of such convergence. Arbitration rose to prominence by allowing parties to resolve their transnational commercial disputes in a neutral forum, away from national legal systems that might not be optimally designed for such purposes. It provided an option for minimising the transactional costs of doing cross-border business. Arbitration also afforded much-needed flexibility to disputing parties, who might often hail from diverse backgrounds and be accustomed to diverse laws and legal practices. One example of such flexibility is that relating to party representation. Unlike in traditional national court systems where as a general rule only lawyers qualified in the relevant jurisdiction have the right of audience before the courts, in arbitration, disputants can usually continue to rely on their preferred legal advisors and counsel to represent them in proceedings.

15 The growth of international commercial arbitration also provides an excellent example of the cross-fertilisation of civil and common law concepts, providing a test-bed for developing best practices in resolving transnational commercial disputes. The rules and guidelines developed by the International Bar Association (“IBA”) serve as important illustrations of this point. For instance, the working party that prepared the IBA Rules on the Taking of Evidence consisted of 16 arbitration practitioners drawn from a mix of civil law and common law jurisdictions.<sup>12</sup> The resulting set of rules reflected procedures initially developed in civil law systems, common law systems and in international arbitration processes,<sup>13</sup> and may be considered as presenting a “hybrid” or “fused” model for regulating the taking of evidence. Another example is the IBA Guidelines on Party Representation in International Arbitration, which sought to provide a uniform standard to regulate counsel conduct in the face of the diverse and potentially conflicting rules and norms in this area.<sup>14</sup> The Taskforce that drew up these guidelines consisted of practitioners from a good mix of civil law and common law jurisdictions. These rules and guidelines have proved to be tremendously useful

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<sup>12</sup> IBA Working Party, “Commentary on the New IBA Rules of Evidence in International Commercial Arbitration” (2000) 2 *Business Law International* 16 at 16.

<sup>13</sup> *Ibid* at 17; the same point is made in the foreword to the latest edition of the IBA Rules: see International Bar Association, “IBA Rules on the Taking of Evidence in International Arbitration” (29 May 2010) at 2.

<sup>14</sup> International Bar Association, “IBA Guidelines on Party Representation in International Arbitration” (25 May 2013) at 1.

particularly as it is no longer uncommon to find a mix of civil law and common law practitioners contemporaneously playing different roles in a single arbitral matter. The cross-fertilisation of ideas has also had a salutary effect in promoting cross-cultural convergence, and there have been recent calls for this to continue.<sup>15</sup>

### ***Increased recognition of access to justice outside the courtroom***

16 The third major shift that I will touch on is the growing recognition that access to justice can take place outside the courtroom. Gone are the days when disputants believed that their quest for justice could only be pursued in courtrooms. Increasingly, disputants look beyond the traditional court-based approaches to resolve their disputes.

17 I have already alluded to arbitration's much-needed role in facilitating the resolution of transnational commercial disputes.<sup>16</sup> But arbitration is not the only means for accessing justice outside the courtroom. There is growing recognition of the important role that *mediation* has come to play as a viable mode of dispute resolution.

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<sup>15</sup> See, eg, Patrick Dahm, Andreas Respondek & Kevin O'Shea, "A Grain of Civil Law – Some (Not So) New Chords for the International Arbitration Jazz" Singapore Law Gazette (October 2014) 19 ("A Grain of Civil Law").

<sup>16</sup> Sundaresh Menon, "International Commercial Courts: Towards a Transnational System of Dispute Resolution" (Opening Lecture for the DIFC Courts Lecture Series 2015) ("*Towards a Transnational System of Dispute Resolution*") at para 7.

18 One of the key features of mediation is its flexibility, which enables the parties to explore a multitude of issues and concerns arising out of a transaction or a relationship, including considerations that might not be strictly legal in nature. The flat structure of mediation, which involves a neutral facilitator rather than an adjudicator, is often conducive to the parties settling their disputes privately and amicably. The process allows them to directly participate and interact with each other in the effort to find a mutually acceptable solution, and importantly, it allows them to *determine* the outcomes of their dispute instead of having a tribunal do so. Mediation also has the great benefit of being much less costly than most other modes of dispute resolution.

19 The benefits of mediation have come to be appreciated across the board from family or matrimonial disputes to business partnerships and commercial relationships. This is a trend that appears to be gaining momentum and we should encourage this.

### **Responses to these shifts**

20 I pause here to pull these threads together. I have highlighted three major shifts that should inform the manner in which we should approach the development of our dispute resolution mechanisms:

- (a) First, a shift towards increased economic openness and mobility of labour and capital;
- (b) Second, a shift towards increased cross-cultural convergence in transnational commercial dispute resolution; and
- (c) Third, a shift towards the increased recognition that access to justice can take place outside the courtroom.

21 Let me now outline three responses to these shifts that could help us shape the future of dispute resolution even as we look to enhance access to justice.

### ***Towards “ADR” – Appropriate Dispute Resolution***

22 The first is to equip legal systems with a diversified range of dispute resolution options. In this regard, we should focus on the provision of *appropriate* mechanisms to resolve the dispute at hand.

23 I mentioned earlier that the acronym “ADR” is commonly understood as a reference to “*Alternative* Dispute Resolution”. This is a reflection of the widely held notion that such mechanisms are merely *alternatives* to the mainstream and conventional method of court-based dispute resolution. However, retaining the

terminology of “alternative” might mislead us, consciously or otherwise, into believing that the *default* – or even the *best* – approach is to be found in litigation.

24 While the court-based approach to dispute resolution certainly has its strengths, it may not always be appropriate in every case.

(a) For instance, resorting to a multiplicity of litigation actions across different national courts might not be the most efficient or effective way to resolve a transnational commercial dispute. Indeed, other than the excessive costs and effort incurred, such a piecemeal approach will often prove unsatisfactory given the unpredictable and sometimes conflicting outcomes that emerge from different courts in different jurisdictions. The long running patent wars between leading international information technology companies attest to this. Some of these long drawn battles have recently seen a ceasefire: for instance, Apple and Google announced in 2014 that they had agreed to settle all direct outstanding patent litigation between them,<sup>17</sup> while in September 2015, Google and Microsoft arrived at an accord to discontinue all pending patent litigation between them.<sup>18</sup>

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<sup>17</sup> See “Apple Agrees With Google to Drop Smartphone Patent Suits”, *BloombergBusiness*, online: <http://www.bloomberg.com/news/articles/2014-05-16/apple-google-agree-to-dismiss-lawsuits>.

<sup>18</sup> See “Google and Microsoft settle patent dispute”, *Financial Times*, online: <http://www.ft.com/cms/s/0/7ecab5c6-67be-11e5-97d0-1456a776a4f5.html#axzz40W4RiBce>.

(b) Another example may be found in the context of family justice. As already alluded to earlier, mediation may be more suitable than court-based litigation in the resolution of certain family disputes where the preservation of continuing familial relationships is a priority.

25 An ideal system of justice is one that delivers justice that is *customised* to each type of case, keeping in mind the subject matter, the parties, and the desired outcomes. This is a situation where one size does not always fit all. In this regard, it would perhaps be timely to embrace a paradigm shift and understand “ADR” as a reference to “*Appropriate* Dispute Resolution” instead.<sup>19</sup> This requires us to move away from our traditional and rigid ideas of how disputes should be resolved, towards a flexible and option-laden model where disputants are well-placed to choose the ideal mode of dispute resolution from a suite of options.

26 Let me emphasise that the call for “*Appropriate* Dispute Resolution” should not be seen as suggesting a reduced role for the courts. Even with the development of other dispute resolution options, the courts retain a special place in society as the guardians of the rule of law and, oftentimes, the principal and authoritative resolver of legal disputes. As such, quite the opposite of taking a

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<sup>19</sup> See Jeffrey Scott Wolfie, “Across the Ripple of Time: The Future of Alternative (Or, Is It Appropriate) Dispute Resolution” (2001) 36(4) *Tulsa Law Review* 785.

reduced role, courts should embrace the reality that different disputes call for different measures, and be equipped or even redesigned to resolve disputes as *appropriately* as possible. I touch briefly on three ways that the courts could do so.

(a) First, some degree of specialisation of the bench could be useful given that different knowledge bases and skillsets may be required for resolving different types of disputes. For instance, commercial and technology matters could be entrusted to judges who are experts in these areas, while criminal and family justice disputes could be dealt with under different procedural rules. Many courts, including the English and Singapore courts, have recognised the need for a calibrated approach to specialisation and the docketing of cases.

(b) Second, recognising that certain subjects may require the input of specialists in certain disciplines or areas of law, courts might endeavour to use experts, assessors and *amicus curiae* to enhance the robustness and correctness of their decisions.

(c) Third, with the unique role entrusted to courts to interpret, and where appropriate, to develop the law, courts should endeavour to play an active role in developing a coherent body of jurisprudence in transnational

commercial cases. This will help to provide guidance for commercial parties, enhance the predictability of outcomes, provide yardsticks for international standard-setting, encourage transnational conversations on substantive principles of law and possibly, in time, even provide a basis for the development of a *lex mercatoria*.<sup>20</sup> While international commercial arbitration has played a part in initiating this process, there are limits to what it can accomplish in this context. This arises because arbitration is generally regarded as an *ad hoc*, consensual, convenient and confidential method for resolving disputes; it is neither designed nor well-placed to develop an authoritative and legitimate superstructure of legal norms to facilitate global commerce.<sup>21</sup> In contrast, court proceedings are generally more transparent in the interest of “open justice”, and the appellate mechanisms available are invaluable in correcting errors, enhancing consistency and creating judicial precedents.

27 I suggest that litigation, arbitration, mediation and other dispute resolution methods should each play to their respective strengths and weaknesses as we move towards promoting *appropriate* dispute resolution.

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<sup>20</sup> *Towards a Transnational System of Dispute Resolution* at para 54.

<sup>21</sup> *Ibid* at para 14.

### ***Towards convergence, conversations and communications***

28 The second response is that of increasing convergence through conversations and communications amongst the relevant stakeholders so as to chart a coherent developmental pathway for the evolution of dispute resolution mechanisms.

29 Learning from beyond one's borders is of tremendous value because the refinement and development of practices is a long drawn process that involves repeated imagination, experimentation and refinement. In due course, greater convergence, coupled with more conversations and communications might even promote a wider appreciation for the fundamental importance of the rule of law.

30 Insofar as increased convergence, conversations and communications are concerned, I believe that we have already begun moving in the right direction.

31 In 2013, I suggested that the "opening act" in a three-Act convergence effort could be the harmonisation of the recognition and enforcement of court judgments.<sup>22</sup> Since then, the Hague Convention on Choice of Court Agreements<sup>23</sup>

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<sup>22</sup> Sundaresh Menon, "The Somewhat Uncommon Law of Commerce" (2014) 26 SAclJ 23 (*The Somewhat Uncommon Law of Commerce*) at para 53.

<sup>23</sup> HCCH, "Convention of 30 June 2005 on Choice of Court Agreements", online: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=98>.

entered into force on 1 October 2015, and is currently operating in Mexico and all the member states of the European Union (save for Denmark). The Convention promises to do for court judgments what the New York Convention has so successfully done for arbitral awards; and it promises to be a game changer insofar as the international enforceability of court judgments is concerned. This, in my view, is a very important step towards convergence.

32 I had also suggested that Act Two of the convergence effort might be the development of deeper connections amongst courts and the exploration of further avenues for knowledge-sharing and substantive collaboration.<sup>24</sup> There have been encouraging developments on this front too in recent years. For instance, courts from Australia, the Dubai International Financial Centre, England and Wales, Korea, New York and Singapore, to name a few, have separately entered into memoranda of understanding and guidance to clarify, amongst other things, the procedures for mutual references of questions of law or for the enforcement of judgments. We have also seen an increase in cross-court conversations on matters ranging from intellectual property law and cross-border insolvency to international family law. Singapore has been particularly active in such conversations. For example, we are currently working with judges from key

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<sup>24</sup> *The Somewhat Uncommon Law of Commerce* at para 62.

commercial jurisdictions on issues relating to cross-border insolvency, and are looking to establish an international cross-court network connecting the courts of these jurisdictions in due course.

33 We have also seen an increasing cross-fertilisation of civil law and common law ideas in specific areas of law. Discovery is one such area. In recent years, possibly in part inspired by the civil law practice in which parties litigate without the equivalent of common law discovery, and perhaps partly because of its prohibitive and often disproportionate cost, major common law jurisdictions such as the US and the UK have moved towards circumscribing the discovery process.<sup>25</sup> In Australia, the right to general discovery has been removed in the Federal Court of Australia as well as in the courts of New South Wales and Western Australia.<sup>26</sup> On the other hand, the civil law world has begun adopting some common law ideas on the production of documentary evidence in selected areas. For instance, at the European Union level, a recent directive on antitrust private enforcement introduces the concept of “categories of evidence” in addition to specific “items of evidence”. Commentators have observed this to be “a complete novelty for some civil law jurisdictions... [as it provides] a much broader

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<sup>25</sup> Michael Hales *et al*, “W(h)ither Discovery?” (2015) 9 *Dispute Resolution International* 29 (“*W(h)ither Discovery*”) at 31–37.

<sup>26</sup> For instance, see Federal Court Rules 2011 Part 20.11 and 20.12. Part 20.12(1) states that “A party must not give discovery unless the Court has made an order for discovery.” See also *W(h)ither Discovery* at 38–39.

range of document production.”<sup>27</sup> The cross-fertilisation of ideas seems therefore to have led to increasing convergence in the approaches towards document production.

34 Selected examples from Singapore’s experience will further illustrate the cross-pollination of ideas. In the context of family justice, the Committee for Family Justice studied, amongst other jurisdictions, the German family justice system, and observed the roles played there by judges and child representatives. This inspired the judge-led approach for resolving family disputes and the subsequent introduction of child representatives in our family justice system. In the context of medical litigation, we are similarly considering a possible shift from the present purely adversarial common law model to a process in which the judge, with the assistance of an expert assessor, pro-actively directs the proceedings using a model that might be seen to be more closely associated with the civil law tradition. As yet another example, proceedings in the Singapore International Commercial Court (“SICC”) are governed by a unique set of rules that incorporate elements of international best practices which make its processes conducive to users coming from both the common law and civil law traditions. For instance, while generally retaining the common law adversarial framework, the

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<sup>27</sup> See EC Directive 2014/104/EU; also cited in *W(h)ither Discovery* at 41.

SICC disapplies the common law discovery regime in favour of a regime similar to that commonly adopted in some civil law countries and in international commercial arbitration.<sup>28</sup> In the SICC, parties also have increased autonomy and flexibility, working with the court to design procedures for their cases; for instance, parties may agree that evidential rules other than those in Singapore’s Evidence Act shall apply,<sup>29</sup> and may also agree to exclude, limit or vary the right and scope of appeal.<sup>30</sup>

35 There have also been many courses and conferences organised specifically for the exchange of ideas and best practices across jurisdictions. We have seen increasing interest and awareness from varied stakeholders in the convergence of cross-border substantive business laws, improved legal infrastructure and regulatory standards. Most recently in January 2016, an international conference on “Doing Business Across Asia: Legal Convergence in an Asian Century” was hosted in Singapore. It drew more than 500 delegates including policy makers, members of judiciaries, legal practitioners, business leaders and academics. It was fitting that the Asian Business Law Institute (“ABLI”) was launched at that conference. The ABLI has, amongst its core tasks, the task of evaluating and

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<sup>28</sup> See the “Request to Produce” procedure in Order 110 rule 14 of the Rules of Court.

<sup>29</sup> Order 110 rule 23(1) of the Rules of Court.

<sup>30</sup> See para 139(3) of the Singapore International Commercial Court Practice Directions.

stimulating the development of Asian law, legal policy, and practice. In particular, the ABLI aims to make proposals to facilitate the convergence of commercial law in the region,<sup>31</sup> and will provide an important platform for key stakeholders to work together on this important initiative.

36 Greater convergence in substantive rules and principles of law will enhance the consistency of outcomes across jurisdictions and reduce the legal costs for parties who inevitably will, to an increasing degree, operate in multiple jurisdictions. It can also reduce the incentive for parties to “forum shop” in a bid to obtain favourable results. Frequent conversations and communications amongst the relevant stakeholders will facilitate the synthesis of ideas and the distilling of international best practices.

37 There is wind in the sails of the convergence movement but we must ensure that the conversation neither stagnates here nor stumbles along on a piecemeal basis. We cannot leave the evolution of our dispute resolution mechanisms to happenstance. Against the backdrop of the changing landscape of global commerce, we need to press on towards greater convergence of our frameworks as this will yield efficiency, transparency, flexibility and consistency in dispute

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<sup>31</sup> Asian Business Law Institute, “Introduction”, online: <http://abli.asia/ABOUT-US/Introduction>.

resolution.<sup>32</sup> There must be on-going dialogue on this and this is precisely what the ABLI seeks to ensure.

***Towards tapping on the global talent pool in a flattened world***

38 The third and final response is to grasp the opportunity that is presented by the reality today that we have access to a global talent pool in a flattened world.

39 With increased economic openness and mobility of labour and capital, it is unsurprising that the number of legal practitioners, academics and even judges working outside their “home jurisdictions” has increased tremendously. In recent years, we have seen the internationalisation of law firms, as illustrated by the increasing number of law firms opening foreign branches or entering into partnerships with foreign law firms. We have also seen an increase in the number of “international arbitral tribunals”, universities with an international outlook, and even “international courts”.

40 We should embrace the increasing internationalisation of the legal services sector. However, we must recognise that the process of doing so must be thoughtfully and carefully managed and regulated because otherwise, issues

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<sup>32</sup> See *A Grain of Civil Law*.

might otherwise arise from a clash of cultures, inconsistent practices and uneven understandings of ethical standards.

41 Let me again draw an illustration from our experience. In recent years, there has been a move towards the liberalisation of Singapore's legal industry, including the extension of local rights of practice to various types of foreign law practices and the recognition of law degrees in selected foreign universities.<sup>33</sup> As at June 2013, foreign lawyers formed approximately 20% of Singapore's total population of lawyers.<sup>34</sup> With the increase in the number of foreign lawyers practising in Singapore, we have thought it fit to establish a common disciplinary and regulatory framework for both local and foreign lawyers practising in Singapore. To this end, we have promulgated rules relating to professional practice, etiquette, conduct and discipline that apply to all legal practitioners working in Singapore. And by tapping on and managing the global talent pool, we have further strengthened our position as a legal hub in the region.

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<sup>33</sup> Pasha Hsieh, "The ASEAN Economic Community and the Legal Services Market", Singapore Law Blog (19 December 2014), online: <http://www.singaporelawblog.sg/blog/article/70>.

<sup>34</sup> Final Report of the Committee to Review The Regulatory Framework of the Singapore Legal Services Sector (January 2014), online: <https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/Final%20Report%20of%20the%20Committee%20to%20Review%20the%20Reg%20Framework%20of%20the%20Spore%20Legal%20Sector.pdf>) at para 5

42 But Singapore does not only import legal talent; we also export it. Our universities have produced many excellent young lawyers, a number of whom practice in international law firms based both in Singapore and worldwide. Indeed, an eminent Singapore lawyer currently serves as the Chief Justice of the Dubai International Financial Centre Courts.

43 Perhaps the most vivid illustration of tapping on the global talent pool is found in the establishment of the SICC. Alongside commercial judges from Singapore, the SICC's panel presently features twelve eminent international judges hailing from various jurisdictions, each possessing deep commercial expertise, and representing a good mix of both the civil and common law traditions. The SICC also offers fairly liberal rights of audience for foreign lawyers who are registered with the SICC, the criteria for registration being generally much less stringent than the admission of Queen's Counsel for domestic cases in Singapore.<sup>35</sup> Registered foreign lawyers may generally represent parties in the

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<sup>35</sup> See s 36P of the Legal Profession Act (read with the Legal Profession (Foreign Representation In Singapore International Commercial Court) Rules and the SICC Practice Directions) for the registration of foreign lawyers in the SICC; *contra* s 15 of the Legal Profession Act for the admission criteria for Queen's Counsel or counsel of equivalent distinction.

SICC so long as the case in question has no substantial connection with Singapore.<sup>36</sup>

44 Within the span of a single year since its establishment, we have already begun to see glimpses of the SICC's truly international character. As at 29 February 2016, more than 60 foreign lawyers, many of them Queen's Counsel or Senior Counsel, have sought and obtained registration with the SICC. In a historic development, the first SICC case was managed by a Singapore judge sitting alongside two international judges, receiving submissions from legal teams helmed by eminent Singapore Senior Counsel and with submissions on foreign law made by foreign law experts who were registered with the SICC. The second SICC case is being presided over by an international judge, who has conducted case management conferences both in person as well as over video conference and has heard the trial in Singapore. Tapping on the global talent pool has opened the door for the SICC to emerge as a world class court for the resolution of transnational commercial disputes.

45 Improvement and betterment will come about most quickly with the free flow exchange of ideas and best practices in the talent pool. We must tap on the

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<sup>36</sup> See Order 110 rule 1(1) of the Rules of Court (for a definition of "offshore case"). See also ss 36P(1) and (2) of the Legal Profession Act and the Legal Profession (Foreign Representation In Singapore International Commercial Court) Rules.

global talent pool that we have at our disposal. It is certainly *easier* than ever to do so now.

## **Conclusion**

46 It is perhaps appropriate to draw my address to a close by quoting from Professor Pound himself. Professor Pound was a legal scholar and thinker who was well ahead of his time and who passionately argued that the law must continue to adapt to the needs of society. One of his most memorable quotes is that “the law must be stable, but it must not stand still”. Indeed, the major shifts in the global landscape that we are witnessing today ought to remind us that our legal systems cannot stand still. The quest to improve the resolution of disputes and to enhance access to justice must be a continuing one.

47 We in Singapore have recognised these major shifts and the concomitant need for an organised response to them. We are committed to ensuring that we can meet the demands of the exciting and legally diverse region we serve.

48 To this end, we have sought to develop an array of effective dispute resolution capabilities designed to meet the varied needs of our stakeholders. We are blessed with a judiciary that enjoys a strong reputation for integrity, efficiency and trustworthiness. We also have developed very well regarded institutions such

as the Singapore International Arbitration Centre (“SIAC”) and the Singapore Mediation Centre (“SMC”). The SIAC has been actively promoting arbitration for the resolution of disputes and providing quality and neutral arbitration services to the international business community for many years. As for the SMC, it has an admirable track record in mediating disputes. In terms of training mediators, the SMC has been engaged throughout the region from the Middle East to the Pacific. We have also recently launched the Singapore International Mediation Centre, which comprises mainly international mediators with a focus on international commercial disputes.

49 With mediation gaining traction, we also decided that it was timely to establish the Singapore International Mediation Institute otherwise known as “SIMI” in 2014. SIMI was set up to ensure professionalism and to raise standards in mediation. It acts as the professional body for mediation in Singapore and will certify the competence of mediators, apply and enforce world-class standards of mediation and uphold professional codes of conduct and ethics. SIMI mediators are also required to meet renewal requirements, which include the responsibility of mentoring younger mediation professionals.

50 We have also established institutions to promote the exchange of ideas and dialogue amongst stakeholders. In 2015, we launched the Singapore Judicial

College, which boasts not only training resources for local and foreign judges, but also an empirical judicial research wing that already has a number of exciting projects in the pipeline. I have also already spoken of ABLI. Today, I am proud to announce the launch of the Singapore International Dispute Resolution Academy, or “SIDRA”. SIDRA is the first regional hub dedicated to training and educational excellence in negotiation and dispute resolution. It has been established to complement our suite of dispute resolution services, capitalise on our track record in dispute resolution training and draw on the competencies and talents of our world-class dispute resolution institutions to offer outstanding training and educational opportunities for the wider region. SIDRA will collaborate with both local partners and renowned overseas institutions to establish training and educational programmes, research and development projects and other initiatives. Significantly, SIDRA will offer an international platform for exchanging and developing ideas on theory, practice and policy development and will bring a strong presence of contemporary Asian voices into the global conversations on dispute resolution.

51 Finally, we have also embraced the opportunity to host conferences dedicated to discussing the need to reinvent and reimagine the way we approach dispute resolution. The future of dispute resolution, and our commitment to

enhance access to justice, will be greatly facilitated by such on-going conversations among different stakeholders.

52 This is why we are so greatly honoured to have this opportunity to host the first of the Global Pound Conference Series, which will conclude in London next year. The Series provides an excellent platform for the exchange of ideas. It will convene all stakeholders in dispute resolution and “provoke debate on existing tools and techniques, stimulate new ideas and generate actionable data on what corporate and individual dispute resolution users actually need and want, both locally and globally”.<sup>37</sup>

53 It is my pleasure to welcome you all and I wish this conference, and indeed the entire Global Pound Conference Series, every success.

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<sup>37</sup> See “Welcome to the Global Pound Conference Series 2016-17”, online: <http://www.globalpoundconference.org/>.