

“The Rule of Law and Economic Prosperity”

The Sir Cassam Moolan Memorial Lecture 2025

The Rt. Hon. Lord Hamblen of Kersey*

1. Introduction

- 1.1. It is a pleasure and a privilege to be asked to give the Sir Cassam Moolan Memorial Lecture 2025. Sir Cassam was highly respected for both his professional and personal qualities and served with distinction as Chief Justice. We have at least one attribute in common, namely membership of the Honourable Society of Lincoln’s Inn.
- 1.2. My speech today will focus on how adherence to the rule of law can provide important support for the economic growth and prosperity of a country. In outline, I will discuss (1) what the rule of law means; (2) the attributes of the rule of law which are of particular relevance to economic prosperity; (3) how the rule of law encourages economic growth; (4) how the rule of law supports the international legal services sector, in relation to both the courts and arbitration; and (5) how the Judicial Committee of the Privy Council may assist.
- 1.3. It would appear that this is a topical subject, given, in particular, the 2025-2029 programme of the Government of Mauritius introduced at the start of this year. That programme includes, among many other objectives for the country, establishing a superior court of appeal and creating a new specialist, international investment and commercial court¹, the stated rationale for which is to further inspire investor confidence in the Mauritius legal and judicial system.²

2. What is meant by the Rule of Law?

- 2.1. In order to discuss how the rule of law contributes to the economic prosperity of a country, it is first essential to define what we mean by the term or what values we

* Justice of the UK Supreme Court.

¹ Government Programme 2025 – 2029, ‘A Bridge to the Future’ (24 January 2025), [58]. Available at: <https://mauritiusassembly.govmu.org/mauritiusassembly/wp-content/uploads/2025/01/Government-Programme-2025-2029.pdf> (Accessed 10 November 2025).

² *Ibid.*

ascribe to it. This is not a straightforward task. As Lord Neuberger has observed: “*the rule of law is easy to pontificate about, but not so easy to define.*”³

- 2.2. The rule of law is often understood in two broad senses: first, the formal or “thin” conceptions which place their emphasis on procedural protections. Second, the substantive or “thick” conceptions which suggest that the rule of law imports a certain minimum of substantive content.⁴
- 2.3. Joseph Raz was a significant proponent of the former, ‘thin’ conception. He argued that the rule of law was principally concerned with the ability of a country’s laws to guide one’s conduct. From this, he deduced further values that he viewed as a necessary component of this aim, including: (1) that the law itself should be prospective, clear and relatively stable, (2) it should be made in an open, stable and clear manner, and (3) concerning the application of the law, this requires parties having access to the courts, filled with an independent judiciary.⁵
- 2.4. In contrast, one of the most well-known expositions of the ‘thick’ conception was that advocated by Lord Bingham⁶, who I regard as the greatest common law judge of my professional lifetime. He suggested that the rule of law was in fact made up of eight separate ‘strands’, some of which included more ‘substantive’ content. In summary, those strands were:
- (1) The law must be accessible, intelligible, clear and predictable.
 - (2) Issues should be resolved by law, not discretion.
 - (3) Laws should apply equally to all.
 - (4) The law must protect fundamental human rights.
 - (5) Disputes must be resolved economically and fast.
 - (6) Public powers must be exercised reasonably and appropriately.
 - (7) Adjudicative procedures provided by the state should be fair.

³ David Neuberger, ‘Arbitration and the Rule of Law’ (March 2015), [5]. Speech given to the Chartered Institute of Arbitrators Centenary Celebration, Hong Kong. Available at: https://supremecourt.uk/uploads/speech_150320_6ed8a9ed61.pdf (Accessed 10 November 2025).

⁴ See generally: Paul Craig, ‘Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework’ (1997) Public Law 467; The Rt. Hon. Lord Sales, ‘What is the Rule of Law and Why Does it Matter’ (December 2024) (The Robin Cooke Lecture, Victoria University of Wellington/Te Herenga Waka). A proponent of the ‘substantive’ conception is Tom Bingham. See Tom Bingham, ‘The Rule of Law’ (2011) Penguin Books, pages 66-67.

⁵ Joseph Raz, ‘The authority of law: Essays on law and morality’ (1979) Oxford, ch. 11. See also Craig (n. 4), page 4.

⁶ Bingham (n. 4).

(8) The state must comply with its obligations under international law.

3. The main attributes of the Rule of Law which promote economic prosperity

3.1. The 'thin' and 'thick' conceptions of the rule of law should not be regarded as being mutually exclusive. Both share central insights which are of particular importance to a country's economic growth and prosperity:

(1) The first focuses on the rule of law qualities of a country's laws. Those laws must provide legal certainty and predictability. Raz expressed this in terms of law being prospective, clear and relatively stable and made in an open, stable and clear manner. Lord Bingham expressed this in terms of the law being accessible, intelligible, clear and predictable.

(2) The second is that there must be effective application and enforcement of those laws. Parties need to have efficient and effective access to fair mechanisms and procedures to enforce their legal rights before independent, impartial and incorruptible courts and tribunals.

3.2. These components of the rule of law are essential features for a legal system to be attractive to commercial business.

3.3. At its simplest, economic value is created in a capitalist system when individuals, businesses, organisations or countries transact with each other and efficiencies are gained than would otherwise be the case. The interconnected society we live in now means that such transactions can occur with parties based all over the world.

3.4. In order for parties to rely on such transactions, and realise these efficiencies, the transacting parties need to be able to readily understand their legal rights and obligations. Commercial parties need to know where they stand. They need to be able to identify what the law is and obtain reliable advice as to how it is likely to be applied. That way they can conduct business with confidence.

3.5. However, whatever the technical quality of a country's laws may be their value will be little unless they are effectively applied and enforced. Parties need to be able to have confidence in the protection and enforcement of their rights. They need to know that their contractual rights will be recognised and enforced and that their property rights

will be effectively protected. Without this confidence, proper planning and organisation of their business affairs will be hindered or prevented and economic benefits lost.

- 3.6. A legal system's adherence to these key characteristics of the rule of law, legal certainty and predictability and effective access to fair and efficient justice, facilitates and supports the creation of economic value and provides a platform on which the wider economic activities of a country can operate and prosper.
- 3.7. This interrelation between economic prosperity and adhering to these rule of law principles has long been recognised by jurists and economists alike.
- 3.8. For example, Lord Mansfield, the eighteenth-century Lord Chief Justice observed long ago that: "*In all mercantile transactions the great object should be certainty: and therefore, it is of more consequence that a rule should be certain, than whether the rule is established one way or the other.*"⁷
- 3.9. More recently, Max Weber, the renowned German sociologist, commented that certainty and predictability are a necessary part of a rational capitalist society. The confidence to invest for economic gain depends on "*calculable adjudication and administration.*"⁸
- 3.10. An important aspect of "calculable" adjudication is that the law is expressed in accessible and intelligible terms.
- 3.11. "Calculable" administration requires effective enforcement mechanisms of legal obligations, through the court or, by other dispute resolution procedures such as arbitration, provide an underlying guarantee that a party will honour its obligations or risk a remedy being granted to the injured party. Without this guarantee from the underlying legal system, the economist Joseph Stiglitz observes that the market would fall apart: "*cheating would be rampant, trust low... Contracts agreeing to receive a good today in return for a payment later couldn't exist.*"⁹
- 3.12. The importance of the rule of law to a country's international trade and investment was recognised in an address by your former President and Prime Minister, Sir Anerood Jugnauth GCSK 1774KCMG PC QC, given to the International Council for

⁷ *Vallejo v Wheeler* () 98 E.R. 1012, 1017.

⁸ Max Weber, 'General Economic History' (1923), chapter XXII.

⁹ Joseph Stiglitz, 'The Road to Freedom: Economics and the Good Society' (2024) Penguin Random House, xvi.

Commercial Arbitration's Congress in Mauritius. This Congress was especially significant in that it was the first ICCA Congress held in Africa. He said:

*“[O]ne cannot speak of international trade, international investment and international transactions at large without acknowledging the need for the requisite legal architecture to underpin these activities.”*¹⁰

- 3.13. The rule of law, and, in particular, legal certainty and predictability and effective access to fair and impartial justice, provides that “*requisite legal architecture*”.

4. The economic benefits of the Rule of Law

- 4.1. Whilst the potential economic benefits of these features of the rule of law may seem intuitive or self-evident, evidencing their tangible impacts is more difficult. Important research to bear this out has, however, been carried out.
- 4.2. First, in 2015 the Bingham Centre for the Rule of Law (the “**Bingham Centre**”) commissioned a survey¹¹ of senior executives at leading multi-national companies to understand how important a foreign country's adherence to the rule of law was in their decision to bring foreign direct investment (“**FDI**”) to that country.¹²
- 4.3. The conclusion was that it played a significant part in their decision-making. The executives viewed a ‘Strong Rule of Law’ as one of the top three considerations when making an FDI decision. 88 per cent of respondents stated it was either “*essential*” or a “*very important*” factor.¹³
- 4.4. The survey also found that, as a general rule, where a company experienced a ‘Rule of Law incident’ from the country's legal system, this often led to a reduction of investment levels or, depending on what exactly occurred, potentially a complete withdrawal of investment by the company.¹⁴

¹⁰ Sir Anerood Jugnauth GCSK KCMG PC QC published in International Council for Commercial Arbitration, ‘International Arbitration and the Rule of Law: Contribution and Conformity’ (2017) (General Editor: Andrea Menaker) Kluwer Law International B.V., page 14.

¹¹ The Bingham Centre for the Rule of Law, ‘Risk and Return – Foreign Direct Investment and the Rule of Law’ (2015). Available at: https://binghamcentre.biicl.org/documents/49_risk_and_return_fdi_and_the_rol_compressed.pdf (Accessed 10 November 2025).

¹² *Ibid*, page 8. The survey was conducted with 301 senior decision-makers at Forbes 2000 companies with global annual revenues of at least USD \$1bn.

¹³ *Ibid*, page 6.

¹⁴ *Ibid*, page 33.

- 4.5. As examples of such incidents, the survey respondents identified “*opaque decision-making*”, “*arbitrary or discriminatory treatment*”, and a “*lack of recognition of intellectual property rights*”.¹⁵ These concerns are the antithesis of the rule of law values that I described earlier. They are an explicit statement by businesspeople of the need for effective recognition and protection of their legal rights, including intellectual property rights. Such rights require protection against all, governments included.
- 4.6. It is well understood that FDI can be a potential stimulus for economic growth for both the states receiving the FDI and the originating states who benefit from those investments. What the survey helps demonstrate is that a country that has laws and a legal system with the requisite rule of law qualities, will be better placed to reap these economic benefits. It can be a *pull* factor, incentivising investment in it or, where those qualities are not present, a *push* factor turning businesses and investment away.
- 4.7. A 2024 report published by the International Bar Association (“**IBA**”) looked at the potential contribution of the rule of law to a country’s GDP.¹⁶ Whilst accepting that this will ultimately be influenced by the individual country’s specific circumstances, they found that, as a general rule, a one-point increase in the World Bank’s Rule of Law Index ranking for a country brought a corresponding 0.82% increase in GDP per capita.¹⁷ This provides further empirical evidence of the rule of law’s role in promoting the economic prosperity of a country.
- 4.8. The IBA report goes on to consider the wider, direct contribution that the legal profession makes to the global economy through both employment in the profession and the wider GDP contribution of its activities. The headline figure from the report is that legal professionals directly contributed over USD \$1.6 trillion to global GDP – representing 1.7 per cent of total sources in 2022.¹⁸

¹⁵ *Ibid*, page 7.

¹⁶ The International Bar Association, ‘The IBA report on the social and economic impact of the legal profession’ (2024). Available at: [https://www.ibanet.org/Economic-impact-of-the-legal-profession-valued-at-\\$1.6tn-states-new-IBA-study](https://www.ibanet.org/Economic-impact-of-the-legal-profession-valued-at-$1.6tn-states-new-IBA-study) (Accessed 10 November 2025).

¹⁷ *Ibid*, page 98. The report notes that there are outliers to this general relationship and that the specific relationship will ultimately be influenced by each country’s individual stage of development (page 99).

¹⁸ *Ibid*, page 107.

- 4.9. In relation to the UK, A recent report by TheCityUK¹⁹ showed that, in 2023, the legal sector contributed £37 billion to the UK economy. The total revenue generated by legal services activities was £47.1 billion and the trade surplus was £7.6 billion.
- 4.10. This shows how legal professionals who are involved in promoting the rule of law in a country are also making a direct contribution to its wider economy. This leads on to my next topic.

5. How the Rule of Law supports international legal services

- 5.1. Our world is becoming ever more interconnected and interdependent. People, knowledge, data, goods, services and capital movements continually flow from one country to another in an increasingly globalised society.
- 5.2. A single company may have a head office and fixed assets in one country, employees and registered intangibles in another, use suppliers from another continent, and have its customers scattered across the world.
- 5.3. Globalisation provides real opportunities for countries seeking to become an international provider of legal services.
- 5.4. Taking advantage of these opportunities involves acknowledging and embracing the wide choice allowed to parties in making decisions as to applicable law and jurisdiction. The factors which increase the ease at which the flows of people, goods, services and data can move around the globe also increase the choices available to parties when selecting which laws and systems should govern, adjudicate upon and enforce their legal rights.
- 5.5. To be a chosen jurisdiction it is vital not only to be a country in which the rule of law applies, particularly in the respects which I have identified, but also to be recognised as being such a country. You have not only to be a rule of law country but to be seen to be so.
- 5.6. Building on these foundations it becomes possible to attract international business for legal services in two main ways. First, through the development of a commercial or international commercial court and, secondly, through the provision of international arbitration services. Both are highly relevant to Mauritius given the stated aim to

¹⁹ TheCityUK, 'UK Legal Services 2024' (December 2024). Available at: <https://www.thecityuk.com/our-work/uk-legal-services-2024/> (accessed 12 November 2025).

establish an international investment and commercial court and its ambitions to be a leading international arbitration centre, as borne out by the enactment of Mauritius' International Arbitration Act 2008 ("MIAA 2008") and the setting up of both the Mauritius International Arbitration Centre ("MIAC")²⁰ and the Mediation and Arbitration Center Mauritius ("MARC")²¹.

Commercial Courts

- 5.7. When contemplating the setting up of a commercial court or international commercial court, the UK provides an important case study. The English Commercial Court, centred in the Rolls Building in London, is widely regarded as setting the gold standard. It is interesting, therefore, to reflect on how it began and how it has developed.
- 5.8. The Commercial Court was 'created' in 1895 and it was designed to address and remedy specific issues that commercial parties were experiencing with the existing legal system in England.²²
- 5.9. Broadly, there were three issues:
 - (1) First, due to wider court reforms in the prior period, normal court procedure was difficult and time-consuming.
 - (2) Second, there was a lack of expertise among the judiciary in the field of commercial affairs, in part due to a fear that this would otherwise narrow the more generalist approach of judicial experience.²³
 - (3) Third, there were significant time and costs associated with bringing commercial litigation, coupled with an inability to predict their likely amounts.
- 5.10. The Commercial Court responded to this by initially giving greater control to the commercial judge at the outset of proceedings, allowing the default technical rules of evidence to be dispensed with, and providing a flexible procedure to accommodate the case at hand.²⁴

²⁰ See MIAC's website. Available at: <https://www.miac.mu/> (Accessed 10 November 2025).

²¹ See MARC's website. Available at: <https://marc.mu/> (Accessed 10 November 2025).

²² See Bowen LJ, 'A Member of the Bench' (August 1892), *The Times*. Reproduced in (1892) 27 LJ 570, 573. For further details concerning the history of the Commercial Court, see: <https://www.commercialcourt.london/> (Accessed 11 November 2025).

²³ *The Times* (24 February 1897).

²⁴ See the reported summary on those changes: (1894-95) 98 *Law Times*, 342.

- 5.11. In 1896, just a year following the Commercial Court’s creation, The Law Journal remarked upon the success of these initiatives: it “*proves that commercial men prefer to bring their disputes into the Courts where a rapid system of procedure is provided for them, and where they can rely upon having their cases decided by an able judge who is familiar with their transactions.*”²⁵ These words remain as relevant today as they did then. These three, considerations – judicial expertise, tailored and effective procedure, and relative speed – have remained guiding principles throughout the history of the Commercial Court.
- 5.12. The Commercial Court continued to adapt to the needs of its users during the twentieth century, building on its foundational principles. It also grew. Having started with one judge, Mr Justice Mathew, by the end of the 1970’s there were five Commercial Court judges and now there are generally eight Commercial Court judges sitting at any one time (out of a pool of about 15 nominated judges), all of whom will have been specialist commercial law practitioners.
- 5.13. Its work has also become increasingly international. By the 1990s, three-quarters of the cases issued in the Court involved at least one foreign party, and litigants from more than 70 different countries around the world used the Commercial Court.
- 5.14. During the 2023–2024 period, for example, 743 new claims were issued with a general claim value of £8 million or more²⁶ and nearly 75% of the Court’s case load was exclusively international work.²⁷
- 5.15. The success of the Commercial Court has also led to many international equivalents being established around the world. Indeed, the Commercial Court has been at the forefront of encouraging and fostering these developments through the establishment of the Standing International Forum of Commercial Courts (SIFoCC).²⁸ SIFoCC was initiated in 2016 by the former Lord Chief Justice, Lord Thomas, and had its inaugural meeting in 2017 with senior judges from 25 jurisdictions in attendance, including many of the major commercial centres of the world, from New York to Dubai. SIFoCC was established on the basis of three principles. The first is very much in keeping with the

²⁵ The Law Journal (1896) 31 LJ 41.

²⁶ Courts and Tribunals Judiciary, ‘The Commercial Court Report 2023 – 2024’ (February 2025). Available at: <https://www.judiciary.uk/guidance-and-resources/commercial-court-annual-report-2023-24/> (Accessed 10 November 2025). See page 19.

²⁷ *Ibid*, page 18.

²⁸ <https://sifocc.org/about-us/>

history of the Commercial Court, namely, that the sharing of best practice will allow courts to better serve their users. The second is that the commercial courts spread around the globe can make a stronger contribution to the rule of law acting in concert than they would separately. The third is to contribute to the development of emerging countries by offering effective means for the resolution of commercial disputes. SIFoCC currently has 58 member jurisdictions.

- 5.16. Notable international commercial courts established in different parts of the world include the Singapore International Commercial Court in South East Asia; the Dubai International Financial Centre Courts, the Abu Dhabi Global Market Courts and the Qatar International Court in the Middle East, and the Astana International Financial Centre Court in Eurasia. English practising lawyers and retired judges have assisted in the setting up of these courts and many sit as judges there. For example, our most recent Lord Chief Justice, Lord Burnett, is Chief Justice at the Astana Court, his predecessor, Lord Thomas, is President of the Qatar Court, and my colleague at the Supreme Court, Lord Hodge, will shortly be taking over from Lord Hope as Chief Justice of the Abu Dhabi Court. Many of the courts apply or have regard to English common law and have procedures closely based on the English Commercial Court model, as set out in its Commercial Court Guide.
- 5.17. There are therefore many models which can be drawn upon when considering the establishment of an international investment and commercial court in Mauritius, but, as with other international courts, there is much to be gained from drawing on the long experience of the English Commercial Court, its law and procedures, and its practitioners and judges.

International Arbitration

- 5.18. Arbitration is an increasingly significant method of dispute resolution relied upon by international parties. For the 2024-year-end, the International Chamber of Commerce reported that they had their highest ever reported total case value pending with a valuation of US\$354 billion.²⁹ The London Court of International Arbitration had 95%

²⁹ International Chamber of Commerce (ICC), 'ICC Dispute Resolution 2024 Statistics' (June 2025), page 5. Available at: <https://iccwbo.org/news-publications/news/icc-dispute-resolution-statistics-2024/#top> (Accessed 10 November 2025).

of their cases involving one or more international parties from a total of 101 jurisdictions.³⁰

- 5.19. Arbitration is prized for its confidentiality and for the enforceability of arbitration awards. 172 countries³¹, including the UK and Mauritius, are party to the ‘New York Convention’ on the Recognition and Enforcement of Foreign Arbitral Awards and, like the rise of international commercial courts, many arbitration centres have been specifically set up to try and capture this international demand for arbitration services, including, in Mauritius, MIAC and MARC.
- 5.20. The benefits for a country of attracting international arbitration business is both direct and indirect. Direct economic benefits are captured in the form of the contribution to the economy that the relevant arbitration services and fees generate.³² Indirect benefits include that it increases the standard and quality of arbitration services. The competition for international arbitration also promotes a greater respect for the rule of law values that commercial parties demand. As Lord Neuberger has previously explained: “*The fact the different centres for arbitration are in active competition for “custom” serves to ensure best standards both nationally and internationally, and this is to the benefit of the rule of law.*”³³
- 5.21. London has long been a leading centre for international arbitration. To remain so, the courts’ approach to arbitration has had to develop and adapt. In the 19th century the courts regarded arbitration with a degree of competitive hostility. For example, in 1892, a Lord Justice of the Court of Appeal, Lord Justice Bowen wrote to *The Times* lamenting that: the “*mercantile public... prefer even the hazardous and mysterious chances of arbitration in which some arbitrator, who knows about as much of law as he does of theology, by the application of a rough-and-ready moral consciousness, or upon the affable principle of dividing the victory equally between both sides, decides intricate questions of law and fact with equal ease.*”

³⁰ London Court of International Arbitration (LCIA), ‘Annual Casework Report 2024’ (July 2025), page 6. Available at: <https://www.lcia.org/News/lcias-2024-annual-casework-report.aspx> (Accessed 10 November 2025).

³¹ <https://www.newyorkconvention.org/contracting-states/contracting-states> (Accessed 10 November 2025).

³² For example, the Law Commission estimated that arbitrations in England and Wales were worth at least £2.5 billion to the economy. See Law Commission, ‘Review of the Arbitration Act 1996: A consultation paper’ (September 2022) at [1.2]. Available at: <https://lawcom.gov.uk/project/review-of-the-arbitration-act-1996/#3-Documents> (Accessed 10 November 2025).

³³ Neuberger (n. 3) at [40].

- 5.22. This was reflected in the degree of supervisory control exercised by the courts over arbitration, in particular in relation to questions of law. Until the Arbitration Act 1979, questions of law would be stated by the arbitrators in the form of a special case and there would be right of appeal on such questions. This helped the development of commercial law, and especially shipping law, but it was increasingly seen as too intrusive a role, as well as adding to delay and cost. In the 1979 Act the requirement of leave to appeal on points of law was introduced and the House of Lords in *The Nema* [1982] AC 724 decided, in the interests of finality, that leave to appeal should generally only be given if the arbitrators' decision was plainly wrong. A more benevolent approach was to be adopted if the point of law was of general public importance but even then a strong *prima facie* case of error had to be shown. This radically reduced the number of appeals on points of law and this approach was then given statutory footing in the Arbitration Act 1996 (**"the 1996 Act"**). That Act closely followed the advice set out in the report of a Departmental Advisory Committee, chaired by Lord Savill (**"the DAC Report"**). The DAC Report provides an instructive and insightful analysis of modern arbitration law and what the role of the court should be and it finds its counterpart in the *Travaux Préparatoires* to the MIAA.
- 5.23. The role of the courts in relation to English arbitration has therefore changed over time and is now much more in line with international arbitration practice, although the possibility of appeal on questions of law is retained. There is no question of the courts and arbitration being in competition; the court's role is one of support. Lord Thomas has explained that this role should be "*Maximum support. Minimum interference*"³⁴.
- 5.24. There are three aspects of that supporting role which I wish to highlight.
- 5.25. **The first supporting role has been described as "*patrolling the arbitral perimeter*"**³⁵. Like any boundary, it performs two functions. Where parties have agreed to subject their commercial arrangements to arbitration, it would undermine the predictability of their agreement and defeat their autonomy if the law simply allowed the court to ignore it and determine an arbitral matter for themselves. It also risks

³⁴ Lord Thomas CJ, 'Commercial Dispute Resolution: Courts and Arbitration' (6 April 2017) at [25]. Available at: <https://www.judiciary.uk/wp-content/uploads/2017/04/lcj-speech-national-judges-college-beijing-april2017.pdf> (Accessed 10 November 2025).

³⁵ See David Foxton, 'Arbitration and the Rule of Law – the Role of the Court' (5 October 2023) (ICC UK Annual ADR and Arbitration Conference). Available at: <https://www.judiciary.uk/speech-by-mr-justice-foxton-arbitration-and-the-rule-of-law-the-role-of-the-court/> (Accessed 10 November 2025).

leading to inconsistent and parallel awards being granted which further reduces the legal certainty of the jurisdiction's regime.

- 5.26. To fulfil this function, the English and Mauritian courts are granted express powers to stay any proceedings brought before them which are subject to an arbitration agreement provided it is not “*null and void, inoperative, or incapable of being performed*”.³⁶ A more wide-ranging power of the court is the ability to order interim measures, including anti-suit injunctions to prevent parties from trying to commence or continue in other jurisdictions in breach of the arbitration agreement. In England and Wales, the inherent jurisdiction of the court is relied upon³⁷ whilst the MIAA affords a wide statutory power to issue interim measures where they support international arbitration proceedings.³⁸
- 5.27. **The second supporting role is the function of the court in ensuring a fair, independent arbitration process.** Whilst the principle of minimum interference by the court generally applies throughout the arbitration process, this deference to the arbitration process is only justified to the extent that the underlying procedure accords with the requirements of natural justice. Indeed, to remove the court's supervisory role in this area would be to remove a fundamental component of the rule of law by denying access to justice.
- 5.28. This is explicitly recognised in the 1996 Act which provides an ability for a court to set aside the arbitral award where there was a “*serious irregularity affecting the tribunal, the proceedings or the award*” (section 68) and in the MIAA where there has been a “*breach of the rules of natural justice*” which “*substantially prejudiced*” the rights of a party (section 39(2)(b)).
- 5.29. Arbitral tribunals are subject to explicit duties of fairness and impartiality in their proceedings in both systems³⁹.
- 5.30. **The third supporting role is by the legal system promoting the finality of the arbitral award.** One of the main benefits of international arbitration over court

³⁶ See section 9(1)-(5) AA 1996 and section 5(2) MIAA 2008.

³⁷ See, most recently, *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30.

³⁸ Section 23 MIAA 2008 and most recently *SBM Africa Holdings Ltd v KHIMJI S* [2025] SCJ 445.

³⁹ See section 33 AA 1996 and section 24 MIAA 2008.

proceedings is considered to be finality.⁴⁰ The promotion of finality underlies both the 1996 Act and the MIAA.

- 5.31. In relation to the MIAA this is made clear by a number of provisions. First, section 3(8) which sets out the principle of limited court intervention (“In matters governed by this Act, no Court shall intervene except where so provided in this Act”). Secondly, section 36(7) which sets out the final and binding nature of awards and section 39(1) which makes clear that applications to set aside an award are to be strictly confined. Thirdly, there can be no appeals on questions of law unless the parties opt in to such an appeal under the First Schedule of the MIAA. The independence of arbitral decision making is then reinforced by section 20 which provides for the arbitral tribunal’s ability to rule on its own jurisdiction and for the separability of the arbitration clause.
- 5.32. A country’s courts therefore play a fundamental supporting role in relation to arbitration. This calls for judges with experience of arbitration and who are sensitive to the proper application of the statutory framework and the importance of maximum support but minimum interference. In England all arbitration applications are dealt with by Commercial Court judges. In Mauritius, only those judges of the Supreme Court which have been specifically designated by the Chief Justice can hear international arbitration cases under the MIAA.⁴¹
- 5.33. The key role of the judiciary is emphasised in the *Travaux Préparatoires* to the MIAA (para 17(a)) as follows:

“First and foremost, the success of Mauritius as a jurisdiction of choice for international arbitration will be largely dependent on the uniform and consistent application by the Mauritian Courts of modern international arbitration law, and (in particular) on their strong adhesion to the principles of non-interventionism which is at the heart thereof.”

6. The support of the Judicial Committee of the Privy Council (“JCPC”)

- 6.1. In promoting an international investment and commercial court and international arbitration in Mauritius, the JCPC can play an important supporting role.

⁴⁰ Neuberger (n. 3) at [37].

⁴¹ Sections 42 – 43 MIAA 2008.

- 6.2. The judges of the JCPC are principally senior UK judges who are Justices of the UK Supreme Court. We are also assisted in hearing and determining appeals by judges from the courts of appeal from each of the UK jurisdictions. More recently, Dame Janice Pereira (formerly Chief Justice of the Eastern Caribbean Supreme Court) and Sir Anthony Smellie (formerly Chief Justice of the Cayman Islands) have taken up office as our colleagues on the JCPC. It is accordingly made up of judges of high calibre, as is internationally recognised.
- 6.3. Having a court of international renown as a final court of appeal will be seen by many as a positive feature.
- 6.4. Increasingly, in recent years the JCPC has handled appeals in major commercial disputes arising in offshore financial services and corporate centres, such as the Cayman Islands and the British Virgin Islands. Having a final court of appeal with international standing determining disputes of international significance helps to underpin the economic development of those centres. As David Doyle, a judge of the Financial Services Division of the Grand Court of the Cayman Islands in a recent paper stated:

“The fact that the JCPC is the final appeal court of the Cayman Islands increases international investor confidence in the Cayman Islands and assists in its economic development ... The JCPC continues to inspire international investors to have confidence in Cayman as a place for doing business and using corporate and trust structures to facilitate international investment.”

- 6.5. As stated in the *Travaux Préparatoires* for the MIAA⁴², the JCPC can “provide international users with the reassurance that Court applications... will be heard and disposed...by eminently qualified jurists.” It outwardly demonstrates and reassures businesses and international investors that, irrespective of the size of the underlying jurisdiction, the rule of law will be respected and upheld.⁴³

7. Conclusion

⁴² THE INTERNATIONAL ARBITRATION ACT (No. 37 of 2008) *Travaux Préparatoires* (2008). Available at: https://attorneygeneral.govmu.org/Documents/Documents/16-TRAVAUX_PREPARATOIRES_%28INTERNATIONAL_ARBITRATION_ACT%29%20WORD%20VERSION.PDF (Accessed 10 November 2025).

⁴³ See further, The Rt. Hon. Lord Hodge, ‘Address on the Judicial Committee of the Privy Council’ (10 April 2025) (Commonwealth Conference, Malta). Available at: https://supremecourt.uk/uploads/speech_lord_hodge_10042025_9551aa3d71.pdf (Accessed 10 November 2025).

- 7.1. The rule of law is a very important pillar of support for the economic growth and prosperity of a country. A country which can demonstrate that its laws are certain and predictable and that it provides efficient, fair and independent adjudication mechanisms for the enforcement of legal rights will yield significant economic benefits. Both indirectly, in providing the necessary legal architecture for commerce to thrive, and directly, in incentivising foreign direct investment and international parties to select that country's legal system to govern and/or resolve their commercial transactions.
- 7.2. The international legal landscape shows that there are real opportunities for countries which can develop international commercial courts and international arbitration centres. Given its geographical position, its common law links, its international arbitration foundations and its stated ambition, Mauritius is well placed to take advantage of these opportunities. To do so it is very important that the rule of law is both respected and observed, and is recognised as being so.

November 2025