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NEWS & LEGAL UPDATE



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The President's Message

Young-Moo Shin
President



Dear Colleagues,

The end of the year is fast approaching, and as we reflect back on 2013 we can be proud as an association to have had a very successful Annual Meeting and Conference in Seoul, and an equally successful Mid-Year Council Meeting and Regional Conference in Zurich. Due to the great efforts of the host committee in Zurich, headed by the JCM for Switzerland, Bernhard Meyer, we gained seven new members in that jurisdiction before and after the weekend's events, with new member registrations still coming in. If you could not attend, you can enjoy it vicariously through the article and photos on pages 8-12 of this issue of the Journal.

Since IPBA was established in 1991, like any association it has had its share of ups and downs. Natural disasters, economic downturns, political strife, and the like all have an impact on our members. I strongly believe that we are on a path to becoming the strongest we've ever been; not only in terms of membership numbers, but also through the initiatives of individual members to enhance the association through high-quality IPBA programs and deeper collaboration with other organizations. As I mentioned in the last issue of the Journal, Past IPBA Presidents Jerry Libby, Lee Suet-Fern, and Yukio Hamada have been involved for many years with the World Justice Project, an organization dedicated to promoting the rule of law around the world. I believe so strongly in this effort that in order to devote the remainder of my life to work for anti-corruption and the rule of law in Korea, I recently retired from Shin & Kim, the firm that I founded more than 30 years ago.

The concept of the rule of law can be traced back to ancient civilizations, but the implications change based on the context of the jurisdiction in which it is practiced, as well as the global situation at the time. While IPBA is an apolitical association, there is no denying that we, as individuals, conduct our work to benefit the lives of people. Of course,

we all know what the rule of law means on a humanitarian and political scale, but the rule of law also extends to the business world. International business is becoming more complicated each day, and it is increasingly imperative to address issues of compliance, anti-corruption, and fraud, particularly for cross-border issues and transactions. Accountability on the legal business end will benefit all people through 'clean' business and government practices. Isn't it time that the IPBA as an association joins this effort? At the Mid-Year Council Meeting in Zurich on October 27th, I initiated the formation of a new Ad Hoc Committee focusing on anti-corruption and the rule of law, a suggestion that was supported by the entire Council. I hope that you will join us in this as this committee takes shape over the next few months.

Other IPBA projects are well under way. The Strategic Long-Term Planning Committee is making great progress in formulating a business plan to strengthen the association. The comprehensive plan will keep the current and incoming council members very busy in the coming months, and we will count on all of you to support our efforts. Related to this, Secretary-General Yap Wai Ming is also working hard on the incorporation of IPBA, and our administrative management support from the IPBA Secretariat is changing for the better.

We can expect another exciting year for IPBA in 2014, with stronger membership, more IPBA programs, and a great Annual Meeting and Conference in Vancouver, May 8-11.

I wish all of you a very joyous holiday season, as well as much success and happiness in 2014!

Young-Moo Shin
President



The Secretary-General's Message

Yap Wai Ming
Secretary-General



Dear IPBA Members,

Bernhard Meyer, our Jurisdictional Council Member from Switzerland, did a fantastic job hosting the IPBA Mid-Year Council Meeting from 25–27 October 2013 in Zurich. This was followed by a regional conference on 28 October entitled '*Bridging Cultures in Arbitration – A Special Focus on Asia and Europe*' which was very well attended. On behalf of the IPBA, we wish to thank Bernhard Meyer and his team for hosting the Council Meeting for the first time in the beautiful city of Zurich. We also wish to thank them for the various receptions and for the use of the wonderful facilities of Homburger, Froriep Renggli and MME Partners law offices.

The Council had a fruitful discussion. I would like to report on three major discussions/developments:

First, the Strategic Long-Term Planning Committee ('SLTP') has briefed the Council on the initial phase of work that was carried out and assisted by Kathleen Singleton of Eliquent Business Consulting. Our past President Lalit Bhasin mooted the issue of delinking the presidency from the venue of the annual conference as part of the SLTP review agenda, as our Constitution under Article VII 1(b) provides that the President-Elect shall 'be responsible for holding and organizing, either in the Jurisdiction in which he/she is then residing or in such other Jurisdiction as determined by the Council, the conference to be held as part of the Annual Meeting of the Association in that year'. The Council, therefore, retains the overall discretion on the choice of the venue for the hosting of the annual conference. Traditionally, we have always had the President-Elect host the annual conference in a city within his/her jurisdiction. We will likely maintain this for many years to come and will reconsider this tradition in future if we have a much larger secretariat that can truly support the hosting of annual conferences without the substantial involvement of the host committee of the President-Elect.

Kathleen has conducted a survey of the current officers and other council members of the IPBA. The results provide much insight, and the one that struck me particularly was that the average Council members' involvement in different capacities is only about five years. Leadership of the IPBA is indeed transient and the secretariat provides the longest continuity of support for future and succeeding Council members. This makes the secretariat support all the more important for the future of the IPBA and emphasises that we do have a great need for a strong secretariat.

Second, IPBA's budget and finances for 2014 were discussed. Our financial position has never been better: we currently have a cash balance of over US\$1.2 million, thanks to an uptick in the number of members and the efforts of the annual conference and regional conference host committees to generate healthy surpluses. However, we do not want to spend the funds indiscriminately without carefully considering the return on investment. As noted above, a healthy secretariat is essential to any association like the IPBA. Since before IPBA's establishment in 1991, various support and secretariat services have been provided by TGA Inc., a consulting agency in Tokyo that offers services to a global clientele. Their service fee has stood at Japanese Yen ¥1.5 million per month for the past 23 years, while TGA has weathered an increasing workload to support the IPBA. In recognition of this, the Council has approved in principle an increase of ¥500,000 (less than US\$5,000) to ¥2 million per month, subject to terms and conditions to be agreed upon between TGA and the Secretary-General, taking effect from 1 January 2014. The Secretariat staff of Rhonda Lundin and Yukiko Okazaki will continue to serve the Council and general members of IPBA, and Midori Hirano will continue to oversee the overall operation of the Secretariat. Please don't hesitate

to contact them for any reason! They can answer questions on the spot, or point you in the direction of the appropriate officer or other council member to help you become more actively involved in the association.

Third, I reported to the Council that as part of the SLTP review, the IPBA in its current status as an unincorporated association cannot continue indefinitely. We urgently need to corporatise the IPBA for a better governance structure and accountability, not least for the personal liability protection of its officers and council members. I will be putting up a further report for the Council's deliberation, hopefully by the Vancouver meeting.

I am also pleased to inform you that the secretariat has 'gone cloud'. Storage of historical records and secretarial minutes are in the process of being digitised for cloud storage. This is to ease the retrieval of records and to allow for the creation of a virtual secretariat. We have also requested each of the officers and council

members to assist by summarising from the voluminous IPBA Manual and IPBA Annual Conference Manual the relevant portions of their job scope where 'byte-size' information can be provided for their future successors. This condensed version of the relevant segments of the Conference and the IPBA manuals that relate to each position and role could then be uploaded to the cloud. Incoming officers and council members can be briefed on succession planning via the virtual secretariat. We hope that Council members will avail themselves of the cloud service once it is rolled out in full.

The Vancouver Annual Conference preparation is in full swing and exciting programmes are lined up for us. Kindly register online at www.ipba2014.com to catch the early bird discounts before 31 January 2014.

Yap Wai Ming
Secretary-General

IPBA Upcoming Events for IPBA Journal, December 2013 Issue

Event	Location	Date
IPBA Annual Meeting and Conference		
24th Annual Meeting and Conference	Vancouver, Canada	8-11 May 2014
25th Annual Meeting and Conference	Hong Kong	6-9 May 2015
IPBA Mid-Year Council Meeting		
2013 Mid-Year Council Meeting (Council Members only)	Rio de Janeiro, Brazil	Fall 2014
IPBA Regional Event		
IPBA-CIC Construction Conference 2014	Hong Kong	24 January 2014
IPBA Regional Conference (open to all)	Rio de Janeiro, Brazil	Fall 2014
Supporting Events		
Kluwer Law's "Indonesia & SE Asia: International Arbitration Summit"	Jakarta, Indonesia	12 December 2013
IFLR/IPBA Asia M&A Forum	Hong Kong	25-26 February 2014
ABA Section of International Law Spring Meeting	New York, USA	1-5 April 2014

More details can be found on our web site:
<http://www.ipba.org>, or contact the IPBA Secretariat at ipba@ipba.org

Legal News in Brief

Australia: Minter Ellison chief departing

Australian law firm Minter Ellison's chief executive John Weber has announced he will be stepping down in June 2014 after serving in the firm's top role since January 2009. The firm has engaged recruiters to find a replacement for Weber and expects to make an announcement by February 2014.

Before his appointment as chief executive partner, Weber was the firm's Canberra office manager and government industry head. He was also a senior partner in the firm's dispute resolution department.

Under Weber's leadership, Minter Ellison has opened offices in Beijing and Mongolia, and launched an Asian tax practice. About 25% of its revenue is now generated by offshore work.

Singapore: Freehills' Singapore team leaves

A year on from the merger between Herbert Smith and Freehills has seen the bulk of the legacy Freehills Singapore team depart from the Singapore office, with former Freehills Singapore managing partner John Dick the latest to leave the firm in early December 2013. He follows legacy Freehills energy partner Geoffrey Grice, who joined Freehills in 2009 and left recently to join Duane Morris & Selvam in Singapore.

Following the October 2012 merger, Freehills' Singapore team consisted of around 18 lawyers, including three partners. A year later, *The Lawyer* reported that of the original team to transfer to the Singapore office, only one legacy Freehills partner and fewer than three associates remain at Herbert Smith Freehills (HSF). HSF confirmed the departure of Dick and Grice and declined to comment further on the firm's integration in Singapore, according to *The Lawyer's* report.

Myanmar: Two more firms join the Myanmar rush

Two international law firms have joined the fast-growing rush into Myanmar as the southeast Asian nation becomes more open to foreign entrants and investors. United Kingdom intellectual property firm Rouse and southeast Asian law firm Tilleke & Gibbins both announced in November they are expanding into Myanmar.

Rouse's Myanmar office, based in Yangon, will offer filing and prosecution for trade marks, patents designs and geographic indications, as well as portfolio management and IP commercialisation services.

Tilleke & Gibbins' Yangon office also has a particular focus on IP related services, but has already had significant interest in other service areas from clients, the firm said.

Other international law firms to have ventured into Myanmar this year include Selvam & Partners, Herzfeld Rubin Meyer & Rose and Stephenson Harwood.

Indonesia: Politician stands trial for graft

The trial of Indonesian Democratic Party of Struggle politician Izedrik Emir Moeis began on November 28 for his alleged role in a bribery case involving a United States subsidiary of the French conglomerate Alstrom.

Emir is accused of accepting more than US\$400,000 in bribes from the company in exchange for his help to secure the company a contract to construct a coal-fired power plant in the Indonesian province of Lampung in 2004. Emir has been charged under the 1999 Corruption Law and, if found guilty, faces a maximum of 20 years' imprisonment.

IPBA Mid-Year Council Meeting and Regional Conference in Zurich, Switzerland

While not located within the Pacific Rim, Switzerland has, and continues to have, close connections with Asia. Swiss traders first established trade relations with China, Japan and Singapore in the late eighteenth century (the trading company DKSH, for example, can be traced back to three Swiss traders who visited and started businesses in Asia in the 1860s). In recent years, Switzerland has deepened its ties and entered into Free Trade Agreements with China (6 July 2013), Hong Kong (1 October 2012), Japan (1 September 2009), the Republic of Korea (1 September 2006) and Singapore (1 January 2003), among others and is in negotiation with many more Asian countries. With this in mind, Switzerland and Asia are not that far apart, and it was a fitting venue for the IPBA Mid-Year Council Meeting.

The Mid-Year Meeting kicked off with the first meetings held on Friday followed by a reception hosted by Catrina Luchsinger Gähwiler and Peter Merz at the offices of Froriep. The views over Lake Zurich, the mountains and beautiful red-sky sunset set the scene for council members to catch up and meet local lawyers.

Work started in earnest on Saturday with various meetings being held in parallel at the Homburger offices arranged by Felix Dasser. The meeting rooms on the 31st and 34th floor of the Prime Tower (the highest office building in Zurich) provided floor-to-ceiling views over the city and surrounding areas.



An overview of the city was particularly helpful for the council members who wanted to explore the city or make use of the 24-hour tram/train passes arranged by Michael Cartier, courtesy of Walder Wyss. The short distances in Zurich, the warm weather (and the expensive Zurich taxis) made walking or using the trams and trains the best way to get around and see the city.

The first day of council meetings concluded with a reception and council dinner at the Zunfthaus zur Meisen (the guild hall of the wine merchants, saddle makers and painters). The location chosen by Urs Lustenberger in the heart of the old part of Zurich provided a historical setting. The 14 historic guilds played an important role in governing Zurich, being the main political power between 1336–1798. Not only was the City Council elected from among the guild members, but only guild members were entitled to vote: a practice which certainly ensured that the interests of business and commerce were well represented.

The dinner speaker, Gerhard Schwarz, a leading liberal thinker and economist, and currently the director of the think tank 'Avenir Suisse', picked up the issue of business, politics and governance and provided a tour d'horizon over the ties between Switzerland and Asia, the factors



IPBA Council Members meet to discuss the business of the association, hosted by Zurich law firm Homburger.

leading to Switzerland's economic success and how these have been replicated and reflected in Asia. He ended on a warning note that while Asian countries have learned from Switzerland, it would do well for Switzerland to now also look to and learn from Asian countries going forward to ensure continued economic prosperity.

Council meetings continued on Sunday and wrapped up in the early afternoon, leaving sufficient time for a drinks reception hosted by Homburger, some sightseeing or getting ready for the Swiss Evening on the lake side arranged by Martina Altenpohl from Ruoss Vögele Partner. The Swiss Evening not only showcased traditional Swiss musical instruments and yodelling but also featured



Bernhard Meyer in traditional Swiss dress, addressing the crowd at a special cheese fondue dinner on the shores of Lake Zurich.



The Regional Conference attracted 120 delegates, who actively participated in Q&A.



Entrance to Zunfthaus zur Meisen, guild hall of wine merchants, saddle makers and painters.



Council Dinner Speaker Mr. Gerhard Schwartz, director of "Avenir Suisse".



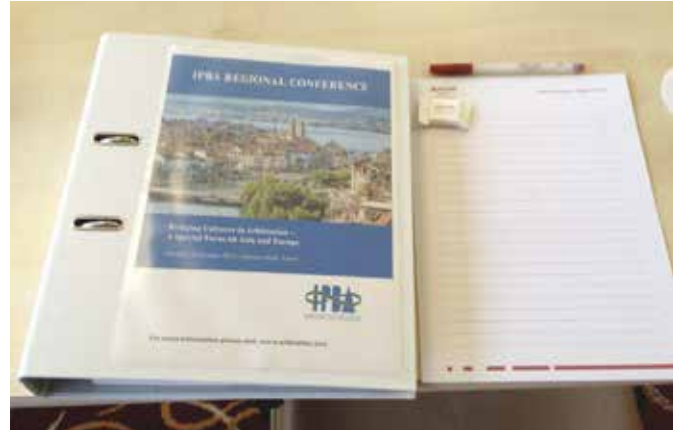
Chair of the Zurich Host Committee and JCM for Switzerland Bernhard Meyer welcomes the IPBA Council members, spouses, and special guests to dinner at the Zunfthaus zur Meisen.

the most typical of Swiss meals: cheese fondue. The 'fondue caquelon' is a true melting pot and what better way to end the Midyear Meeting by sharing a pot of melted Swiss cheese among friends.

Last but not least, with so many leading Asian lawyers present in Zurich, the host committee grasped the opportunity to hold a conference on 'Bridging Cultures in Arbitration – A Special Focus on Asia and Europe'. Under the guidance of Bernhard Meyer from MME Partners as conference chair, the various topics were addressed by the panels from different cultural and jurisdictional perspectives, with a very active participation from the audience. With 120 registrations in total and almost a quarter of the participants hailing from the Middle and Far East and overall half the participants hailing from abroad, the conference participation exceeded expectations. It also provided an excellent opportunity to network and introduce the IPBA to new or potential members, thus further deepening the ties between Switzerland and Asia. One immediate result of the conference was an



Miyuki Ishiguro, Deputy Secretary-General (L) and Kathleen Singleton, Eliquent Business Consulting enjoy some refreshments kindly provided by Foreip Renggli on the shores of Lake Zurich.



Professional presentation of materials at the Regional Conference.



Become an IPBA Council member and you, too, can enjoy a delicious dinner in a sumptuous setting!



Four panels of experts from around the world addressed various topics at the conference, "Bridging Cultures in Arbitration – A Special Focus on Asia and Europe".

increase of the Swiss IPBA membership by more than 10 per cent as a number of participants who have not previously known the IPBA spontaneously followed the Host Committee's suggestion to become members.



Michael Cartier
Managing Associate, Walder Wyss
Ltd, Zurich, Switzerland

Dr. Michael Cartier is managing associate in the litigation and arbitration team of Walder Wyss. He acts both as counsel and arbitrator, with a focus on international commercial as well as construction disputes.

Interview with Dieter Brändle, President of the Swiss Federal Patent Court

On 28 October 2013, Caroline Berube, the Chair of the Publications Committee of the IPBA, was honoured with an opportunity to interview Dieter Brändle for the IPBA Journal. Below is a summary of the interview.



President of the Swiss Federal
Patent Court, Dieter Brändle

Dieter Brändle studied law in Zurich and wrote his thesis on human rights in Strasbourg, France. He was a clerk at a district court in Zurich and was then admitted to the bar. In 1984 he joined the commercial court in Zurich where he began to work on patent cases. Since 1992, he has been spending most of his time on patent cases as a judge. Overall, he has been working with patents for more than 25 years.

on a court appointed expert's opinion as the basis of their decision. The new Federal Patent Court opened in January 2012 and since then all cantonal courts transfer patent cases to the Federal Patent Court.

1. **Before being appointed as President of the newly created Swiss Federal Patent Court, you had been working for a Zurich District Court since 1984. Since 1992, you were focusing mainly on patent disputes. Before the creation of the Swiss Federal Patent Court, the Zurich commercial court was handling 50 per cent of the patent cases in Switzerland. Why was a new court set up? Were there discrepancies in expertise and how cases were handled across Switzerland?**

There were about 30 patent cases a year in Switzerland. About 50 per cent of cases were handled by the court in Zürich. The other 50 per cent of cases were spread out across the country and were sometimes handled by courts without experience. The incentive for the new Swiss Federal Patent Court was to have all the cases heard by one court to allow for a more uniform judicial review and process. The courts with less experience in patent cases would sometimes rely

2. **The 2012 Activities Report of the Federal Patent Court states that the resolution rate in 2012 was 52 per cent, which is lower than the rate at other federal courts. However, the whole process is four times faster than the average time required before the district courts having jurisdiction before. What explains these numbers?**

I do not want to focus on statistics and averages. Our own procedural system differs from those of other courts given the specific nature of the legal matters we come across. Because the bench of judges is a mix of technicians and lawyers, it becomes easier for the parties to come to an agreement. We often have settlements at the first hearing with the parties, where a technical judge informs the parties about his provisional opinion of the case in view of what the parties have brought forward so far. If there is no settlement after the first appearance, the parties exchange further pleadings. Within six weeks of the pleadings, the technical judge then issues a formal

technical opinion provided to the parties to highlight his assessment of the technical issues. Before the Patent Federal Court was set up, the process to obtain an expert opinion – from an external expert – could take about one year. The new procedure is faster compared to the previous system even though many parties still chose to go to trial.

3. There were 54 procedures filed in 2012. What is the trend this year regarding the number of cases filed?

There were 33 cases filed from January to October 2013. We anticipate an increase in the overall number of cases this year.

4. The rate of cost versus claim amount is higher than the rate observed for other federal tribunals. Are the higher costs due to the appointment of technical judges while a traditional tribunal appoints experts whose costs are borne by the parties?

The higher cost is due to the fact that we have higher disputed amounts than those in other courts. We compare ourselves favourably to regular courts given the higher amounts of damages in question. I might add that except for two full time judges all judges work on a part-time basis and are paid salaries that are significantly less than those of practising lawyers or patent attorneys in private practice.

5. As the President of the Federal Patent Court, you are in charge of making decisions over the composition of the chamber. How do you decide the make-up of the chamber?

For ordinary procedures, the tribunal is composed of either three, five or seven judges. The President decides the number of judges for each case based on the complexity of the matter. For a trial, the standard bench is made up of five judges. There has to be at least one technical judge who is a patent attorney and at least one qualified barrister on the bench. The judges are called in for each case according to their technical skills and work experience.

For a summary procedure, the President decides as a single judge. But it is a legal requirement to have a

bench made up of three judges when the matter is highly technical. In practice, there are almost always three judges appointed for a summary procedure made up of a mix of qualified barristers and patent attorneys.

6. Technical judges are experts in various fields of technology and the parties have the choice of being heard in four languages (German, French, Italian and English). This may limit the number of skilled technical judges to hear a certain matter. The fact that the technical judges are part-time judges could also raise the optic of conflicts of interest. How do these issues affect the composition of a bench to hear a case?

Judges are either qualified barristers or patent attorneys. There are 25 patent attorneys and 11 qualified barristers. Judges are elected by the Swiss Federal Parliament for six years and they are paid according to the number of days they sit as judges. Swiss law is flexible as judges can work in private practice during their term. Some of the judges can also be experts or attorneys representing parties before the Federal Patent Court. This flexibility was necessary in order to attract talent to the Federal Patent Court. Indeed, this works pretty well.

Because of the nature of the court, we are careful to limit any potential conflict of interest. Each of the judges must clear a conflict check before being appointed to a case. As the president of the Federal Patent Court, I create a list of names according to the dispute matter and required expertise. Proposed judges then reply to me whether there is a conflict of interest. The appointment of judges usually takes two days and we have never been short of technical judges thus far.

For language issues, we also have not encountered any problem as of now. Most of the cases are heard in German even though the parties are from foreign countries – two thirds of our cases involve foreign parties. We suspect that the parties agree on German in order to create a layer of neutrality. I can think of a case between two United States based companies who pleaded in German. Even though we are

supposed to be able to handle cases in French, German, English and Italian, I must admit that it would be difficult to offer a hearing in Italian. Handling cases in English is also very common as everyone practising patent law is comfortable in English.

In addition to the language of the proceedings, that is to say the language the court uses in a given case, the parties are free to choose any official language of Switzerland to submit their pleadings without any requirement to submit translations except if requested by the other party. In such an event, translations are borne by the court.

- 7. We understand that there is cooperation between Liechtenstein and Switzerland for patent applications meaning that when applying for a patent in Switzerland, the patent granted extends to Liechtenstein. Is there any kind of cooperation at a judicial stage between Liechtenstein and Switzerland to avoid a double procedure or discrepancies in solutions given for the same dispute? For example, if there is a claim for nullity filed in Switzerland against a patent granted in the Switzerland-Liechtenstein zone, is the nullity decision effective in both countries or must the claimant run two trials?**

Yes, there is cooperation in many fields between Switzerland and Liechtenstein. For example, Liechtenstein uses the Swiss Franc as its currency. There is also cooperation in the field of patents as patents granted in Switzerland extend to Liechtenstein. Liechtenstein and Switzerland are one patent region. For patents disputes, Liechtenstein and Switzerland are also one patent region. There is no risk of double trial or discrepancy as patents disputes actually end up in Switzerland and the decisions made are valid for both countries.

- 8. In Switzerland, the application procedure does not include a material review of the applications regarding novelty and inventive step. However, this step is generally required in other countries and is necessary for a European patent. Do you think the law should be amended to be on the same page as the European patent procedure? Is this attracting more applicants to Switzerland or is it a disadvantage?**

For companies that are only interested in the Swiss market, there is no issue for them to apply for a Swiss patent according to the Swiss procedure. For bigger companies, there is practically no case where the applicant applies according to the Swiss procedure. The applicant would apply for a European patent, which also includes Switzerland.

However, the legislators in Switzerland are thinking about introducing the same application procedure as for the EPC. This was previously the procedure in Switzerland and we have kept novelty and inventive step checks only for some specific fields like watches and textiles. Checking novelty and inventive steps does not change anything for disputes. When there is a claim regarding infringement, the defence will usually plead invalidity of the patent in suit.

- 9. On February 19 2013, 25 countries in the European Union have signed an agreement to create the Unified Patent Court. This is the culmination of a long process. The cases involving EPC patents represent more than 80 per cent of the total cases submitted to the Federal Patent Court. Is there competition between both courts? Or will there be cooperation in the future?**

I think we need to wait and see if this will really happen and how it will work. The time frame for operation has not been finalised nor has the commencement date of the Unified Patent Court, right now estimated at some time in 2015. There is still a lot of work to be done before it happens. I foresee several challenges including languages issues.



Caroline Berube
Managing Partner, HJM Asia Law & Co LLC

Caroline Berube is a managing partner of HJM Asia Law & Co LLC and focuses on Chinese corporate law and commercial practice. She has advised clients in various industries such as manufacturing, energy (oil, gas and mining), technology and services. Caroline is also a regular speaker at many international conferences and is an arbitrator approved by the Chinese European Arbitration Centre.

Interview with Michèle Alliot-Marie, former French Justice and Foreign Affairs Minister

On 3 September 2013, Anne Durez, Chair of the Corporate Counsel Committee, interviewed Mrs Michèle Alliot-Marie, a law professor and attorney. Mrs Alliot-Marie consecutively served for more than ten years as Minister of Defence, Minister of Home Affairs, Minister of Justice and Minister of Foreign Affairs under the presidencies of President Jacques Chirac and President Nicolas Sarkozy.



Law Professor and Attorney,
Mrs Michèle Alliot-Marie

1. **Last August, the French Government via President François HOLLANDE, declared to ASEAN that it wanted to reinforce its relations with South East Asian countries and that, because it had primarily focused on China and India in the past, it needed to make up some lost ground with other countries. As a former French Minister of Foreign Affairs, do you endorse that analysis?**
2. **Is there any room for Europe in terms of international economic relations, which appear presently to be dominated by the China-United States axis?**

I believe that this analysis is not accurate as it seems to ignore that, apart from China and India, for many years France has had important political and/or strategic economic relations with Singapore and Thailand and, in more specific areas, with Malaysia, Indonesia and even Japan, which has¹ not even been referred to. Of course, it is important to develop economic relations with Vietnam or Cambodia, but one cannot say that France has not been concerned with South East Asia during the past ten years, far from it.

The first reality that we have to bear in mind is that Europe is the first economic power in the world, although that tends to be forgotten quite often. Indeed, all of the European countries together economically represent more than the United States, and much more than China, even though China is developing its economy. It would therefore be more accurate if the main axes² was between Europe and the United States and Europe and China.

However, Europe suffers from a lack of organisation. In other words, Europe seems to be an existing but vague entity in the economic arena, and to a lesser extent, in diplomacy or defence. Outside Europe, it is not always known what Europe wants and this may be due to the

fact that Europe itself does not really know what it wants. The conception of Europe is closer to laissez faire than to an expressed willingness to defend its production. What is missing is a European vision and policy together with a strong European voice.

For example, some progress has been made during the years following the 2008 financial crisis, in particular in the banking sphere in relation to economic governance of the European Union. However, important differences still remain between European countries with regards to their respective tax policies.

3. Do you believe that Europe is engaging in better economic governance?

Yes, but timidly, because most of the time it is responding to a crisis. In this respect, as already mentioned, we have seen some progress after the banking and financial crisis. However, we need a single voice capable of leading all Europeans towards a dynamic approach of Europe, not only economically, but also in terms of its relations with the outside world.

From this perspective, the financial and economic difficulties which various European countries have been facing have not helped to reach such a target. Each and every country has tended to withdraw into itself and focus on its own difficulties rather than allowing solidarity to prevail and foster a common European policy. For instance, a country such as Germany seems to consider that because it has overcome its difficulties there is no reason to wait for others, while other countries who are still undergoing difficulties will find it harder to pursue a shared European ambition because they are still trying to recover and safeguard a certain social balance.

Having said that, I am convinced that attempting to harmonise some elements of the economic development of each European country does not affect their sovereignty. We have an interest in

bringing closer, for instance, labour cost in European countries, which would probably decrease internal competition within Europe while creating an entity which could expand into new markets with a better, stronger and more efficient coordination.

4. What are the three main assets of France to attract foreign investors, in particular those coming from Asia?

First, in order to determine France's greatest assets, one has to determine what will be the main economic challenges for the next 15 or 20 years. In this respect, France is in a leadership position in various strategic areas of production.

The first strategic area is food supply. France is one of the main producers of foodstuffs and agri-foodstuffs in the world. The challenge is all the more important because the world population is growing exponentially, while the surface area of arable land is decreasing. France can respond to this challenge, although it is not the only country. For instance, China is attempting to invest in African land because it is aware of the necessity to decrease its dependence on food importation.

The second strategic area is space and aerospace. Satellites are being increasingly used, either in the telecommunications field or by the internet. In this respect France is the largest manufacturer of satellites in the world and also the first country launching satellites into space through the Ariane rocket. Space is a technological area for the future which is the concern of many countries.

The third strategic area is the aircraft industry. For example, the French company Airbus is one of the main manufacturers of all types of aircraft in the world and the French company Dassault, is one of the main manufacturers of private and military aircraft.

The fourth strategic area is health. This is directly linked to one of the major challenges for the future taking

into account the growing worldwide population. In this respect, biological research centres and pharmaceutical laboratories located in France are a real asset for our country.

The fifth strategic area is crafts, in particular luxury products and art, for which France's reputation is quite well established.

Therefore, France is very well placed in a number of strategic areas to attract foreign investors.

Second, another important asset of our country is the quality of its well-trained and highly productive workforce. Although the 35-hour working week constrains our activities and production, the productivity of the French workforce has been acknowledged, provided it continues to be encouraged and not discouraged as it is now the case as a result of several measures implemented by the current government.³

Third, foreign investors are attracted by the high quality of France's cultural, geographical and natural environment, which is an important element of France's appeal to people coming from Asia, based on my experiences particularly when I have met Chinese, Japanese and Indian people.

5. In your opinion, what is the main difficulty which foreign investors have to face when they want to do business in France?

Taxation and administrative burdens, which are indeed linked. France's level of taxation, in particular on labour, is one of the highest in the world. In addition, the French administration is not only the largest in Europe and in the world but, unfortunately, it also produces the most numerous changing regulations. Running a business, either in France or abroad, requires that laws and regulations remain stable in order to facilitate investments in the long term.

When I was the Minister of Justice, I decided to improve and simplify the rule of law. It is one of my deepest convictions that the law must be made to facilitate life between people and also must safeguard balance within society. The rule of law needs to be understandable and understood by each and every person. During the 18 months that I held the position of Minister of Justice I constantly had this double concern in mind: first, to have the law drafted in a way that would be understandable, in particular by non-lawyers because a businessman is not necessarily a lawyer and because it is a fundamental democratic principle that people should know what is expected from them and what is prohibited; second, to have the rule of law simplified so as to avoid an expanding number of rules preventing citizens from finding out which one applies to them and also to avoid contradiction between various regulations. In reality, some actions, either economic or judicial, are impeded because of a multiplication of regulations and the absence of deadlines. For instance, there is no legal deadline to complete a judicial expertise, which explains why some litigation matters may last for many years.

The law is an important tool for France's competitiveness. However, I can only regret that it currently hinders such competitiveness because the rule of law should be used to secure commercial relations, not to obstruct them.

6. Security and international commercial development are closely linked; in this respect, do you consider that international regulation is sufficient to fight against maritime piracy?

I consider that international regulation has been considerably reinforced during the past few years. I also remember that when I was a Minister I was responsible for several laws being passed in Parliament regarding the fight against piracy. Therefore, the problem is not really that regulation is not sufficient, but rather implementation of the rule

of law. In this respect, the reality is that a number of countries do not really feel concerned about application of the rule of law. While there has been some effective implementation of the law regarding courts' jurisdiction, it is obvious that a lot still needs to be done on the sea where military action and interventions are required. Few countries are involved in such actions because very few want to bear the cost of the relevant military expenses. International regulation will be better applied and respected when countries make more effort to mobilise their forces. In particular, those countries which are reluctant to contribute should be aware that their involvement is necessary because all economies and countries are victims of piracy.

In addition, countries which are the most concerned by piracy should unite in order to fight against the leaders of organisations carrying out piracy activities. Of course it is not always easy because such organisations are often concealed. However, thanks to the coordination of international action, investigations and action could be better conducted.

7. A growing number of bilateral agreements are concluded between the European Union and several Asian countries (EU- South Korea/ EU-India are currently being negotiated). Do you believe that they challenge multilateralism ?

I believe that bilateralism and multilateralism are complementary because bilateral agreements cannot replace multilateralism. We must bear in mind the necessity to facilitate international economic relations and, at the same time, be sure that a number of rules are applied, including reciprocity. Therefore, I am not concerned by the negotiation and signing of bilateral agreements as long as these main principles are respected.

Notes:

- 1 It is only Japan which has not been referred to by President F. Hollande. Therefore it is inaccurate to write "which have"
- 2 Here it is the singular and not the plural
- 3 Mrs Michèle Alliot-Marie, Professor of Law, lawyer and former Minister of Justice validated her interview and her words cannot be changed.



Anne Durez
Attorney, Paris Bar

Anne Durez, former Attorney to the Paris Bar, is Senior Legal Counsel at the energy group TOTAL. She is involved in compliance programs and corporate social responsibility issues. Anne is Chair of the Corporate Counsel Committee of the IPBA.

How Can Chinese Invest Abroad – Some Basic Aspects that One Should Pay Attention To

As China's economy is playing an important role in global markets, more and more Chinese enterprises and businessmen are exploring opportunities to invest in the international markets, and the Central Government is encouraging such moves. However, with reference to Chinese law and international rules, some important aspects should be paid special attention during the process of making investments.

China's Willingness to Invest Abroad

As China's economy is developing, more and more businessmen and enterprises are considering exploring the global market. This is especially so for 'Zhejiang Businessmen', who are renowned for their hardworking attitude, business acumen and their 'never give up' spirit. There may be several reasons for this trend. The first is that, if products can be accepted by the outside world, the market is enormous and the benefits will be substantial. The second is to try to have a bigger investment payback for capital invested through this process. No company thinks that their present market is big enough, which is why each year giants, such as Coca Cola, Apple and others, are attempting to be known and accepted by more people around the world, by making large and popular advertisements and updating their products. Investing abroad would bring several benefits to investors, such as making the best use of resources from the destination country, taking up a sales market in foreign countries and reducing labour costs.

There are several ways for individuals and enterprises to invest abroad. One is where the investing party transfers money directly to the destination country and establishes





Chinese law says
investors should
gain approval by the
Government before
investing abroad.

a new entity according to that country's laws and regulations. Another is to find a local business partner and together form a new entity. A third way is to invest directly in an existing entity in the destination country in order to have business goals realised. Each form of investment has its advantages and disadvantages when compared with each other and it is up to the investor make the wise and suitable choice in respect of the investment.

Several Aspects for Care

Before any capital leaves the country, one should pay attention to the following aspects related to government supervision and administration:

(1) Legal risks

When a project commences, one should know the destination country's laws which are binding on foreign investments, such as whether the proposed industry is open to investment by the outside world.

(2) The approval process

According to Chinese law, anyone who is willing to invest abroad should be approved by the Government before capital is transferred. The supervising departments analyse the truthfulness of the project and its workability. Usually there will be three levels of approval – these are the city level, province level and the central level – and usually these would take three to four months. So early preparation would reduce the risk of extra time being consumed by this process. Two departments are very important in this process: one is the Ministry of Commerce of the PRC, the other is the National Development and Reform Commission of the PRC.



(3) The money transferring process

This is a process that involves the department of Foreign Exchange Administrating Bureau. Without the permission of this department, the transfer of money to the foreign market may be illegal as the sum would usually be large compared to amounts for daily life requirements, which do not need approval. So it is important to bear this in the mind.

After the capital reaches the destination country, the following aspects should be considered:

(1) Managing risks

Usually local personnel would be hired for the running of the business so it is important to know how to manage this team in effective and efficient ways, as it would be different to running a team in China. Labour laws should also be studied carefully as each country will have different views regarding usage of the labour force.



(2) Financial risks

This includes the risks involved with taxes and accounting. One should figure out whether the new enterprise would face the risk of being taxed twice as the investing country would tax while the home-country would also tax for the business running costs. If double taxation occurs, this would pose serious risks of loss of profits for the investing party.

(3) Market risks

Whether the business can be successfully accepted by the local market or the markets related to the business aims would be affected by several elements. So bearing the risks in mind and making several plans for the likely problems that might arise will reduce the risks in such a fast-developing era.

How to Control the Legal Risks During this Process

First, one should know the foreign market and legal rules of

the destination country. Also, attention should be paid to culture differences as this will sometimes be an important aspect in the process. To know the foreign market means that one needs to make the necessary investigations regarding the market which is aimed at. This includes aspects of the natural, culture and business environment, as all the related elements should be in conformity with the short and long term business goals. This does not necessarily mean that one must be present in that country during the investigations, but one should obtain the authoritative and latest reliable information by legal means.

Second, one should seek professional assistance from lawyers and accountants who are familiar with the local regulations in that country. Also, go to the official websites of that local government. It is advised not to rely on the business routines from one's home country as it is widely known that 'When in Rome, do as the Romans do'.



Haicheng Zhu
Attorney at Law, Vice Director
Zhejiang Chession Law Firm

Haicheng Zhu was born in 1981 in Jiangsu, China. He was majoring in English in college and then became an attorney at law in 2011 after studying by himself. His working arena covers international investment and M&A, international arbitration, and also domestic corporations litigation and in-house counsel business.

Is the Vietnam Securities Market Ready to be Opened to the Foreign Community?

Recognising the importance of the securities market in mobilising capital by and channelling capital to the Economy, the Government of Vietnam was, is and will be carrying out a number of measures to provide supports to the development of the market. These include development of the legal framework so as to make it more consistent with the country's commitments under international and regional treaties to which Vietnam is a party, and closer to international and regional standards and practices, with a view to providing investors (including foreign investors) with more supports and comforts when entering into the market. The article below provides a quick glance at what was, is and will be happening in Vietnam.

The Market

Initially operating in July 2000 and 2005, although first introduced in July 1998, the Ho Chi Minh City Stock Exchange ('HSX', formerly 'HOSE') in Ho Chi Minh City (the biggest economic centre of Vietnam) and the Hanoi Stock Exchange ('HNX', formerly 'HTC') in Hanoi (the political centre and capital of Vietnam) are now markets for 687 corporate shares, 39 corporate bonds, and five fund units. In addition, UpCom plays the role as the market for the corporate shares of 138 public companies which have not been listed. Vietnam is now home to 663,800 companies (including both foreign invested and local companies), of which more than 4,000 are public companies, including those whose shares are listed and traded on HSX, HNX and UpCom.

Further, Vietnam is now home to 105 securities companies (of which about 46 are foreign invested ones), 47 fund management companies (of which around 30 are foreign invested ones), and more than 400 investment funds (of which only 23 are domestic invested ones).

Most of the investment funds in Vietnam are now close-ended private funds because public funds (including exchanged-trade funds, real estate investment funds, pension funds) and securities investment companies are only recently permitted by the laws. In addition, there are three custodian and clearance banks licensed and active in providing securities-related services (including custodian and clearance payment services) in Vietnam. It is also worthy to note that some offshore investment banks such as Morgan Stanley and Goldman Sachs, are now very active in Vietnam.

As at 30 September 2013, there are about 1.2 million investors registered and operating in the markets, of which about 90% of them are individual investors and the rest are corporate investors. Foreign investors (including individual and corporate investors) account for about 20,000, of which the number of offshore investment funds entering into securities markets in Vietnam is increasing, particularly in the last five years, thanks to the fact that Vietnam is considered an emerging market, regardless of

its economy's difficulties and being affected by regional and international economic crises.

Decreasing from the 'golden' years of 2005 to 2008, with the peak in 2007 when total capitalisation of the market accounted for about 40% of the GDP at that time, the total capitalisation of the markets presently is about VND813,000 billion, accounting for about 28% of the GDP. For the first nine months of 2013, the average daily transaction value of the markets was about VND1,342 billion, which, although not comparable with the daily average of around VND2,600 billion in 2007, seems to be quite optimistic at this moment and particularly in the context of the uncertainties of global and domestic economies. It also indicates an increase if compared with the average daily transaction value in the markets in the past two years (i.e. 2011 and 2012).

As at 30 September 2013, VNIndex (HSX) reached 492 points, which, although it cannot be compared with the 921.07 points it reached in early 2008, represents an increase by about 19% as against the same period at the end of 2012, while HNIIndex (HNX) has increased by about 6.8% as against the same period at the end of 2012.

The market is currently regulated by the Ministry of Finance ('MoF') through its subordinate body, namely the State Securities Commission ('SSC'). The Vietnam Securities Depository Centre ('VSD') currently acts as a nation-wide depository centre for all types of securities (including corporate shares, government (including local government) and corporate bonds, and other types of securities).

Most recently, the SSC signed in early October 2013, the Multilateral Memorandum of Understanding ('MMoU'), with a view to having better access to high standards of securities-related regulations and practices and to be in a better position to cooperate with other members, and officially to become the 80th member of the International Organization of Securities Commissions ('IOSCO').

Although achieving certain developments over the past decade as highlighted above, the Vietnamese securities market, from the industrial point of view, is still a small-sized market in the region, which is to a large extent isolated and far from being well connected to and becoming part of the international and regional market network.

The Legal Framework

Realising the importance of the securities market for domestic purposes and a great need to connect the Vietnamese securities market to the international and global market network, the Government of Vietnam formulated an ambitious master plan for development of the market for the period from 2011, with a vision to 2020. In general, the master plan was based on the fundamental development principles, constituted by four major pillars, including: (1) forming a synchronous and consistent securities market system within the overall financial market of the country; (2) developing and expanding an organised securities market, a shrinking free market and at the same time making special efforts to ensure the quality and safety of the market, and to approach step by step international and regional standards and practices; (3) developing the securities market in a direction aligned with the reform and rearrangement of state owned enterprises to create more products in the market; and (4) conducting state management with legal tools and support policies, facilitating stable and firm development of the securities market, and developing the role of self-governing institutions and associations in order to ensure rights and legitimate interests and encourage the participation on a long-term basis, of various players and stakeholders in the securities market, in the future. The MMoU most recently



signed by the SSC in early October 2013, as mentioned above, is one of the ongoing achievements as targeted by the master plan based on the abovementioned fundamental development principles, which will place Vietnam closer to the international and regional community and their best standards and practices.

In parallel with the abovementioned master plan, Vietnam has built, step by step, a quite comprehensive legal framework related to securities and the securities market. The Securities Law (which was initially introduced in 2006) was amended in 2010, with a view to creating more favourable market conditions for all players in the new context of the market, and at the same time to make the law more consistent and to match Vietnam's commitments to the WTO in terms of opening its local securities market to the foreign community. To provide the necessary guidelines for the implementation of the amended Securities Law, a number of government decrees were subsequently issued in the last three years (i.e. 2010, 2011 and 2012). Among these are included Decree No. 01 issued in 2010 guiding the conduct of corporate private placement, Decree No. 01 issued in 2011 providing the legal framework for government bond issuance, Decree No. 90 issued in 2011 providing the legal framework for corporate bond issuance, and more importantly, Decree No. 58 issued in 2012 guiding the implementation of a number of articles of the amended Securities Law. To further provide the necessary guidelines for the implementation of the amended Securities Law and the above said government decrees, dozens of ministerial circulars were also issued by the relevant authorities, including the MoF, the SSC, the VSD, the HOSE/ HSX and the HNX in the past three years (i.e. 2010, 2011 and 2012) and this year in 2013.

Many believe that the legal framework so built and developed in recent years builds an important platform for the further development of the Vietnamese securities market in the coming year, and moves it a further step closer to the international and global market network.

The Market Opening to the Foreign Community

According to Vietnam's international and regional commitments and national laws, foreign (individual and corporate) investors are entitled to do business and have their investment in all permissible sectors in Vietnam. Foreign investors are free to decide whether their investment is made in the form of either foreign

direct investment ('FDI') (i.e. setting up new legal entities or acquiring shares in existing companies in Vietnam and being involved in corporate management) or foreign indirect investment ('FII') (i.e. acquiring shares in existing companies in Vietnam, but not being involved in corporate management).

In general, FDI and FII in production sectors which employ high technologies, generate less environmental pollution, and/or are located in areas with socio-economic difficulties are encouraged, without foreign ownership restrictions. FDI and FII in non-production or service sectors are conditional (i.e. foreign ownership restriction, market restriction, service restriction, etc.). However, with respect to foreign ownership restriction, there are differences between FDI and FII in some service sectors. At the moment, foreign ownership in the charter capital of a bank is not permitted to exceed the ceiling limit of 30% (in the case of FII), but it can be 100% (in the case of FDI), a securities company is not permitted to exceed the ceiling limit of 49% (in the case of FII), but it can be 100% (in the case of FDI), logistics (49% maximum, regardless of FII or FDI), telecommunications (49% maximum in the case of a facility-based business and 65% maximum in the case of a non-facility-based business, regardless of FII or FDI), aviation (30% maximum, regardless of FII or FDI),



etc. However, it is worth noting that foreign ownership in all public companies (including listed companies on HSX, HNX and UpCom) in Vietnam is not at the moment permitted to exceed the ceiling limit of 49%, regardless of whether the target companies operate in either the production or service sectors.

Foreign investors are free to invest in bonds, including both government and corporate bonds, issued in Vietnam, without limitation.

In addition to traditional products such as corporate shares and bonds as mentioned above, investment fund units can be at the moment an additional choice for foreign investors in Vietnam. Securities-based derivative products, though not being products in the market at the moment, will soon become products in the market in the future.

Foreign investors can make their own investment in Vietnam, under their own names, after opening investment bank accounts with banks licensed to operate in Vietnam, securities trading accounts with securities companies licensed to operate in Vietnam, and obtaining their securities trading codes (these are required for securities). At the same time, foreign investors can make their investment via investment vehicles such

as investment funds, investment companies or market intermediators, such as investment fund management companies and securities companies, which are licensed and operating in Vietnam. Along with the development of the securities markets, the recent introduction of public funds (including exchanged-trade funds, real estate investment funds and pension funds) and securities investment companies, in addition to private funds, provide foreign investors with more choices for their consideration for participation and investment in the Vietnamese securities market.

To facilitate Vietnamese companies seeking capital, not only in the local markets inside Vietnam but also in regional or international markets, the amended Securities Law permits some qualified public companies to offer, on a pilot basis, their shares in regional markets and list their shares on relevant regional stock exchanges. Some top-end companies on the stock exchanges of Vietnam (including Vinamilk and Gemadept) have planned to offer their shares in regional markets, including Singapore and Hong Kong, and are now finalising their plans to make them ready for further action. In addition, the Securities Law and its amendment permit some qualified public companies to consider and offer, on a pilot basis, products such as securities-backed depository receipts ('DRs') (including regional depository receipts ('RDRs') and global depository receipts ('GDRs')). Hoang Anh Gia Lai (one of the top-end companies on the stock exchanges of Vietnam) is the first company in Vietnam to successfully offer this type of securities to foreign investors, and via Deutsche Bank, its GDRs have been listed and are now traded on the Professional Securities Market ('PSM') of the London Stock Exchanges ('LSE').

Foreign investors will be encouraged to invest in all types of securities on a long-term basis in Vietnam.

What Will Happen Next?

The targets moving forward are (1) increasing the total capitalised value of the local securities market to about 70% of the GDP of the country by 2020, rendering the local bond market an important channel for mobilising and allocating capital for economic development; and (2) diversifying the types of investors, with a focus on professional (corporate) investors to ensure long term foreign investment channelled into Vietnam. A number of measures will be taken from now until 2020, including the following:

(A) Improvement of legal framework

A new Securities Law (to replace the current Securities Law of 2006 and its amendment of 2010) is scheduled to be presented and adopted by the National Assembly

in 2015, with a view to (1) providing a broader scope of application and a closer approach to international and regional standards and practices; (2) adjusting synchronously the securities market in all aspects so as to be better connected with the global capital markets; and (3) improving the securities laws and regulations and making them more consistent with the relevant laws.

(B) Restructuring the organisational model of the stock exchanges

The existing two stock exchanges (the HSX and HNX) will be merged into an unique stock exchange, in which the segments of the market will be clearly defined, including (1) the equity market; (2) the bond market; and (3) the derivatives market. In addition, the new stock exchange will be designed in a way that will link it closely with the VSD in order to provide investors with better support in terms of securities payments, clearing and deposits. All formats of information and reports as well as technical connection standards and requirements applicable to the stock exchanges and all market participants (including the VSD, custodian and clearance banks, securities companies, etc.) will be standardised, in order to meet international and regional standards and requirements for linking Vietnam's stock exchanges with other stock exchanges in the region.

(C) Development and diversification of types of investors

Professional (corporate) investors (such as real estate funds, exchange-traded funds, associated insurance funds, voluntary pension funds and some other types of investment funds) will be encouraged to be set up in Vietnam. With respect to foreign investors, they will be encouraged to invest in all types of securities on a long term basis in Vietnam, through policies on financial incentives (taxes and fees) and simplification of procedures for their investment registration.

(D) Extension of ownership for foreigners

While the foreign ownership restrictions in non-public companies will be removed step by step in accordance with the progress of opening the market, as already committed by Vietnam to the WTO and set forth under the relevant national laws, the ceiling limit of 49% as currently applicable to foreign ownership in public companies is now being considered. While the choice of foreign investors might be to have up to 100% foreign ownership, among the options being considered is that the voting shares offered to and held by foreign investors in public

companies would remain at up to 49%, as currently applicable, but foreign investors would be permitted to hold non-voting shares in a public company up to 100% of the charter capital of the company. Otherwise, DRs (including RDRs and GDRs) may be an alternative solution for non-voting shares as mentioned above.

(E) Diversification of products for the market

More securities products will be considered to be made available in the market, including convertible bonds, bonds with securities rights, investment-associated products and structured products. In addition, the markets of government bonds (including local government bonds) and corporate bonds will be further developed on the basis of linkages between initial public offerings ('IPO') in the primary market with trading in the secondary market. In particular, corporate bonds will continue to be developed in the direction of bonds secured by property or payment guarantees, convertible bonds and bonds with securities rights. A mechanism for securitisation will be introduced in Vietnam and built step by step to be consistent with regional markets. The derivative securities market will also be formulated step by step, with a few simple products at the beginning moving to more complicated products at a later stage, in which all derivative products will be based on or backed up by the original instruments, being securities, commodities and currencies.



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Ngoc is a partner of Vision & Associates with 19 years of legal advisory and business consulting experience. His particular strengths are in the fields of FDI, corporate/ M&As, banking & finance, securities/ capital market, private equity, and TMT. Ngoc is also active in several development projects carried out in Vietnam, funded/ supervised by donors.

The Long-Awaited New Trademark Law of China

The Third Amendment to the PRC Trademark Law was approved at the National People's Congress on 30 August 2013 and will be in effect on 1 May 2014. This article provides an overview of the main amendments which should be noted by those in the industry.

Time Frame for Trademark Examination

There is currently no provision in the Trademark Law that regulates the time frame for trademark examination. However, to enable the applicant to have greater clarity of time frame, the new law imposes time limits for the different stages of examination during the prosecution procedure:

- The preliminary examination (初步审查) must be issued within nine months from the date of application
- A decision on a review against refusal procedure (驳回复审) before the Trademark Review and Adjudication Board ('TRAB') will be issued within nine months of the filing date of the review. In special cases, such time limit is extendable by three months upon approval
- Oppositions (异议) must be decided within 12 months from the expiration of the publication date, and such period may be extended to 18 months upon approval
- Reviews against an opposition decision filed by the opposed party (不予注册复审) must be decided within 12 months from the date of request

Therefore, under the new law, smooth trademark applications should mature into registration within 15 to 18 months from the application date.

For examination of non-use cancellations, decisions must be made within nine months (extendable by three months with approval) from the date of acceptance. This is a welcome provision of certainty and predictability. However, there is still no procedure for the suspension of pending applications due to another examination



procedure. Therefore, the current time frame would still not address the issue that many trademark applicants face when trying to remove a cited mark through non-use cancellation procedures. This illustrates the continued importance of doing searches prior to trademark filings.

Bad Faith Registration

The new law codifies a previous Supreme Court interpretation on the scope of the principal-agent relationship, so that any attempt to register a mark by a party who (1) has contractual relationship, business transaction or other relationship with the trademark owner; and (2) should have known the mark of the trademark owner to register an identical or similar

mark, will be refused. The new law also clarifies that using another's registered trademark or unregistered well-known trademark within a trade name would be considered an act of unfair competition under the Anti-Unfair Competition Law.

Regulating Trademark Agents

The new law imposes a higher standard of honesty and fidelity on trademark agents. The law generally appoints the trademark agent body to regulate their members, but, in addition, provides specific and harsher penalties on the below activities. The trademark agent will be subject to a fine, or even may be subject to criminal sanction if the case is serious, upon violation of the following:

- forges, amends or uses forged or amended legal documents, seals or signatures;
- defames other trademark agents to attract business or uses similar means to disrupt the trademark agency marketplace; breaches the duty of confidentiality by disclosing any trade secret obtained as agent;
- fails to inform their client with clarity that their marks may not be registrable under the Trademark Law;
- fails to refuse to act if he/she knows or should have known that the intended trademark application would infringe upon another party's existing rights or unfairly obtaining trademark registrations for marks that he/she knows are used by others (trademark squatting behavior).

These measures are put in place precisely to address the issue in China whereby quite a large number of trademark squatters are trademark agents.

Opposition

In order to avoid unnecessary opposition by any unrelated parties, the new law only allows the owner of a prior right or an interested party to oppose a mark. Moreover, to avoid oppositions filed in bad faith, if an opposition fails, the opposed mark will be approved for registration and the opponent can only file a cancellation with the TRAB. This is a change to the current law whereby the opposed mark will remain unregistered if a review is filed. If on the other hand an opposition is tenable, the opposed mark will not be approved for registration and the opposed party can file an opposition review with the TRAB.



Well-Known Trademarks

- It is not uncommon to see products bearing the term 'well-known trademark' (驰名商标) or words bearing the same meaning used as a gimmick in the course of advertising by a trademark owner in China. Often, 'well-known trademark' is used loosely as an adjective denoting 'good quality' products and services. The new law strictly prohibits any labelling of the words 'well-known trademark' on products, product packaging or containers, or on advertisements, exhibition and other commercial activities by the manufacturer or trader even if the 'well-known trademark' status is obtained by the trademark owner through the court or administrative means.
- Although the amendments may curb unscrupulous advertisers from using the term 'well-known trademark' in the course of advertisement, they are silent on whether alternative similar terms such as 'China's top brand' (中國名牌) and 'famous trademark' (著名商标) can be used. Further, the law is unclear on whether the mere stating of the fact of obtaining the 'well-known trademark' status and the surrounding case facts are to be regarded as an advertisement. It will remain to be seen the extent to which the courts will enforce this.

Damages and Administrative Penalties

The new law increases the damages for trademark infringement cases to triple the claimed amount as opposed to just the claimed amount, which is calculated based on the actual loss suffered by the trademark owner or the profit earned by the infringer or by reference to the royalty fee for the registered mark. Moreover, the maximum statutory damages

To enable the applicant to have greater clarity of time frame, the new law imposes time limits for the different stages of examination during the prosecution procedure.

are to be increased to RMB 3 million, which is six times the current maximum of RMB 500,000. Further, if the trademark owner has tried his/her best to provide evidence, whereas the relevant books of accounts or information are kept by the infringer, the court can order the infringer to disclose such books of accounts and information.

For administrative penalty, the new law increases the fine for trademark infringements to five times the volume of the illegal business, or no more than RMB 250,000. If the infringer commits trademark infringement more than once within a five-year period or in any situation which is considered 'serious', the AIC should exercise its discretion to impose a heavy penalty.

A New Defence

The new law includes a new defence for the alleged infringer, and that is if the trademark owner did not use the registered mark in the past three years, and cannot provide evidence to prove its damages due to the infringing activities, the alleged infringer will not bear any liability for the damage. This increases the need for trademark owners to use their marks in China and to maintain evidence of the same regularly.

Scope of Infringing Goods and Instruments to be Confiscated and Destroyed

Under Art 53 of the current Trademark Law, upon the determination of a trademark infringement, the AIC shall confiscate and destroy any instruments specifically used to manufacture the infringing goods. However, the new law expands the scope of the instruments to be confiscated and destroyed. AICs are now empowered

to confiscate and destroy any instruments so long as they are mainly used to manufacture the infringing goods.

Single Colour Trademark

It was suggested in the previous drafts that single colour be registrable as a trademark. However, this suggestion is not supported by the NPC and will not be implemented under the new law. Colour combinations will still remain registrable as under the current law.

E-Filing and Multi-Class Filings

The new law allows multi-class filings and e-filings. Currently, e-filings are only possible for applications with standard specification items. It therefore remains to be seen how CTMO will implement the new e-filing system in the future.

Renewal of Trademark Registrations

Pursuant to the current Trademark Law, renewal applications shall be filed within six months prior to the expiration of the registration. The new law extends this to 12 months. However, the grace period remains the same, i.e. six months after the expiration of the registration to revive the registration.

Looking Forward ...

As in China, we expect there to be further Implementing Regulations and Judicial Interpretations on the finer details of the new provisions. Further, it remains to be seen how the courts and administrative bodies will interpret and implement the regulations. However, the new law provides us with a base for the long-awaited changes needed within the system.




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Vivien Chan is the senior partner of Vivien Chan & Co., a Greater China law firm with offices in Hong Kong and Beijing. She has over 30 years of experience in M&A, China direct investment, corporate services, employment, technology transfers, IT, IP and related tax issues.

Lack of Coherent Definition of 'Financial Institution' and 'Financial Services' under the Laws of Mauritius

The definition of what is meant by the terms 'financial institution' and 'financial services' under the laws of Mauritius should be considered because various enactments define these terms in various ways. This creates, in practice, a great deal of confusion for practitioners.



There is a lack of consistency ascribed to the expressions 'financial institution' and 'financial services' under the various enactments.

Both the Banking Act 2004 and Financial Services Act 2007 and other enactments in Mauritius have provided a definition of banking financial services and non-banking financial services and have designated their respective regulatory body, namely the Bank of Mauritius and the Financial Services Commission.

However, the provisions set out below show that there is a lack of consistency ascribed to the expressions 'financial institution' and 'financial services' under the various enactments which creates confusion. To date there is no

local case law considering this issue, even though non-banking and banking financial services have reached greater heights.

The different legislative definitions of 'financial institution':

The legislation in Mauritius provides many different definitions of the term 'financial institution', and they are namely as follows:

- The Banking Act 2004 defines a 'financial institution' as any bank, non-bank deposit taking institution or

- cash dealer licensed by the central bank.
- The Financial Intelligence and Anti-Money Laundering Act 2002 ('FIAMLA') defines a 'financial institution' as an institution, or a person (meaning a corporate person and not an individual), licensed or registered or required to be licensed or registered under (a) section 14 or 77 of the Financial Services Act; (b) the Insurance Act; or (c) the Securities Act.
- The Prevention of Corruption Act 2002 ('POCA') defines 'Financial institution' as an institution or person regulated by (a) the Financial Services Act 2007; (b) the Immigration Act in so far as it relates to section 5A; (c) the Insurance Act; (d) the Securities (Central Depository, Clearing and Settlement) Act; (e) the Securities Act 2005; (f) the Trusts Act 2001; and (g) the Unit Trusts Act.
- The Prevention of Terrorism Act ('POTA') defines a 'financial institution' as any institution or person regulated by the Financial Services Act 2007.
- The Financial Services Act 2007 does not define a 'financial institution' but speaks of 'any licence' issued under any relevant Act; and except where otherwise specified, includes (i) a Category 1 Global Business Licence; (ii) a Category 2 Global Business Licence; or (iii) a management licence. It also speaks of a 'licensee', which (a) means the holder of a licence; and (b) includes (i) any person authorised, registered or approved under the relevant Acts; and (ii) any institution established to provide any service under the relevant Acts.
- The Securities Act 2005 does not specifically define 'financial institution' but simply stipulates that 'financial institution' includes (a) a bank licensed under the Banking Act 2004; and (b) a corporation licensed by the Commission, other than a management company or a company licensed to conduct global business.

What is meant by 'financial services'?

Financial services generally refers to facilities such as savings accounts, leasing, money transfers, checking accounts, stock broking and insurance among others, which are offered by banks, credit unions, stock brokerage firms, insurance firms, as well as foreign exchange. Financial services are many, wide and varied, hence many institutions or organisations are involved in offering them. Other well-known financial services include debt resolution, private equity, and intermediation venture capital conglomerates as well as both private and public equity. In general, financial services relate to

all those issues which affect the circulation of money and how they interrelate.

The Financial Services Act 2007 does provide a definition of 'financial services', which includes the following: Assets Management, Credit Finance, Custodian Services (non-Collective Investment Scheme), Distribution of financial products, Factoring, Leasing, Occupational Pension Scheme, Pension fund administrators, Pension Scheme Management, Retirement Benefits Scheme, Superannuation Funds, Registrar and Transfer Agent, Treasury Management and such other financial business activity as may be specified in Financial Services Commission Rules.

The above exercise shows that Financial Services Law is not codified in Mauritius as compared to our Civil Code, Code de Commerce or our Criminal Code. The sources are found scattered in a confusing state made a) in various legislations made under Acts of Parliament, b) by way of Delegated Legislations (regulations made by Ministers or Authorities which have been vested with such powers) and c) by way of Case Law where for example in a recent judgment, 'M&A Aluminium Centre Ltd Vs The Mauritius Commercial Bank Ltd' 2009 SCJ 52, the Supreme Court, when referring to Section 40 (1) under the Banking Act 1988 headed 'Identity of customers', held that in looking at the identity of a customer a bank has the added duty to look at the credibility as well of that customer. The word 'Credibility' does not exist in the Act of Parliament but the Supreme Court has created it.



Siv Potayya
Founder, Wortels Lexus

Siv Potayya, the only prize winner in Banking Laws in Mauritius, graduated from Aix-en-Provence University and he was admitted to the Mauritian Bar in 1991. He worked at the Mauritius Commercial Bank Ltd for almost 14 years before joining private practice. He founded Wortels Lexus in June 2010. The drafting of various banking security documents led him to write materials and books on financial services law in Mauritius. The most recent, published in 2008, was *Guide to Decisions of the Supreme Court of Mauritius Affecting Banking (1861–2007)*, which contains a foreword by the Chief Justice of Mauritius. He is a part time lecturer at the University of Mauritius. More info on www.wortelslexus.com



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Hong Kong Says 'No' To Human Trafficking

On 1 November 2013, Hong Kong said 'no' to human trafficking at the Ending Human Trafficking Conference co-organised by the Hong Kong Federation of Women Lawyers (www.women-lawyers.org) and the Centre for Comparative and Public Law of the University of Hong Kong (www.law.hku.hk/ccpl/). Government officials, police representatives, consulate representatives, lawyers, NGOs and students were joined by women lawyers from Beijing, Shanghai, Guangzhou, Shenzhen, London, Singapore, the Philippines, and Peru, among others.



Mr Lai Tung Kwok, the Secretary for Security of the HKSAR, sent a strong message in his opening address on Hong Kong's continuous commitment to ending human trafficking. With coordinated efforts, active enforcement, international cooperation, and on-going dialogue with overseas counterparts and NGOs, Hong Kong has been preventing and combating human trafficking to ensure that we will not become a source, destination or transit point for human traffickers. Mr Lai shared that in the Global Slavery Index 2013, published by the Walk Free Foundation based in Perth, Australia, out of the 162 jurisdictions surveyed, Hong Kong is among the top 20 where modern slavery by population is the least prevalent. The recent amendment to the Prosecution Code of the Department of Justice to include guidelines on how to deal with human exploitation cases is also one step forward. However, with the transnational and complex nature of the problem, Hong Kong must remain vigilant and tap into the resources of the international community and all parts of the local community to join hands and further combat human trafficking.

The UN Women's keynote address gave us a global and Asia Pacific overview on human trafficking. The former Vice President of South Africa, Ms Phumzile Mlambo-Ngcuka, was recently appointed as UN Women Executive Director. She reiterated the gravity of human



Participants of the conference doing the gesture to say 'no' to human trafficking.

trafficking and the need for a commitment to ending it. Despite international human rights treaties and protocols, multilateral agreements and national laws, the scourge of trafficking continues and the traffickers are rarely prosecuted. She stated that it is time to criminalise all forms of trafficking of persons, to strengthen laws and to bring justice to the offenders and intermediaries involved. We need to take more action to prevent trafficking and address its underlying causes, including wider efforts to increase education, create decent jobs and provide social services and protection. It is crucial to generate a pervasive culture of respect for human rights and to advance gender equality.

The Regional Director of Asia and the Pacific of UN Women and human rights lawyer, Ms Roberta Clarke, stressed the importance of ensuring women's voices, experiences, interests and needs shape international and national laws as well as policies in order to end all forms of discrimination against women. There are different forms of trafficking, including the sex trade and the labour market. Sex trafficking accounts for 58 per cent

of all trafficking cases detected globally and for 44 per cent of cases in the Asia Pacific region. Sex trafficking has been addressed in human rights treaties consistently over the past 30 years. The Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW') considers sex trafficking a form of sex discrimination and a form of human rights violation. This is reinforced by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, attached to the UN Convention against Transnational Organized Crime, signed and/or ratified by some 14 member states from Asia and the Pacific. In the Asia Pacific region, there are also several multilateral agreements addressing trafficking and, at national level, at least nine countries in the region have trafficking laws. However, to end trafficking, Ms Roberta advised that countries must marshal their political will evidenced by an enlargement of voices speaking out against social exclusion and gender inequality. She advised that we should build partnerships, especially with men and boys, asking them to join in solidarity to increase women's freedoms and rights and to eliminate gender stereotypes that also restrict men's choices. We should



Mr Lai Tung Kwok, Secretary for Security HKSAR with FIDA Honorary Members Ms Elsie Leung and Ms Miriam Lau, HK FIDA Past Presidents Judge Wong Hing Chun, Sylvia Siu and Sandy Wong, President Anne Chen and Council Members, Professor Johannes Chan, Dean of the Faculty of Law of the University of Hong Kong, Professor Gu Minkang, Associate Dean of the School of Law of the City University of Hong Kong, Professor Puja Kapai, Director of Centre for Comparative and Public Law, Ms Stella Lau, Chairperson of the HKSAR Women Commission, Ms Amelie Heinsjö, Consulate General of Sweden, and Mr Huen Wong, Past President of The Law Society of Hong Kong and Vice President of the IPBA.

allocate sufficient resources, including for the prevention of corruption and state actor complicity which too often accompanies and facilitates trafficking. And we need oversight. Bar associations, women groups and NGOs can play a critical role, holding governments accountable for the development and implementation of laws, policies and practices to end discrimination against women in all its forms.

Other than Professor Puja Kapai of the Centre for Comparative and Public Law of the University of Hong Kong and Ms Phobe Lam, a social worker of the Diocesan Pastoral Centre for Filipinos, reporting on Hong Kong's status, speakers at the conference included Ms Zhang Wei, Vice Chairman of the Beijing Lawyers Association and Chairman of the Beijing Women Lawyers Liaison Association; Sister Juliana Devoy of Good Shepherd Macau; Director General Hsieh Li-kung, National Immigration Agency of Taiwan; Ms Priscilla Chan of Hagar Cambodia; Dr Sunitha Krishnan, Co-Founder of Prajwala India; Professor Aurora Javate de Dios, Executive

Director of the Women and Gender Institute of Miriam College Philippines; Mr Thomas Ahlstrand, Deputy Chief Prosecutor of the International Public Prosecution Office of Gothenburg Sweden; and Mr Matt Freidman, Regional Technical Advisor of The Mekong Club.

Speeches have been uploaded to our facebook page : <https://www.facebook.com/#!/GoMADXHT>. Have a look, 'like' us, write your comments and spread the word. End human trafficking! No violence to women!



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Sandy HY Wong is the Past President and Chair of the Womens Rights Committee of the Hong Kong Federation of Women Lawyers and an IPBA member.

IPBA New Members

September-November 2013

We are pleased to introduce our new IPBA members who joined our association from September 2013 to November 2013. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

Australia, Robert Tang
Allen & Overy

Canada, Andrew Stainer
Bull, Housser & Tupper LLP

Ecuador, Darwin Ariel Lopez Jumbo
Lopez & Associates

France, Emmanuel Bidanda
P3B AVOCATS

Hong Kong, Ricky Sun
Ribeiro Hui

India, Shardul Shroff
Amarchand & Mangaldas & Suresh A. Shroff & Co.

India, Piyush Gupta
Kochhar & Co.

Japan, Sadaharu Kato
Musashi Law Office

Japan, Tomoka Tamari
Mikata Law Firm

Japan, Hiroyuki Tanaka
Mori, Hamada & Matsumoto

Japan, Shinya Yoshida
Chuo Sogo Law Office, P.C.

Korea, Byoung Seon Choe
Shin & Kim

Korea, Young Ik Choi
Nexus Law Group

Lebanon, Fady Jamaledine
MENA City Lawyers (MCL)

Philippines, Reginald Jeremy Wan
Office of the Government Corporate Counsel

Singapore, Chien Mien Ho
Allen & Gledhill

Singapore, Rene Paul Ludovic Marie Koopman
Baker & McKenzie

Singapore, Sujatha Selvakumar
Straits Law Practice LLC

Spain, Victor Cortizo
Cortizo Abogados

Spain, Ferran Foix
Gómez-Acebo & Pombo Abogados, S.L.P.

Switzerland, Marc Blessing
Baer & Karrer AG

Switzerland, Maurice P. Choquard
Choquard Law Firm

Switzerland, Daniel Eisele
Niederer Kraft & Frey AG

Switzerland, Christoph Pestalozzi
Vischer Ltd.

Switzerland, Hansjörg Stutzer
Thouvenin Rechtsanwälte

Switzerland, Paul Thaler
Wenfei Attorneys-at-Law Ltd.

Switzerland, Dominik Vock
MME Partners

Switzerland, Nathalie Voser
Schellenberg Wittmer Ltd.

USA, Bruce Aitken
Aitken Berlin, LLP

USA, Christine Lee
Watt Tieder Hoffer & Fitzgerald

USA, Gina, Jee-Eun Kong Lin
Eimer Stahl LLP

Vietnam, Thi Thanh Xuan Nguyen
Vision & Associates Legal

Turkey, Bahadır Oktay
Oktay Law Firm

Publications Committee Guidelines for Publication of Articles in the IPBA Journal

Please note that the IPBA Publication Committee has moved away from a theme-based publication. Hence, for the next issues, we are pleased to accept articles on interesting legal topics and new legal developments that are happening in your jurisdiction. Please send your article to both **Caroline Berube** at cberube@hjmasialaw.com and **Maxine Chiang** at maxinechiang@leetsai.com. We would be grateful if you could also send a lead paragraph of approximately 50 or 60 words, giving a brief introduction to, or an overview of the article's main theme and a photo with the following specifications (File Format: JPG, Resolution: 300dpi and Dimensions: 4cm(w) x 5cm(h)) together with your article).

The requirements for publication of an article in the *IPBA Journal* are as follows:

1. The article has not been previously published in any journal or publication;
2. The article is of good quality both in terms of technical input and topical interest for IPBA members;
3. The article is not written to publicise the expertise, specialization, or network offices of the writer or the firm at which the writer is based;
4. The article is concise (2500 to 3000 words) and, in any event, does not exceed 3000 words; and
5. The article is written by an IPBA member. Co-authors must also be IPBA members.

Discover Some of Our New Officers, Council Members and Members



Jeffrey Robert Holt

Corporate Council, Saipem SA,
Montigny le Bretonneux
Chair, Energy and Natural
Resources Committee

What was your motivation to become a lawyer?

I undertook law studies in France and became a lawyer as it was a means to allow a former political science and French major from the United States to be able to work in the private sector in international affairs, especially in France. The study of law is not so different from the study of political science.

What are the most memorable experiences you have had thus far as a lawyer?

There are quite a few experiences up until today, but one which stands out is the following. The construction conglomerate I worked for had signed a public works construction contract in order to design and build a courthouse in Lagos, Nigeria. Unknown to any of us, half of the land where it was to be built had been sold two

weeks prior to the closing. We thus had to negotiate with the client in order to redesign the initially planned courthouse and had to find a suitable monetary arrangement in three weeks' time in order to keep to the construction schedule.

What are your interests and/or hobbies?

Football, historical works on Asia, Europe and North America (nineteenth and twentieth centuries), theatre, jazz and blues, travelling.

Share with us something that IPBA members would be surprised to know about you.

Actually, I have French ancestry on both my parents' sides. I am French by my mother and American by my father. That said, my father's paternal grandmother was French Canadian (Quebecois) and she crossed the border between Quebec and Vermont in her mid-teens. She then changed her last name from Delaroche to Rock and a few years after that married a then United States Army Colonel by the name of Holt.

Do you have any special messages for IPBA members?

To not forget that Europe, including but not limited to France, is a good friend of Asia.



Michael Burian

Partner, Gleiss Lutz, Stuttgart
Vice Chair, Cross-Border
Investment Committee

What was your motivation to become a lawyer?

When the time had come for me to start thinking about my future career, my main desire was to find a job that would allow me to work in an international environment with people from other countries and to have the opportunity to study and work abroad. This is why I decided to become a lawyer and to join a large law firm.

What are the most memorable experiences you have had thus far as a lawyer?

As a young associate, I worked on a large M&A

transaction as lead associate. The transaction kept me very busy for almost eight months, which included an extensive due diligence and intense negotiations, and ended exactly two days before a family holiday I had planned for more than half a year.

What are your interests and/or hobbies?

My hobbies are travelling, learning foreign languages and spending time with my family.

Share with us something that IPBA members would be surprised to know about you.

I never really wanted to study law but did not have any idea what else to study so my sister, who was already studying at that time, told me to study law and I simply followed.

Do you have any special messages for IPBA members?

Make use of the platform the IPBA offers you, build relationships and try to give something back to the IPBA by contributing to its success.



Riccardo G. Cajola

Partner, Cajola & Associati, Milan
Chair IP, Committee

What was your motivation to become a lawyer?

Working as a lawyer is an intellectually rewarding job. From helping to protect a trademark, to structuring trial strategy, to assisting in a complex merger, lawyers are problem-solvers, analysts and innovative thinkers whose intellect is material to career success.

What are the most memorable experiences you have had thus far as a lawyer?

Many deals and transactions come to my mind. However, a rewarding experience – though unrelated to the intellectual property field of law – was assisting in the first years of my career a French airline in connection with the bankruptcy of a former Swiss airline, which insolvency had business and legal consequences in most European countries and had to be dealt with and coordinated simultaneously. We were following several business interests in Italy of the client company on that occasion

and were able to successfully protect it in the complex cross-border insolvency scenario.

What are your interests and/or hobbies?

I would say sports in general such as running, skiing or swimming. I like reading novels as well. Among contemporary authors, several are my favourites, for instance Milan Kundera, Murakami Haruki, Ken Follett, Carlos Ruiz Zafon and Isabel Allende. When feasible, I like reading their books in their original language.

Share with us something that IPBA members would be surprised to know about you.

My family and I have been for several years sustaining members of the Orchestra Filarmonica of La Scala Theatre in Milan. We share a palco there during the philharmonic season and enjoy very much following the performances of the Orchestra.

Do you have any special messages for IPBA members?

Do get involved in the committees' activities. The IPBA has so much potential to offer to those members who are seeking to contribute to the success of the organisation. Attend regularly the meetings and conferences of the IPBA and have a long-term or mid-term strategy in reviewing your achievements.



Nguyen Thi Thanh Xuan

Partner, Vision & Associates, Hanoi

What was your motivation to become a lawyer?

Being a lawyer is intellectually stimulating and satisfies my love of playing by the rules. My clients are interesting and I like learning about their lives, businesses and practical experiences. It feels rewarding to solve problems that they have found intractable, although it can also be sad when I realise how many other obstacles many of them face. In addition, my career gives me a chance to speak on behalf of my clients in ways I could not otherwise do. I mean this not only literally when I go to court and represent them, protect their rights and legitimate

interests, but also in terms of the respect I get when I speak as a lawyer.

What are the most memorable experiences you have had thus far as a lawyer?

Two years ago, a client of mine (Mr. X) who was very wealthy, asked me to help him bring an action against his brother (an insane person who inherited all the properties from their late mother). Since Mr. X inherited nothing, he wanted the court to hold the will invalid and take all the properties. Mr. X said that whatever the fee was, he would be able to pay. However, as I thought that this case was contrary to both public ethics and the Rules of Professional Ethics and Code of Conduct that must be abided by as a lawyer, I refused to act as Mr. X's duly authorised representative.

What are your interests and/or hobbies?

My hobby is reading. I read story books, magazines, newspapers and any kind of material that I find interesting. Reading enables me to learn about so many things that I would otherwise not know. Thank to this, I

am better equipped to cope with living. Further, a lawyer will have to read a great deal of material when they take on a client. This may be court documents, witness testimony, contracts, case law, or a myriad of other texts. Thus, reading has certainly helped me not only in my daily life but also in my career.

Apart from reading, I am fond of listening to music. When I have free time, I often listen to my favorite songs from my laptop or cell phone. Music widens my knowledge and relaxes my mind after hours of hard work.

Share with us something that IPBA members would be surprised to know about you.

Women lawyers confide they often feel they must sacrifice their own personal needs to meet a never-ending stream of professional responsibilities. I am not the exception. As I have made changes to better balance my own professional and personal priorities, I have

sometimes been faced with some difficult decisions. For example, one of my goals is to leave the office no later than 6:00 pm (absent a significant emergency). In order to live up to this commitment, at times I have ended a conversation with my boss, walked out of a meeting or left the office without answering all my emails. Sometimes, I struggle with feelings of guilt: when I'm at work I feel guilty that I'm not at home and vice versa.

Do you have any special messages for IPBA members?

My male colleagues often have the support of a "stay at home" wife, which gives them the freedom to focus on their career in a way that I don't. As a woman, I feel like I need to work harder to demonstrate my commitment to my career. I do hope that the IPBA will develop and bring to my colleagues, especially other female lawyers like me, a chance to pursue their dream of becoming a successful lawyer.



Janet Yung Yung Hui

Partner, Jun He Law Offices, Beijing

What was your motivation to become a lawyer?

It is interesting to be a transaction lawyer who can assist clients to conclude deals based on the clients' preferred conditions. It is also a great satisfaction to be an antitrust lawyer in China, as we have experienced the evolvement of, and tremendous changes in, antitrust law development ever since the Anti-monopoly Law became effective in China. Other than that, being a lawyer is extremely challenging and exciting as the laws and regulations in China keep changing quickly.

What are the most memorable experiences you have had thus far as a lawyer?

The most memorable experiences as a lawyer include two matters. First, the completion of 100 legal DD reports within three weeks, where each batch of legal DD documents to be reviewed was more than 100 pages.

We managed to complete all of the legal DD reports on time and the client was very happy with the quality of the legal DD reports. Second, participating in various international conferences held in different countries and meeting lawyers from different jurisdictions.

What are your interest and/or hobbies?

Sleeping, eating, travelling, watching TV series and spending time with my family members and friends.

Share with us something that IPBA members would be surprised to know about you.

I am an idiot in most non-legal work matters and need to rely on my family members and friends to take care of me most of the time. I believe a good lawyer does not need to be good and strong at everything else. It is fine to remain incompetent on some other matters.

Do you have any special messages for IPBA members?

For a female lawyer married with children, it is very hard to have a balanced work and personal life, but this is achievable. We cannot be good, or even excellent, at our work without our family's love and support. My greatest happiness comes from my time with my family members and friends, not from work. Love your children by spending time with them: the best use of time is love, the best expression of love is time, and the best time to love is now.

Members' Notes

Anton G. Maurer

Juris Publishing published in June 2013 a revised edition of *The Public Policy Exception under the New York Convention*, written by our member Anton G. Maurer, LL.M. who is a partner with CMS Hasche Sigle in Stuttgart, Germany. The book explains how the public policy exception under Art V(2)(b) of the New York Convention is applied by courts in many economically relevant states, and especially in Brazil, Russia, India, and China. The revised edition also explores the landmark decision of the Indian Supreme Court in *Bharat Aluminium Co v Kaiser Aluminium Technical Service Inc.*

Fernando Hurtado de Mendoza

I had always heard about the spirit of the IPBA, the professional and personal qualities of its members and its friendship beyond boundaries. Allow me to share a gesture showing this to be true. Earlier this year I received a large volume on dispute resolution contributed to and written by my friend Tatsuki Nakayama. His legal skills are highlighted in the text, his personal qualities are known by many of you, and thanks to the IPBA our friendship crosses the globe despite distance – just as the amazing book that he sent as a gift. I look forward to seeing you all, and your IPBA spirit, in Vancouver!

Lawrence Kogan

The Philippines is internationally renowned for its legal framework regulating the marketing of breast milk substitutes and breast milk supplement products ('BMS'). However, a recent legal analysis performed by the non profit Institute for Trade, Standards and Sustainable Development ('ITSSD') found that the Philippine BMS Framework, while well-intentioned, overreaches and contravenes WTO law. See <http://new.itssd.org/library-publications-2013.html>

Stephan Wilske

Stephan Wilske is proud to announce that the book *Guerrilla Tactics in International Arbitration*, which he co-edited with Günther Horvath (Freshfields, Vienna) has been published. The idea for the book emerged when the editors addressed an audience at the Vienna Arbitration Days 2010, at which time they used the popular term 'guerrilla' – denoting such tactics as ambushes, sabotage, and intimidation – and called for effective means to combat tactics undermining the integrity and popularity of international arbitration. This book describes actual experiences from practitioners in all major legal systems and seeks to provide practical guidance for practitioners facing 'arbitration guerrillas'.

Wang Chunyang

In 2013, the fifth anniversary of promulgation of China's Anti-trust Law, the National Development and Reform Commission ('NDRC') of China has largely strengthened its enforcement in respect to anti-monopoly of price. Until today, four 'tickets' are well known of branded and top manufacturers which involve various industries such as LCD panels, milk powder, Chinese wines and gold jewellery shops in Shanghai. The NDRC has shown its confidence and is more experienced in its administrative supervision and enforcement. The market participants should take note that they may need to be more prudent on price policy for distribution systems in China.

Noah Klug

My name is Noah Klug and I am a lawyer in Melbourne, Australia with the firm Nevevtt Ford. I joined the IPBA in July and am very excited about participating in the organisation and getting to know its members. I practice immigration and employment law in Australia, areas that have seen significant changes over the past year. Even though the unemployment rate here remains relatively low at 5.7%, a protectionist attitude among politicians and the public has developed which has led to a significant tightening of restrictions in respect to employment-sponsored visas.



An Invitation to Join the Inter-Pacific Bar Association

The Inter-Pacific Bar Association (IPBA) is an international association of business and commercial lawyers who reside or have an interest in the Asian and Pacific region. The IPBA has its roots in the region, having been established in April 1991 at an organising conference in Tokyo attended by more than 500 lawyers from throughout Asia and the Pacific. Since then it has grown to over 1400 members from 65 jurisdictions, and it is now the pre-eminent organisation in the region for business and commercial lawyers.

The growth of the IPBA has been spurred by the tremendous growth of the Asian economies. As companies throughout the region become part of the global economy they require additional assistance from lawyers in their home country and from lawyers throughout the region. One goal of the IPBA is to help lawyers stay abreast of developments that affect their clients. Another is to provide an opportunity for business and commercial lawyers throughout the region to network with other lawyers of similar interests and fields of practice.

Supported by major bar associations, law societies and other organisations throughout Asia and the Pacific, the IPBA is playing a significant role in fostering ties among members of the legal profession with an interest in the region.

IPBA Activities

The breadth of the IPBA's activities is demonstrated by the number of specialist committees. All of these committees are active and have not only the chairs named, but also a significant number of vice-chairs to assist in the planning and implementation of the various committee activities. The highlight of the year for the IPBA is its annual multi-topic four-day conference, usually held in the first week of May each year. Previous annual conferences have been held in Tokyo (twice), Sydney (twice), Taipei, Singapore (twice), San Francisco, Manila, Kuala Lumpur, Auckland, Bangkok, Vancouver, Hong Kong, New Delhi, Seoul, Bali and Beijing attracting as many as 1000 lawyers plus accompanying guests.

The IPBA has organised regional conferences and seminars on subjects such as Practical Aspects of Intellectual Property Protection in Asia (in five cities in Europe and North America respectively) and Asian Infrastructure Development and Finance (in Singapore). The IPBA has also cooperated with other legal organisations in presenting conferences – for example, on Trading in Securities on the Internet, held jointly with the Capital Market Forum.

IPBA members also receive our quarterly IPBA Journal, with the opportunity to write articles for publication. In addition, access to the online membership directory ensures that you can search for and stay connected with other IPBA members throughout the world.

APEC

APEC and the IPBA are joining forces in a collaborative effort to enhance the development of international trade and investments through more open and efficient legal services and cross-border practices in the Asia-Pacific Region. Joint programmes, introduction of conference speakers, and IPBA member lawyer contact information promoted to APEC are just some of the planned mutual benefits.

Membership

Membership in the Association is open to all qualified lawyers who are in good standing and who live in, or who are interested in, the Asia-Pacific region.

- | | |
|--|---------|
| • Standard Membership | ¥23,000 |
| • Three-Year Term Membership | ¥63,000 |
| • Corporate Counsel | ¥11,800 |
| • Young Lawyers (35 years old and under) | ¥6000 |

Annual dues cover the period of one calendar year starting from January 1 and ending on December 31. Those who join the Association before 31 August will be registered as a member for the current year. Those who join the Association after 1 September will be registered as a member for the rest of the current year and for the following year.

Membership renewals will be accepted until 31 March.

Selection of membership category is entirely up to each individual. If the membership category is not specified in the registration form, standard annual dues will be charged by the Secretariat.

There will be no refund of dues for cancellation of all membership categories during the effective term, nor will other persons be allowed to take over the membership for the remaining period.

Corporate Associate

Any corporation may become a Corporate Associate of the IPBA by submitting an application form accompanied by payment of the annual subscription of (¥50,000) for the current year.

The name of the Corporate Associate shall be listed in the membership directory.

A Corporate Associate may designate one employee ('Associate Member'), who may take part in any Annual Conference, committee or other programmes with the same rights and privileges as a Member, except that the Associate Member has no voting rights at Annual or Special Meetings, and may not assume the position of Council Member or Chairperson of a Committee.

A Corporate Associate may have any number of its employees attend any activities of the Association at the member rates.

- Annual Dues for Corporate Associates ¥50,000

Payment of Dues

The following restrictions shall apply to payments. Your cooperation is appreciated in meeting the following conditions.

1. Payment by credit card and bank wire transfer are accepted.
2. Please make sure that related bank charges are paid by the remitter, in addition to the dues.

IPBA Secretariat

Roppongi Hills North Tower 7F, 6-2-31 Roppongi, Minato-ku, Tokyo 106-0032, Japan
Tel: 81-3-5786-6796 Fax: 81-3-5786-6778 E-Mail: ipba@ipba.org Website: ipba.org

See overleaf for membership
registration form





IPBA SECRETARIAT

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IPBA MEMBERSHIP REGISTRATION FORM

MEMBERSHIP CATEGORY AND ANNUAL DUES:

- Standard Membership ¥23,000
- Three-Year Term Membership ¥63,000
- Corporate Counsel ¥11,800
- Young Lawyers (35 years old and under) ¥6,000

Name: _____ Last Name _____ First Name / Middle Name _____

Date of Birth: year _____ month _____ date _____ Gender: M / F

Firm Name: _____

Jurisdiction: _____

Correspondence Address: _____

Telephone: _____ Facsimile: _____

Email: _____

CHOICE OF COMMITTEES (PLEASE CHOOSE UP TO THREE):

- | | |
|---|--|
| <input type="checkbox"/> Aviation Law | <input type="checkbox"/> Intellectual Property |
| <input type="checkbox"/> Banking, Finance and Securities | <input type="checkbox"/> International Construction Projects |
| <input type="checkbox"/> Competition Law | <input type="checkbox"/> International Trade |
| <input type="checkbox"/> Corporate Counsel | <input type="checkbox"/> Legal Development and Training |
| <input type="checkbox"/> Cross-Border Investment | <input type="checkbox"/> Legal Practice |
| <input type="checkbox"/> Dispute Resolution and Arbitration | <input type="checkbox"/> Maritime Law |
| <input type="checkbox"/> Employment and Immigration Law | <input type="checkbox"/> Scholarship |
| <input type="checkbox"/> Energy and Natural Resources | <input type="checkbox"/> Tax Law |
| <input type="checkbox"/> Environmental Law | <input type="checkbox"/> Technology and Communications |
| <input type="checkbox"/> Insolvency | <input type="checkbox"/> Women Business Lawyers |
| <input type="checkbox"/> Insurance | |

I AGREE TO SHOWING MY CONTACT INFORMATION TO INTERESTED PARTIES THROUGH THE APEC WEB SITE. YES NO

METHOD OF PAYMENT (PLEASE READ EACH NOTE CAREFULLY AND CHOOSE ONE OF THE FOLLOWING METHODS):

- Credit Card
 - VISA MasterCard AMEX (Verification Code: _____)
 - Card Number: _____ Expiration Date: _____

- Bank Wire Transfer – Bank charges of any kind should be paid by the sender.
 - to The Bank of Yokohama, Shinbashi Branch (SWIFT Code: HAMAJPJT)
 - A/C No. 1018885 (ordinary account) Account Name: Inter-Pacific Bar Association (IPBA)
 - Bank Address: Nihon Seimei Shinbashi Bldg 6F, 1-18-16 Shinbashi, Minato-ku, Tokyo 105-0004, Japan

Signature: _____ Date: _____

PLEASE RETURN THIS FORM TO:

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