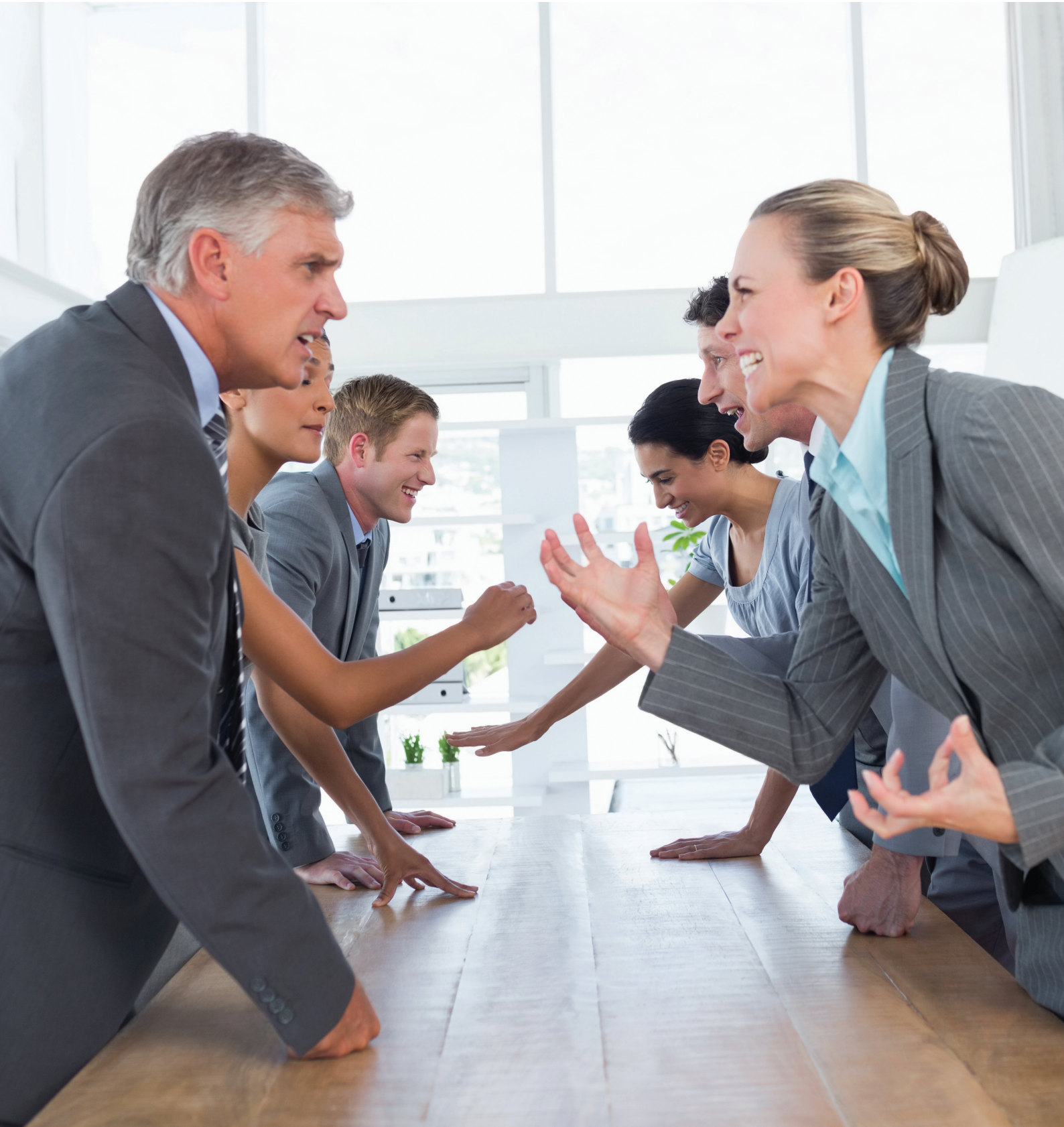
CorporateLiveWire

LITIGATION & DISPUTE RESOLUTION 2019

VIRTUAL ROUND TABLE

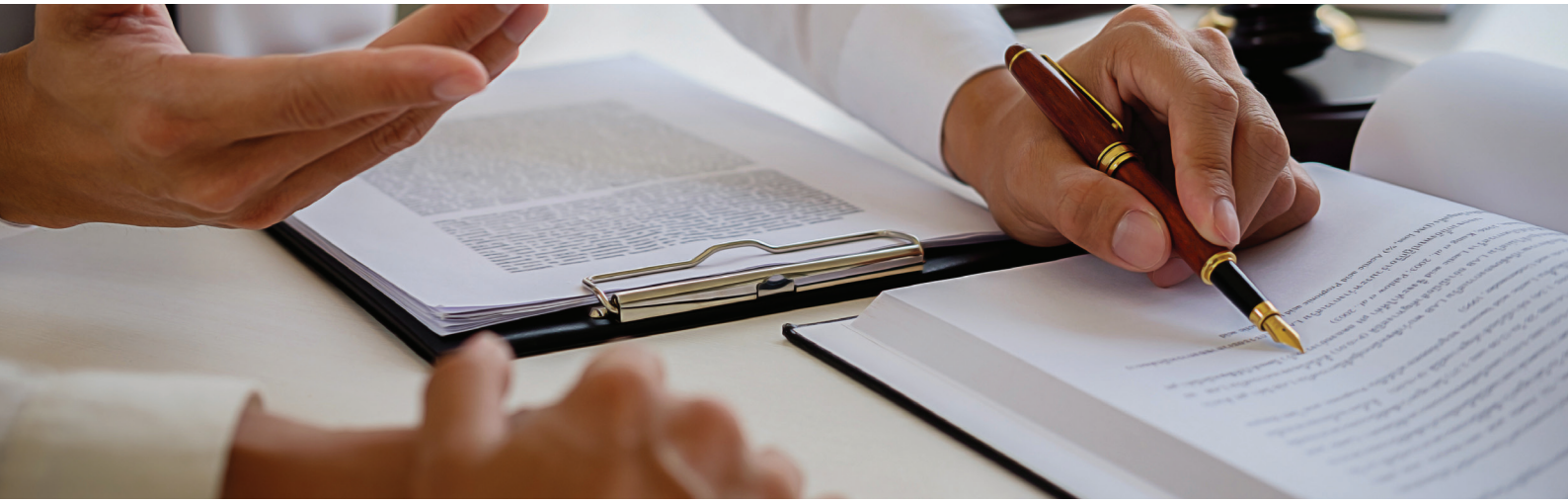
www.corporatelivewire.com



Introduction & Contents

Eight experts from around the world discuss the latest changes and interesting developments relating to Litigation & Dispute Resolution. We find out more about the judicial structures, regulatory changes, litigation trends and noteworthy case studies in key jurisdictions. This roundtable also offers useful advice on when to consider alternative dispute resolution, how to minimise costs of litigation, and what strategies can be implemented in order to achieve consistent results. There is, of course, also a short discussion on the impact of Brexit. Featured countries are: Bahrain, Finland, Germany, India, Israel, Nigeria, and Turks and Caicos Islands.

James Drakeford
Editor In Chief



Meet The Experts

Axel Goetz - BEITEN BURKHARDT
T: +49 89 35065-1303
E: axel.goetz@bblaw.com

Dr Axel Goetz had been co-heading the firm's corporate group for almost a decade and is member of the Litigation Practice Group. He is specialized in shareholder litigation and corporate disputes. His clients include companies in the technology sector as well as the machinery and automobile industry, recapitalisation specialists and other private equity investors.

Dr Axel Goetz was admitted to the German bar in 1995. He studied law at the Universities of Munich and Freiburg (receiving a scholarship from the German National Academic Foundation) and New York (LL.M., Corporate Law) and was awarded a doctorate in 1997. He is admitted to the bar in Germany and in New York. He has been working with BEITEN BURKHARDT since 1997.

Stephen Wilson QC - GrahamThompson
T: +1 649-339-4130
E: sw@gtclaw.com

Stephen Wilson QC is a partner in the law firm of GrahamThompson and head of the firm's Litigation and Dispute Resolution practice in GrahamThompson's Turks and Caicos Island's office in Providenciales. He has headlined cases involving multi-national entities, across a range of sectors, notably tourism and hospitality, banking, real estate, insurance and construction. His work has included multi-jurisdictional claims and multi-party actions and he is especially noted for his expertise in complex corporate and commercial disputes. He is highly regarded for his knowledge of constitutional and administrative law and is a leading attorney in the field of asset recovery.

Noor Radhi - Hassan Radhi & Associates
T: +973 1753 5252
E: noor.radhi@hassanradhi.com

Banking and Financial Services, Project Finance, Capital Markets , Mergers and Acquisitions , Construction and Infrastructure, Admiralty and Maritime, Business Crimes and Compliance, , Employee Benefits and Pensions, Employment and Labor Law, Insolvency, Bankruptcy and Restructuring, Insurance and Reinsurance, Islamic Finance, Litigation, Arbitration and Dispute Resolution, Telecommunications, Toxic Tort and Products Liability.

Benson Lim - Hogan Lovells
T: +65 6302 2593
E: benson.lim@hoganlovells.com

As a multi-qualified international arbitration counsel, Benson focuses on representing parties in cross-border arbitrations especially those with an Asian angle. Clients have cited him for his "splendid work" and "analytical ability and experience". A General Counsel once stated that he often "turns to Benson to seek his views on difficult areas of law."

More typical of a senior lawyer with much longer years of experience, he already sits as an arbitrator in addition to counsel work. His arbitrator appointments include being a sole arbitrator in a SIAC arbitration over international trade of components for solar technology equipment.

Benson is an accredited mediator too. He has been appointed as a sole or co-mediator in over 50 matters in the USA and Singapore with an overall settlement rate of 74.5%.

Meet The Experts

Oluseyi Adejuyigbe - Olatunde Adejuyigbe & Co
T: +234 (1) 295 7863
E: info@oadejuyigbe-ng.com

Oluseyi Adejuyigbe is the Managing Partner of the firm. She obtained a Bachelor of Science Degree (Animal Science) at the University of Ibadan in 1988. She had her mandatory NYSC Programme at Livestock Feeds Plc. between 1988 and 1989.

In 1990 she joined the services of Trans International Bank Plc. and was in the employment

Lauri Railas - Railas Attorneys
T: +358 20 7348654
E: lauri@railas.fi

Dr. Lauri Railas is a Finnish attorney, the Average Adjuster in Finland and a university lecturer. Previously, Lauri worked in marine insurance, in the International Chamber of Commerce, in arbitral and European institutions. Lauri became an attorney 2003 and joined the Finnish Bar 2005. After leaving one of the biggest Finnish law firms Lauri established Railas Attorneys Ltd in 2014. His areas of practice are maritime and transport law, international trade and insurance. Lauri also has good command of IT and EU laws. Lauri arbitrates and litigates dispute cases. He has written several books including the 2nd edition of his popular full-fledged textbook on Incoterms 2010 published in October 2016, as well as numerous articles."

Yoav Navon - Woodsford Litigation Funding
T: +972 (0) 523 670 715
E: ynavon@woodsfordlf.com

In his role as a consultant to Woodsford Litigation Funding, Yoav Navon helps introduce leading Israeli law firms and their clients to our full range of litigation finance solutions.

Yoav has extensive experience in commercial litigation and arbitration over a broad spectrum of sectors, having acted in the commercial, industrial and governmental disputes, before different legal instances tribunals, including all Israeli courts, arbitrators and mediators.

Prior to joining Woodsford, Yoav was an Associate at Ron Gazit, Rotenberg in Tel Aviv, where he represented clients across a range of areas, including intellectual property, media, antitrust and environmental disputes.

Ramni Taneja - Law Office of Ramni Taneja
T: +91 11 4155 2051
E: ramni@ramnitaneja.com

Ramni Taneja is a citizen of India, having been educated in Mumbai, India, and London, England. She enrolled as an Advocate on 17th October 1980, on the Roll of the Bar Council of Maharashtra, [Mumbai], India; subsequently transferred to the Bar Council of Delhi, India, on 20th October 1997. On 3rd March 1997, she was admitted as a Solicitor of the Supreme Court of England and Wales, [now known as the Senior Courts of England and Wales]. In 1999, she was appointed as a Notary by the Government of India, New Delhi, India.

Since 1997, Ramni Taneja practises in New Delhi, India, as an Advocate in the Supreme Court of India and the High Court of Delhi, apart from various other tribunals and courts in Delhi and in India. From 1980 till 1982 she practiced as an Advocate with Little & Co., Advocates and Solicitors, Mumbai, India; she headed the office of Little & Co., Advocates, in New Delhi, India, from 2002 till 2006. From 1983 till 1997, Ramni Taneja was licensed and practised as a Legal Consultant with A.R. Hilal & Associates, Advocates and Legal Consultants, in Dubai, United Arab Emirates. Her law firm, Law Office of Ramni Taneja, began in New Delhi, India in August 2006.

Q1. Can you outline the court and judicial structure in your jurisdiction?

Ramni Taneja

Taneja: One of the unique features of the Constitution of India is that, notwithstanding the adoption of a federal system and existence of Central Acts and State Acts in their respective spheres, it has generally provided for a single integrated system of courts to administer both Union and State laws. At the top of the entire judicial system is the Supreme Court of India, below which are the High Courts in each State or group of States. Below the High Courts is a hierarchy of subordinate courts. Panchayat courts also function in some States under various names (like Nyaya Panchayat, Panchayat Adalat, Gram Kachheri, etc.) to decide civil and criminal disputes of petty and local nature. Different State laws provide for different kinds of jurisdiction of courts. Each State is divided into judicial districts presided over by a District and Sessions Judge, which is the principal civil court of original jurisdiction; the District Court also has criminal courts, which can try all offences including those punishable with death. The Sessions Judge is the highest judicial authority in a district. Below him, there are courts of civil jurisdiction, known in different States as Munsifs, Sub-Judges, Civil Judges et al. Similarly, the criminal judiciary comprises the Chief Judicial Magistrates and Judicial Magistrates of First and Second Class.

Lauri Railas

Railas: The Finnish judicial system consists of general courts, which are divided into civil and administrative courts, and special courts, which exist only at first instance.

The general civil courts are district courts, courts of appeal and the Supreme Court. Civil courts can hear civil and criminal cases. There are summary proceedings for debt collection not requiring examination in substance and imposing fines on smaller delinquency, usually traffic fines. District courts have been very regional, but their number is expected shrink in the coming years.

As there has been congestion of cases, access to the second instance, the courts of appeal, has been limited by a requirement of leave to appeal. Its purpose is to block small or otherwise insignificant or routine cases being heard on appeal.

The access to the Supreme Court of Finland also requires a leave to appeal and only between five to 10 per cent of cases are admitted to the Supreme Court. The case needs to have elements of establishing a precedent, or there must be other compelling reasons to have it heard.

The administrative courts are regionally established. Nowadays, a leave to appeal to the Supreme Administrative Court is needed. Much of the workload of the Supreme Administrative Court is made of complaints by asylum seekers.

There is the Market Court hearing disputes on public procurement, competition and unfair trade practices. Most of its judgments can be appealed against before the Supreme Administrative Court, but cases of unfair trade practices such as unfair advertising may be brought before the Supreme Court of Finland. Other special courts include the Insurance Court, which hears disputes on social insurance such as work incapacity issues, and water courts, which are needed in the country of almost 200,000 lakes. The decisions of the Insurance Court can be appealed against before the Supreme Court of Finland and the decisions of the water courts can be appealed against before the Supreme Administrative Court of Finland.

Finland does not have a constitutional court. General courts can examine questions relating to the interpretation of the Constitution, which usually means fundamental rights. Conflicts between the Constitutions and the provisions of secondary legislation are presumed to be avoided by the scrutiny of the Constitutional Committee of the Parliament, which hears law professors and other experts before giving green light for a Government Bill to pass to the Grand Committee and plenum for adoption. The Finnish Government resigned on 8 March 2016 – just six weeks before the general elections – because one of its most important reforms having been prepared for years, the health care reform, got stuck in the Constitutional Committee.

Q1. Can you outline the court and judicial structure in your jurisdiction?


Oluseyi Adejuyigbe

Adejuyigbe: There is a hierarchical structure of courts in the Nigerian legal system with the Supreme Court at the apex. The Supreme Court is the final court for the resolution of all disputes as all appeals from the court of appeal terminate at the apex court. The Court of Appeal is the penultimate appellate court vested with jurisdiction to hear and determine appeals from the Federal and State High Courts; National Industrial court; Sharia and Customary Courts of Appeal and decisions of court martials. Nigeria consists of 36 states and a federal capital territory. Each of the states has a high court while the federal high court and the national industrial court operate at the federal level as courts established to exercise jurisdiction over matters on the exclusive jurisdiction list in the Constitution. The High Courts are of co-ordinate jurisdiction though the Constitution vests exclusive jurisdiction over certain subject matters in certain courts. For instance, the Federal High Court is vested with exclusive jurisdiction over Admiralty and Insolvency matters; and the National Industrial Court has exclusive jurisdiction over labour, employment and industrial relations matters.

There are also lower or inferior courts of record such as the magistrate and customary courts. Appeals from these courts proceed to the High Court and customary court of appeal respectively. There are also sharia courts in Nigeria from where appeals go to the Sharia court of appeal.


Noor Radhi

Radhi: The legal system in Bahrain is mainly a civil law based system influenced by Egyptian law which in turn is based on French law, with Sharia law being the system governing personal matters for Muslims. In line with Bahrain's aspiration to maintain its status as a hub for business, particularly in the banking and finance field, the legislation to corporate and banking matters has evolved to be more of a of civil law jurisdiction influenced in some aspects by the English common law statutes. The Law is codified and court precedents are not considered as a source of law, but precedents may influence subsequent rulings.

The primary source of law, as set out under the Bahraini Civil Code, consists of the codified legislation, and where the codified legislation is silent the courts will rule in accordance with customary practice, in the absence of which the courts will rule in accordance with Islamic Sharia principles and finally in accordance with natural justice and the rules of equity where Sharia law is silent.

In terms of the classification of the courts, the Civil Courts are divided horizontally into chambers that specialise in civil, administrative, commercial and criminal matters respectively, as well as matters related to personal status of non-Muslims. Sharia Courts exist in parallel and have jurisdiction over all matters related to the personal status of Muslims. Vertically the courts' system consists of three degrees of litigation, first instance courts, the Court of Appeal and finally the Court of Cassation (Supreme Court of Appeal).

Specialised tribunal has also been established since 2009 within the Bahrain Chamber for Economic, Financial and Investment Dispute Resolution (the "BCDR") which has mandatory jurisdiction to hear disputes, the value of which exceed 500,000 thousand Bahraini Dinars (approximately USD 1,332,000.00) among financial institutions licensed by the Central Bank of Bahrain, as well as international commercial disputes. The BCDR also has a division that operates as a dispute resolution centre that provides arbitration and mediation services.

In addition to the above, Bahrain has a written constitution, and a Constitutional Court that hears challenges in relation to the non-constitutionality of legislation. Such challenges are referred to the Constitutional Court by the relevant court before which the challenge is raised by the pleading parties.

Q1. Can you outline the court and judicial structure in your jurisdiction?

Stephen Wilson QC

Wilson: The Turks and Caicos Islands are a constitutional democracy under the British Crown. The judges and magistrates appointed to preside or sit in any court of the Turks and Caicos Islands in the exercise of their judicial functions are independent from the legislative and executive branches of government which is a constitutional requirement. The legislature and the Cabinet are constitutionally required to uphold the rule of law and judicial independence and are required to ensure that adequate funds are provided to support the judicial administration in the Islands.

The Judicial Service Commission for the Turks and Caicos Islands is created by section 86 of the Constitution of the Turks and Caicos Islands. It advises H.E. the Governor with respect to judicial appointments, disciplinary control over persons holding the offices of Chief Justice, President of the Court of Appeal, registrar and deputy registrar, and removal from office of persons holding or acting in the offices of registrar and deputy registrar (section 87). The Chairman of the Judicial Service Commission is appointed by H.E. the Governor acting in his/her discretion; two other members are appointed by H. E. the Governor acting after consultation with the Premier and Leader of the Opposition from among persons who hold or have held high judicial office.

I. The Magistrate's Court

The Magistrate's Court for the Turks and Caicos Islands is a statutory body established by section 3 of the Magistrate's Court Ordinance (CAP. 2.03) with summary jurisdiction for both criminal and civil cases.

II. The Supreme Court

The Supreme Court of the Turks and Caicos Islands is a Superior Court of Record, being constituted by section 77 of the Constitution and the Supreme Court Ordinance (CAP. 2.02) (the "SCO"). Pursuant to section 3 of the SCO, in addition to any jurisdiction previously exercised by the Supreme Court or conferred upon it by the SCO or any other law, the Supreme Court has within the Islands the jurisdiction vested in the following Courts in England:–

- the High Court of Justice; and
- the Divisional Court of the High Court of Justice as constituted by the Supreme Court of Judicature (Consolidated) Act, 1925, and any Act of the Parliament of the United Kingdom replacing that Act.

Subject to the SCO and any other law, the jurisdiction of the Supreme Court is exercised in accordance with the Rules of the Supreme Court 2000 which are based on the former Rules of the Supreme Court of England and Wales prior to the Civil Procedure Rules of England and Wales. In any matter of practice or procedure for which no provision is made by the SCO or any other law or by any rules, the practice and procedure in similar matters in the High Court of Justice in England shall apply so far as local circumstances permit and subject to any directions which the Supreme Court may give in any particular case.

Most criminal trials on indictment and a limited category of civil trials are heard by a Justice of the Supreme Court sitting with a jury pursuant to the Jury Ordinance (CAP. 2.09). Juries ordinarily consist of six members but all cases of treason, murder and piracy require juries of 12 persons (s.22 Jury Ordinance). In civil cases, save for the limited category of cases referred to above, trials are before a judge alone.

Both the Magistrate's Court and the Supreme Court have jurisdiction in relation to children and family matters under various recent legislation including the Matrimonial Causes Ordinance (CAP. 11.04), the Children (Care and Protection) Ordinance 2015, the Family Law (Guardianship, Custody and Access to Children) Ordinance 2015 and other Ordinances.

Q1. Can you outline the court and judicial structure in your jurisdiction?

Stephen Wilson QC

III. The Court of Appeal

The Court of Appeal for the Turks and Caicos Islands is established by section 80(1) of the Constitution of the Turks and Caicos Islands with a President and Justices of Appeal appointed by H. E. the Governor acting after consultation with the President of the Court. It currently sits three times per year and in each case for three weeks.

The practice and procedure of the Court of Appeal is governed by the Court of Appeal Ordinance (CAP 2.01) and the Court of Appeal (Practice and Procedure) Rules which provide that the Court of Appeal Rules of the Bahama Islands shall apply mutatis mutandis to appeals from the Supreme Court of the Turks and Caicos Islands.

IV. The Privy Council

Pursuant to the Turks and Caicos Islands (Appeal to Privy Council) Order[1] a final appeal from a judgment of the Court of Appeal lies with leave to Her Majesty in Council.

Pursuant to section 3, an appeal shall lie––
(a) as of right from any final judgment, where the matter in dispute on the appeal amounts to or is of the value of 300 pounds sterling or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards; and
(b) with the leave of the Court of Appeal, from any other judgment, whether final or interlocutory, if, in the opinion of the Court of Appeal, the question involved in the appeal is one which, by reason of its great or general importance or otherwise, ought to be submitted to Her Majesty in Council for decision.

V. Other courts and tribunals

The Coroners Ordinance (CAP. 2.05) provides for a Coroner for the Turks and Caicos Islands. The Magistrate is the ex officio Coroner of the Islands. The Coroner may appoint from time to time a deputy Coroner.

The Labour Tribunal is a statutory body established by section 93 of the Employment Ordinance (CAP. 17.08). It has jurisdiction to hear and determine any labour dispute or complaint or other matter referred to it under the Employment Ordinance or any other Ordinance. The composition of the Labour Tribunal is prescribed by section 94 of the Employment Ordinance.

1. (U.K. Statutory Instruments No. 1863/1965 and No. 1084/1973)

Q1. Can you outline the court and judicial structure in your jurisdiction?


Axel Goetz

Goetz: The German jurisdiction is split into constitutional jurisdiction, regular jurisdiction – e. g., civil jurisdiction (*Zivilgerichtsbarkeit*) and criminal jurisdiction (*Strafgerichtsbarkeit*) – and particular jurisdictions like labour jurisdiction (*Arbeitsgerichtsbarkeit*), administrative jurisdiction (*Verwaltungsgerichtsbarkeit*), tax jurisdiction (*Finanz-gerichtsbarkeit*) and social jurisdiction (*Sozialgerichtsbarkeit*). Our answers here just refer to the civil jurisdiction (*Zivilgerichtsbarkeit*) with no regard to particularities of labour jurisdiction (*Arbeitsgerichtsbarkeit*).

Within the civil jurisdiction, the German system in general provides for two regular instances. The court review of facts, however, may be limited in the second instance. In addition, the suggestion of new facts is in general only possible if these facts, measured by an objective standard, could not have been proposed during the first instance. A third instance is only available if legal questions of fundamental meaning are at dispute, or if the respective ruling created deviations from major court precedents.

As regards the competence of the court, several criteria have to be applied.

First, the criterion regarding the functional competence (*funktionelle Zuständigkeit*) addresses the issue which organ of German jurisdiction should be competent, and which qualification the persons of which the court consists should have.

Secondly, the question of the so-called subject matter competence (*sachliche Zuständigkeit*) states whether the local court (*Amtsgericht*) or the regional court (*Landgericht*) is the competent court of first instance. As a rule of thumb, disputes with a value below €5,000 will be filed with the local court, disputes with a higher value with the regional court. However, there are certain other criteria which are characteristic of the distinction between local courts and regional courts as courts of first instance.

Thirdly, the local competence (*örtliche Zuständigkeit*) has to be considered.

Finally, the so-called international competence confirms the ability of German courts to decide the matter at all.

While there are competence and enforcement treaties regulating the relations between citizens of the European Union or the EFTA, there may be international state treaties outside the European Union making statements, as well on a bilateral basis, with regard to international competence in civil jurisdiction.

In the absence of such state treaties, German international procedural laws (conflicts of procedural laws) support that the provisions contained in the German Code of Civil Procedure (ZPO) that affect the local competence should apply accordingly to the international case. This means that German courts may claim competence in international disputes even without direct statutory or treaty-related basis.

"Within the civil jurisdiction, the German system in general provides for two regular instances. The court review of facts, however, may be limited in the second instance. In addition, the suggestion of new facts is in general only possible if these facts, measured by an objective standard, could not have been proposed during the first instance. A third instance is only available if legal questions of fundamental meaning are at dispute, or if the respective ruling created deviations from major court precedents."
- Axel Goetz -

Q1. Can you outline the court and judicial structure in your jurisdiction?

Yoav Navon

Navon: The Magistrate Court handles civil cases of less than 2.5 million shekels (but not disputes over the ownership of land), and criminal cases in which the maximum sentence is seven years. Magistrate Courts are to be found in most Israeli towns. The Magistrate Court has six subdivisions

The District Court deals with all civil and criminal matters not under the jurisdiction of the Magistrate Court including disputes over the ownership of land. This court also has jurisdiction over most administrative cases. This court also hears appeals from the Magistrate Court. There are six courts, one in each of Israel's districts: Jerusalem, Tel Aviv, Haifa, Centre (in Lod), South (in Beer-Sheva), and North (in Nazareth).

The Israeli Supreme Court mostly hears appeals from the District Court but also sits as the High Court of Justice and as such hears administrative cases not under the jurisdiction of the District Courts. Many political cases and cases of international interest are heard by the Supreme Court sitting as the High Court of Justice.

The Labour Tribunals hears all cases where the parties are employer and employee, all cases against the National Insurance Institute and some other socially oriented matters. It is an independent system composed of five district tribunals (Jerusalem, Tel-Aviv, Haifa, South and North) and one national tribunal in Jerusalem.

There are also religious tribunals in Israel. Some specific legal matters in Israel (e.g., matters of personal status such as marriage and divorce) come under the jurisdiction of the religious tribunal system. There is a list of legally recognised religious communities: Jewish, Muslim, Greek Orthodox Christian, Catholic Christian etc. Matters incidental to divorce such as distribution of property, child custody etc. are dealt with in the Family Courts, but the personal law of the parties will be applied.

Q2. Have there been any recent regulatory changes or interesting developments?

Lauri Railas

Railas: The Finnish law of dispute settlement remains very stable in general terms. However, minor developments take place all the time. The functioning of the general courts has been developed by introducing a requirement of a leave to appeal to the second instance, the courts of appeal. The number of courts will be reduced in order to improve specialisation. At the same time, the business community tries to improve commercial arbitration.

Like many other countries, Finland would like to see more international arbitrations having their seats in Finland. The Finland Chamber of Commerce initiated last year a revision of the Finnish Arbitration Act of 1992. The main argument was that the Act should follow more carefully the UNCITRAL Model Law on International Commercial Arbitration 1985 (revised in 2006). Actually, the Model Law in its original form was one of the key grounds for the adoption of the 1992 Act.

Yet, there are always issues that may be revisited after more than a quarter of century. In particular, many commentators referred to the provisions of the revised Model Law regarding interim measures. The author of this answer mentioned the possibility of Belgian law, as parties stipulating for arbitration in Belgium for an international dispute may largely contract out the application of Belgian arbitration law as *lex arbitri*.

Q2. Have there been any recent regulatory changes or interesting developments?

Oluseyi Adejuyigbe

Adejuyigbe: What readily comes to my mind is the bill recently passed by the National Assembly – the Companies and Allied Matters Act 2018. The bill is awaiting the assent of the President and when it becomes law, it will repeal the extant Companies and Allied Matters Act 1990 which governs the incorporation and administration of private and public companies in Nigeria. The bill seeks to improve on the ease of doing business in Nigeria and will conform to global best practices.

Noor Radhi

Radhi: Interesting regulatory developments have taken place in Bahrain over the course of the last three years. The most notable developments include:

i. Law No. (22) of 2018 Issuing Reorganization and Bankruptcy Law ("Bankruptcy Law") which revoked and succeeded the previous Bankruptcy and Composition Law promulgated by Decree-law No. 11 of 1987. The most notable aspect of the new Bankruptcy Law is that it asserts that, to the extent reasonably attainable, the objectives of the Law are to save businesses (of entities that fall under the scope of this Law) with financial difficulties and reorganise rather than liquidate businesses to maintain their continuity. The Bankruptcy Law also seeks to exclude payments due under derivative contracts from the protection the debtor receives under the Bankruptcy Law, as the Law provides that the derivative contracts should generally be enforceable in accordance with their terms notwithstanding insolvency proceedings.

ii. The Commercial Companies Law promulgated by Legislative Decree 21 of 2001 has undergone several rounds of amendments in recent years with a view of introducing business friendly changes. The most notable changes are pertaining to widening the scope of activities in which foreign direct investment is permitted in addition to introducing flexible measures to seek the relaxation of restrictions on foreign share capital, on a case by case basis. In addition, rules have been introduced to reinforce corporate governance.

iii. Law No. 30 of 2018 Promulgating Personal Data Protection Act – which regulates processing and transferring personal data in general. The Personal Data Protection Act will come into force in August 2019.

iv. Decree Law No.48 of 2018 on Value Added Tax ("VAT") which came into effect on 1 January 2019 and introduced VAT in Bahrain. As part of its objective to encourage the development of the financial technology sector, the Central Bank of Bahrain ("CBB") introduced the Regulatory Sandbox in May 2017. The Regulatory Sandbox allows participants to develop and test their innovative fintech solutions and products in a safe virtual under the supervision of the CBB. If successful, fintech solutions may then be introduced to the market.

v. The Protected Cells Law was issued in 2016 allowing companies to segregate assets within separate cells creating a ring-fence around each one protecting each one's assets from the liabilities of the other cells. This is particularly useful in the scenario of funds and asset management companies.

vi. Limited Investment Partnership Law was also issued in 2016, allowing partnerships to be regarded as a legal personality in place of companies, with activities such as collective investment undertakings, private investment undertakings, securitisation and insurance captives, as well as additional activities that may be later identified and added by the CBB.

Q2. Have there been any recent regulatory changes or interesting developments?

Stephen Wilson QC

Wilson: There have been a number of recent important legislative changes, in particular:

In the field of company law:

- new modern companies legislation in the form of the Companies Ordinance 2017, (the now repealed Companies Ordinance (CAP. 16.08) dated back to 1981) which, amongst other things requires companies to which Part IX applies to maintain a register setting out the prescribed beneficial ownership information with respect to each person who is a registrable person in relation to the company;
- a new Insolvency Ordinance 2017; and
- to satisfy the EU's requirements with regard to the introduction of an economic substance regime, the Companies and Limited Partnerships (Economic Substance) Ordinance 2018.

In employment law, the enactment of the Hotel and Restaurant (Service Charge) Ordinance 2018 which gives employees of hotels and restaurants the right to a share of all the service charge added to a guest's or customer's bill – an improvement on the right to a share of only 60% of the service charge collected under the old legislation.

Axel Goetz

Goetz: Due to recent legislation, Germany has established, to some extent, the possibility of "model actions for a declaratory judgement". While there are many differences with respect to the US system, it has to be emphasised that, since 1 November 2018, for the first time, class-type litigation for consumer claims has been rooted in the German legal system. This has been done in the wake of the VW diesel scandal.

The main features of this recent German type of "class actions" are the following:

Only "qualified institutions" may raise an action so as to obtain a declaratory judgement on a question affecting the legal relationship between a consumer and a consumer-facing company. The threshold to become a qualified institution is quite high – in particular, the organisation has to be registered for four years under the German Injunctive Relief Act or, if foreign, with the European Commission under Directive 2009/22/EC. 350 natural persons or 10 associations must be part of the "qualified institution". Financing from enterprises or corporate entities is limited. Model proceedings for profit are not admissible.

A claim is started with a filing with a Higher Regional Court provided that at least ten persons are affected by the purported wrongdoing. The claim, however, will be admissible only if at least 50 applicants join the claim by registering their claims with the claims register within two months.

The declaratory judgement of the Higher Regional Court has limited binding effect – its findings bind any consumer who joined the proceedings by registering his claims.

Rulings under the new law may be (directly) appealed to the Federal Supreme Court (BGH).

It remains to be seen whether the new legislation will stir class action-style litigation in Germany beyond the scope of the VW diesel scandal. Critics have emphasised that the new law has not been consumer-friendly enough since consumers still face the problem of having to raise individual claims once a consumer association has obtained a declaratory judgement under the new law.

Q3. Are you noticing any trends in industry-specific litigation or dispute resolution?

Stephen Wilson QC

Wilson: Over the last few years there has been a noticeable increase in the amount of litigation involving strata corporations. Strata title is a form of property ownership that originated in New South Wales, Australia as a means by which to grant the equivalent of freehold title to owners of condominiums. The litigation has centred around a strata corporation's ability via amendments to the strata corporation's by-laws (or by the imposition of regulations or policies purportedly made in accordance with the by-laws) to limit a condominium owner's ability to rent his/her condominium unit on a short-term basis, either at all or other than through a designated rental manager. Despite the seemingly clear wording of the Strata Titles Ordinance (CAP. 9.04) the decisions have favoured the strata corporations. The subject matter of the cases now seems to be shifting to a strata corporation's ability to fine condominium owners for breach of the by-laws including seeking to engage in direct rentals through the likes of VRBO.com or Airbnb.

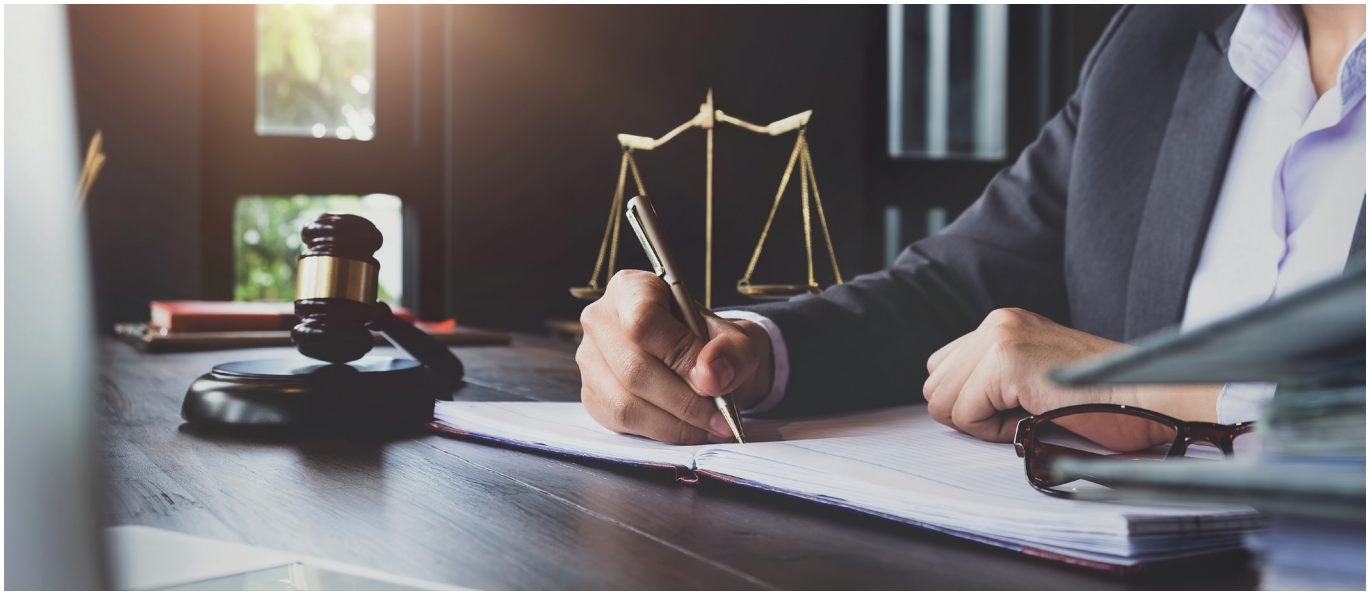
Axel Goetz

Goetz: In some "litigation industries", for example shareholder litigation, there is no doubt that litigation activity has very much increased during the last decade. German stock-quoted companies had to incur considerable cost in defending themselves against aggressive shareholder groups which try to take influence upon the company's business strategy and/or the composition of management and supervisory boards. This tendency is not limited to listed companies but, to some extent, as well affects private companies, in particular family-owned enterprises with competing shareholder groups.

Unlike the past, plaintiffs now do not restrict themselves to rescission or voidness suits (*Anfechtungs- oder Nichtigkeitsklagen*) directed against certain shareholder resolutions, but also take recourse to damage claims vis à vis the company, its management, its supervisory board, or an individual member of these groups.

Yoav Navon

Navon: Yes, litigation funding. Litigation funding in Israel is accepted practice and has been judicially endorsed by Israeli courts in recent years. Although the courts didn't comprehensively cover all aspects involved, they established a favourable environment for litigation funding in Israel. Compared to other jurisdiction, third party litigation funding has had a late start in Israel, but it increasingly grows in the past three years.



Q4. Have there been any noteworthy case studies or examples of new case law precedent?


Ramni Taneja

Taneja: There are several noteworthy recent cases decided by the Supreme Court of India, which is the highest Court of Appeal in India. These are varied and are rich in their jurisprudence. Some of these landmark decisions include *inter alia* the right to die with dignity being recognised as a fundamental right under the Constitution of India, thereby recognising passive euthanasia; decriminalising consensual homosexuality; adultery is no longer a criminal offence under the Indian Penal Code, although it continues to be a ground for divorce. There are quite a few other significant decisions.


Lauri Railas

Railas: The Finnish Supreme Court ruled on 3 May 2018 (KKO 2018:37) on the formation and termination of a long-term cooperation agreement by referring to the provisions of the Draft Common Frame of Reference (DCFR) which might give an extensive protection in the case of termination. Although the cooperation agreement was not a pure distribution, franchise or agency contract, the court expressly referred to such contracts, their termination and damages in the case of termination period which is not of reasonable length. It may therefore constitute a precedent especially for distributorship and franchising contracts for which there is no legislation in Finland. The approach of Finnish courts would seem to be different from that of the courts in other Nordic countries.

A Finnish coffee roastery 'A' had started to order dispensable (throwaway) cups with its trademark printed on them from 'B' in 2008. The amounts of cups ordered and produced each time were in hundreds of thousands. In August 2011, A terminated the relationship by giving B a four-month period to sell its stock of cups away. The time was not sufficient, and a large part of the stock had become redundant. B claimed damages.

A stated that there was no long-term contract in place. The court found, based on precedents, that the production and distribution contract for throwaway cups with an indefinite duration could be construed on the real actions and behaviour of the parties without express declarations of will to construe the contract.

The court the ruled on the termination. Contracts with an indefinite duration may be terminated even without an express provision about it. In terminating the agreements, the parties must nevertheless consider each other's interests. A contract may be terminated after the expiration of a reasonable period (KKO 2010:69).

In assessing, what constitutes a reasonable period, the court referred to the Finnish Commercial Agency Act 1992 and, more interestingly, to the Draft Common Frame of Reference 2008, Book IV Part E (Commercial agency, franchise or distributorship) which provides in 2:302 as follows:

IV. E. – 2:302: Contract for an indefinite period

1. Either party to a contract for an indefinite period may terminate the contractual relationship by giving notice to the other.
2. If the notice provides for termination after a period of reasonable length no damages are payable under IV. E. – 2:303 (Damages for termination with inadequate notice). If the notice provides for immediate termination or termination after a period which is not of reasonable length damages are payable under that Article.
3. Whether a period of notice is of reasonable length depends, among other factors, on: (a) the time the contractual relationship has lasted; (b) reasonable investments made; (c) the time it will take to find a reasonable alternative; and (d) usages.
4. A period of notice of one month for each year during which the contractual relationship has lasted, with a maximum of 36 months, is presumed to be reasonable.

Q4. Have there been any noteworthy case studies or examples of new case law precedent?

Lauri Railas

The court found that four months' notice was sufficient considering the circumstances. The court did not therefore award damages to be paid to B for the stock of unsold cups.

The judgment of the Finnish Supreme Court is relevant because it again states how contractual relationships may be established without a written contract, how contracts of indefinite length are terminated and what rights the parties have in the case of termination. The references to the DCFR in the context of defining a reasonable termination period are a novelty in Finnish law. In this case, the length of the contractual relationship had been only between three or four years. It remains to be seen, whether contractual relationships of for example 15-20 years with substantial investments made by the distributor for whom it is difficult to find a reasonable alternative business, would lead to longer termination periods.

Stephen Wilson QC

Wilson: Following on from the above, there has been the decision of the Privy Council in the case of *O'Connor (Senior) v. The Proprietors, Strata Plan No. 51* [2017] UKPC 45 which upheld a strata corporation's ability via its by-laws to prevent the owners of a condominium unit from renting it for periods of less than a month and the decision of the Supreme Court of the Turks and Caicos Islands in *Dodds v. The Proprietors, Strata Plan No. 27* which followed O'Connor and upheld a policy which provided that condominium owners could only short-term let their condominium units with the approval of the strata corporation and the strata corporation would only approve short-term lettings through a single property rental manager.

Q5. To what extent has spending cuts and strains on the current legal system led to a need to change the way in which litigation is pursued?

Oluseyi Adejuyigbe

Adejuyigbe: In Nigeria, certain measures have been introduced to relieve the burden of heavy dockets in the courts. In Lagos State, the commercial hub of Nigeria, the registry adopts a filtering system to refer appropriate cases to the mediation centre within the court system. In order to expedite the resolution of matters where the monetary claims are not significant, the small claims courts were established and they operate without elaborate procedural rules and permit parties to interface with the court without the services of lawyers. Several other states have also established such courts for small claims. The Federal High Court recently published the Federal High Court Rules (ADR) which established a dispute resolution centre to apply ADR mechanisms such as mediation, conciliation, arbitration and neutral evaluation in resolving disputes referred to the centre by the court. The disputes must be resolved in 60 days or 90 days at the latest if an extension is sought and granted by the judge.

Q6. How do you determine when to consider alternative dispute resolution?

Ramni Taneja

Taneja: The Indian legal system provides for litigation, arbitration, conciliation, and mediation as the methods of dispute resolution. During the course of litigation or even prior to litigation, it is possible to consider alternative dispute resolution. Dispute resolution leads to a swift resolution of disputes; in addition to arbitration, mediation and conciliation, an effective system is the Lok Adalat system, which ensures a quick and expeditious disposal of cases. Please see the links below which are downloaded from the National Legal Services Authority ("NALSA"): https://nalsa.gov.in/lok-adalat

Q6. How do you determine when to consider alternative dispute resolution?

Oluseyi Adejuyigbe

Adejuyigbe: The trend in commercial disputes is the use of ADR because of the obvious advantages. I will ascertain which ADR mechanism(s) is stipulated in the contract and even in the unlikely event that the contract is silent on such. I will still advise the client to explore ADR mechanisms such as mediation and conciliation or arbitration.

I will naturally advise resorting to ADR in disputes which are commercial in nature. However, in scenarios where it is necessary to obtain a pre-emptive court order such as a mareva injunction or Antonpiller order in copyright infringement, or where there is the need to arrest a vessel in admiralty matters, litigation will be the first option as my client's asset will thus be protected while we explore other means of resolving the dispute. This will also ensure that the interest of my client is protected and there can be recourse to the court in the event that ADR fails.

Noor Radhi

Radhi: Various elements play different roles when the circumstances and set up change. But generally, cost, nature and complexity of the dispute, the sensitivity of time and the industry to which the dispute is relevant are the factors mostly considered in the decision to resort to alternative dispute resolution.

For example, mediation is encouraged in cases involving family members or entities that are tied with close business relationships and have interest in maintaining it that way. In cases where the dispute relates to a specialised industry or involves complex issues that may be new to the market of the relevant jurisdiction, it may be advisable to resort to alternative dispute resolution means to have control over the level of expertise of the mediator or arbitrator for example. Dispute resolution may sometimes be too costly but also time efficient, and if a foreign law is applicable, appointing an arbitrator with experience in the applicable law may save time and cost. All the relevant factors must be considered in light of the relevant circumstances to decide whether or not to resort to alternative dispute resolution.

Stephen Wilson QC

Wilson: Much depends on the nature of the dispute and whether a contractual provision requiring or submitting to alternative dispute resolution is in place. However, the resources available in the Turks and Caicos Islands for mediation are very limited and the antiquated legislation dealing with arbitration is such that neither is generally recommended. That being said, in family cases or low value financial disputes, such as construction disputes, mediation is often put forward as a cost-effective way of avoiding litigation and assisting in bringing about a resolution.

Axel Goetz

Goetz: From the German legal perspective, alternative dispute resolution basically would consist of either arbitration proceedings or mediation proceedings. While arbitration has been a well-established tool for decades in Germany, this is not true with respect to the mediation industry.

Formalised mediation proceedings have been acknowledged within the German court system and offer, if all parties cooperate, valuable options. External mediation, however, organised completely independently from current court litigation, in our view has not continuously proven to be successful. We think that the lack of pressure – which was to be considered a benefit of mediation proceedings – may foster party efforts to look for circumventions, and may be an obstacle to efficient conflict resolution.

By contrast, arbitration proceedings offer many benefits. They should be considered in particular in cases where high economic or technical expertise is regarded as a mandatory prerequisite for adequate conflict resolution. While arbitration proceedings are not necessarily more cost-efficient than state litigation proceedings, it should be noted that the decision quality and the likelihood of reasonable settlements is often excellent in multifaceted international disputes. While German legislation still insists on the use of the German language in state litigation, in arbitration proceedings there is no need whatsoever to deviate from the "natural" foreign language of the case, be it English, French, Spanish or Mandarin.

Q7. Disputes can often be quite complex and multifaceted. To what extent do the various different elements – such as industry, size of company, jurisdiction/s of conflict, etc – play a role in your approach?

Lauri Railas

Railas: I would like to answer this question by considering the different sizes of the companies in dispute. Competition law uses the concept of market power, which is considered especially in cases of abuse of dominant position. I do not go into detail of competition law, however, but simply mention that the corporate sizes are relevant also considering their capability to benefit from dispute resolution.

In modern production and supply chain, subcontractors are used to produce components or even to leverage the whole production. Subcontractors are almost invariably not bargaining at arm's length. Payment conditions may be very stringent (e.g. with set-off possibilities). In some countries, there are legal provisions in place especially in public procurement that the end customer remains responsible to pay to unpaid subcontractors. In cases of imbalance of market positions, dispute resolution mechanism may be either a rescue or deterrent to obtain justice.

There are nowadays third-party finance products to alleviate the position of the weaker party. In substantive law, the increasing attention to notions of fairness including the doctrine of good faith and fair dealing as incorporated in the collection of legal principles such as the UNIDROIT
Principles of International Commercial Contracts may improve the position of the weaker party.

Finally, arbitration should not be construed to imply an undertaking of confidentiality. It is easier to enforce unconscionable or unfair contract terms in silence. The conclusion in favour of non-confidentiality has been reached (e.g. in the United States and Sweden whereas in the UK it may exist). Confidentiality may of course stem from the provisions of the commercial contract.

Noor Radhi

Radhi: Dispute management is certainly impacted by all sorts of different elements. The type of industry may have an impact in determining the jurisdiction in which the case is to be brought, and the choice of applicable law thereto, and also whether to submit to courts or resort to alternative dispute resolution means. All depending on how detailed and advanced the legal system and relevant legislation in a given jurisdiction is, and the level of expertise of the judiciary members and the judiciary assistance, such as experts for example. In addition to determining how the dispute is to be managed, the different elements play a significant role in determining whether to litigate or avoid litigation altogether.

Q8. What measures can a company enact to help minimise the cost, damage and disruption of litigation to their business?

Oluseyi Adejuyigbe

Adejuyigbe: There is no doubt that litigation usually disrupts a company's business with the management devoting time and resources to instructing solicitors, attending court hearings and also trying to manage reputational risks amongst other things. The company can establish an in-house department for dispute resolution. It can organise trainings in ADR methods for its employees and encourage them to explore them in the event of a dispute with a client or third party, advising them to escalate such interventions to the management level if need be. Another measure could be making it mandatory for its employees to give an undertaking to indemnify the company in the event that their negligence or dereliction of duty results in damage to a third party. In addition, the company could create a panel of neutrals as a dispute resolution mechanism.

Q8. What measures can a company enact to help minimise the cost, damage and disruption of litigation to their business?

Noor Radhi

Radhi: Measures may be taken from as early as at the initial stages of a business relationship to effectively reduce exposure to litigation. When drafting the contracts, parties thereto may ensure, to the extent possible, that the relevant contract addresses with clarity the matters pertaining to the dealing between the parties and each party's position. In practice it is noticeable that litigation in some cases is initiated or sometimes prolonged because the relevant contractual provisions to the dispute are open to interpretation. In this case evidentiary procedure may be costly and time consuming. The choice of law applicable to a dispute at the time of drafting the contract may also play a vital role in minimising vagueness and limiting the need for interpretation. The importance of having access to proper legal advice in this respect is often underestimated.

Another effective tool is genuinely attempting to discuss the dispute with a view of reaching an out of court settlement. In some industries neutral expert's input in respect of a dispute may effectively enable parties to reach a settlement.

During the course of litigation, and subject to the applicable procedural rules, agreeing on joint expert reports and hot tab examination of witnesses, may have the effect of reducing the time and cost of litigation.

Stephen Wilson QC

Wilson: It is difficult to conceive of any advantages to international litigation from the point of view of the parties involved, other than it is a means of resolving a dispute which should bring about a decision binding on the parties (subject to any right of appeal). On the other hand, the challenges are multi-fold including: litigation is generally expensive and international litigation tends to be more so; the potential need to deal with different legal systems; the vagaries of court procedure in such different legal systems and the significance of such matters as personal jurisdiction, service of process, and evidence from abroad; the quality of representation available; language difficulties; and the enforcement of judgments in other countries.

Taking the Turks and Caicos Islands as an example, although in 1985 there came into force the Overseas Judgments (Reciprocal Enforcement) Ordinance (CAP. 4.07) which was enacted, amongst other things, to make provision for the enforcement in the Turks and Caicos Islands of judgments given in overseas countries which accord reciprocal treatment to judgments given in the Islands, there has never been an Order made by H.E. the Governor directing that the said Ordinance have applicability to any other country, with the result that there is no mutual enforcement or automatic recognition of overseas judgments in the Turks and Caicos Islands or vice versa. The Turks and Caicos Islands can be a relatively quick and efficient place in which to conduct litigation but anyone seeking to enforce a judgment obtained here against assets in another jurisdiction may well have to sue in that other jurisdiction on the judgment obtained.

Axel Goetz

Goetz: As usual, prevention is better than cure – the company should have established excellent compliance and corporate governance systems which primarily should ensure that major cases of customer or shareholder litigation lack ethical and economic grounds. More specifically, listed companies should appreciate strong supervisory boards where legal, technical and economic knowledge is combined.

If disputes cannot be prevented, it goes without saying that the attacked or already sued company should not hesitate to get into talks with the opponents. The company should use best efforts to keep valid communication channels open even in case of very rigid disputes.

If the company is in the defendant position, it should make use of all available procedural means to make progress for the plaintiff difficult.

Q8. What measures can a company enact to help minimise the cost, damage and disruption of litigation to their business?

Axel Goetz

If the company is in the position of the plaintiff, the company should place all the more importance on the choice of experienced local counsel who knows the composition of the relevant local or regional courts and who can advise on adequate proceedings, be it in form of summary procedures where the plaintiff can rely entirely on documentary evidence, be it in the form of (additional) preliminary injunctive relief which may supplement the "main proceedings".

In any event, we recommend to every major domestic or international company to provide for a panel of "litigation law firms".

Yoav Navon

Navon: Litigation funding.

Q9. What strategies, techniques or conflict management tools can be employed in order to achieve consistent results?

Benson Lim

Lim: Businesses naturally desire that their in-house legal colleagues resolve commercial disputes favourably. In-house counsel can achieve this outcome always – or at least, most of the time – with a carefully thought-out plan and with the right team of internal and external team members. I will use a typical cross-border commercial arbitration to illustrate how.

As early as possible in the dispute, in-house counsel will want to work out where the client stands on the legal merits, i.e. an early case assessment. Client's senior management tends to want to be briefed on the critical issues only. More often than not, they are right because disputes generally turn on one or two key issues.

Straightforward disputes can be analysed in an internal note without more. There is, of course, no harm in having a quick, informal chat with a trusted external lawyer to check that the analysis makes sense. Still, even for straightforward cases, in-house counsel should work out what else is at stake beyond the obvious disputed sums (e.g. market reputation where the client wants to be seen as tough but fair in enforcing contractual rights, management time and costs, or future business relationships with the other party).

For complex legal disputes in a potential arbitration, instructing specialist arbitration lawyers to prepare a note advising on legal merits is often helpful in confirming or strengthening the in-house counsel's preliminary analysis. A comprehensive and well-balanced note – obtained early in the dispute – can often highlight certain issues/weaknesses which may have been overlooked. Having the chance to address these weaknesses early can only inform and strengthen the client's dispute resolution strategy.

Q10. What are the main advantages and challenges of international litigation?

Oluseyi Adejuyigbe

Adejuyigbe: One of the advantages of international litigation is the quick resolution of the dispute – especially in a forum where the legal system is robust and effective. Where the litigation takes place in a neutral forum, the judge is likely to be neutral and unbiased as opposed to a local judge who might be prejudiced. Enforcement of the judgement might be easier in a foreign jurisdiction where, for instance, there is no hurdle to overcome in enforcing the same. In Nigeria, the fiat of the attorney general of the federation or state is required to enforce a money judgement against the federal government or the state. Such laws are probably not applicable in other countries and a judgement creditor can readily enforce the judgement.

Difference in spoken language will naturally be a challenge. English is the official language in Nigeria and where proceedings take place outside the country in a foreign language, there might be a need to translate documents into the new language. It might be necessary to also engage the services of a counsel who is licensed to practice in that jurisdiction. Other challenges will include having to procure visas for parties and witnesses, and additional travel expenses that will be incurred for the duration of the proceedings. There is also the challenge of conflict of laws.

Axel Goetz

Goetz: Among the challenges of international litigation, the determination of the place of jurisdiction is key. While this can be agreed contractually in advance, we see many cases where the forum decision is intricate due to lack of clear contractual provisions. In this regard, the parties never should forget the general guideline that judges resident at the place of jurisdiction should be very well acquainted with the substantive laws governing the case.

Among the further challenges, it should be emphasised that it can be difficult to handle the variety of procedural and substance-wise provisions originating from international treaties, European and national laws, let alone the complaint notification difficulties which may offer defensive weapons for the sued party.

Among the major benefits of international litigation, however, it has to be stated that the adequate matching of place of jurisdiction, competent judges and enforcement place may contribute to cost-efficient and swift proceedings.

Q11. What impact will Brexit have on London as a major arbitration centre?

Lauri Railas

Railas: Nobody knows what eventually will happen with Brexit. In this response – written before the original deadline of 29 March 2019 – I presume despite my good faith that Brexit will eventually happen and in a hard way so that no agreement is in place when the United Kingdom leaves the European Union.

An inevitable outcome of a hard Brexit is the disappearance of the "free movement of judgments" created by the Brussels Regulation 2012/1215/EU on the Jurisdiction and Recognition and Enforcement of Judgment in Civil and Commercial Matters. It is assumed that the UK would soon take steps to join the Lugano Convention concluded between the EU and the EFTA countries in order to enjoy the benefits of the system, but this would take time and require the consent of the other parties.

The UK lawyers involved in commercial arbitration use the notion of 'enforceability premium' afforded to arbitration when litigation is no longer a viable alternative in disputes requiring international recognition and enforcement. Commercial contracts would have to take this into consideration and arbitration clauses would replace jurisdiction clauses. In financial services, litigation is often the preferred way of settling disputes whereas in mergers & acquisitions arbitration is practically an exclusive method.

Q11. What impact will Brexit have on London as a major arbitration centre?

Lauri Railas

I would think Brexit would not have an immediate effect on the status of London as a major international arbitration centre. The UK remains to be bound by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. In maritime arbitration, The London Maritime Arbitration Association LMAA boasts having twice as many cases as the other maritime arbitration centres combined. Yet, the competition may become harder.

The maritime law establishment of the Nordic countries (Denmark, Finland, Norway and Sweden) has recently established a Pan-Nordic arbitration scheme entitled NOMA (Nordic Maritime and Offshore Arbitration). Switzerland is the seat of many trading companies, its commercial legislation has had impact on countries such as Turkey. The world economy is growing fastest in Asia and Asian arbitration centres are closer – although Hong Kong and Singapore generally are close to the English legal tradition.

As competition may increase, arbitral institutions are developing their services to cover special needs in arbitration such as emergency arbitration and sector-specific services. The most important trend during the past three decades has been the growing emphasis on the speed and costs of arbitral proceedings.

The United Kingdom has some features which the international arbitration community by and large does not share. Section 69 of the 1996 Arbitration Act provides the possibility of appeal to the English state courts on points of law. The parties may, however, exclude this possibility by agreement. In English arbitration, there is an implied obligation of confidentiality. The UK arbitration community is cognizant of the impact of its legislation and practice on the popularity of English arbitration. The law of the seat of arbitration, *lex arbitri* or curial law has significance comparable to the convenience and traditions.

Q12. In an ideal world what would you like to see implemented or changed?

Ramni Taneja

Taneja: The Government of India and the Indian judiciary are committed to implementing reforms in the legal and judicial system. I believe that when these two important organs (i.e. the Executive and the Judiciary) are able to chalk out proper and effective steps to expedite the adjudication and disposal of cases, the backlog of cases will definitely become less. The number of judges needs to be increased as this will also expedite the resolution of court disputes.

I have great faith in my country, in its robust democracy and in its excellent legal and judicial system. India remains wedded to the rule of law.

India has had an extraordinary civilisation and its two principles, *atithi devo bhava* (the guest as God) and *vasudhaiva kutumbakam* (the world is one family) expressed in our ancient, classical and very beautiful Sanskrit language, exemplify the spirit of India, its rich civilisation and pave the way for the success of the India story.

"I have great faith in my country, in its robust democracy and in its excellent legal and judicial system. India remains wedded to the rule of law."
- Ramni Taneja -

Q12. In an ideal world what would you like to see implemented or changed?

Lauri Railas

Railas: I would like to see the state court system to develop into more specialisation. It is good that judges have a proficiency and command of the legal system in general. In Finland, there are special courts for market law disputes including public procurement, competition and unfair trade practices and water disputes. Maritime courts are normal district courts in Helsinki and the Åland Islands hearing maritime disputes in a composition of maritime experts.

Conciliation is more recognised than before in that Finnish courts can conduct conciliation procedures when the parties consent thereto. Moreover, the Finnish Bar Association as well as the Finnish Association of Construction Engineers on top of the Finland Arbitration Institute
(FAI) all offer services for conciliation.

However, there is a 'halfway house' between litigation or arbitration producing an enforceable judgment or award on the one hand and conciliation being dependent on the parties' compliance. In English construction and housing disputes, adjudication is used. The adjudication is binding on the parties on a contractual basis. Enforcement must be sought separately, but merit would not be revisited.

The author of this answer is the Average Adjuster in Finland. The Nordic countries use average adjusters to settle maritime disputes, in Denmark and Norway more on a contractual basis, but in Finland and Sweden the system is statutory. The parties cannot take disputes on marine insurance before courts unless the national Average Adjuster has issued his or her adjustment. Should the parties not appeal to the Maritime Court in the prescribed deadline, the adjustment becomes binding and cannot be challenged on substantive grounds. This is in fact adjudication recognised by legislation.

Noor Radhi

Radhi: Perhaps introducing a mandatory pre-litigation stage during which parties to a dispute are encouraged to amicably settle the dispute, as an attempt to reduce the cases that proceed to litigation.

In respect of Islamic Finance practices, the industry generally operates on the basis of Sharia principles. However, in practice, and particularly where a dispute arises, unforeseen outcomes may occur as a result of the Sharia principles not being integrated as part of a clear set of laws that is directed at regulating the Islamic finance sector as such. It is worth considering introducing a codified law to integrate codified Sharia compliant rules regulating the Islamic finance transactions.

CorporateLiveWire