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IPBA NEWS AND LEGAL UPDATE



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IPBA JOURNAL

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The President's Message



Dear Colleagues,

In my message posted in the *IPBA Journal* June 2011 issue, I listed eight items as my goals for my term as the IPBA president:

1. Create more networking opportunities, increase IPBA membership and ensure good attendance at the New Delhi 2012 IPBA Conference

IPBA President-Elect Lalit Bashin (the Chair of the Host Committee) together with IPBA Past President Ravinder Nath are actively preparing for the next IPBA Annual Meeting and Conference. As India is now one of the most attractive jurisdictions in the world for business people and business lawyers, I am sure we will have very good numbers in attendance. The Host Committee expects about 1200 participants at the conference and this, in turn, will encourage an increase in IPBA membership and more networking opportunities.

2. Organise more activities in each jurisdiction (seminars, receptions etc)

Members of the 2012 New Delhi Host Committee will be visiting many cities worldwide to promote the New Delhi 2012 IPBA Conference. They will hold seminars and/or receptions during their visits to other jurisdictions. I hope our members and friends will cooperate with members of the New Delhi Host Committee to organise the seminars and/or receptions. IPBA President-Elect Lalit Bhasin with some members of the Host Committee will visit Osaka on 13 October, and IPBA members in Osaka will hold a seminar focusing on dispute resolution and cross-border investment in India, followed by a reception. They will also visit Tokyo on 14 October, and the Indian Embassy in Tokyo will be hosting delegates from India and Japanese IPBA members at their embassy.

3. Develop relationships with other international organisations

The POLA Conference in Taipei
From 13-15 June, I attended the 22nd Presidents of Law Associations in Asia

(POLA) Conference in Taipei. The Taiwan Bar Association with other local bar associations hosted this conference. The leaders of the bar associations discussed various topics, including 'Judicial Reform Updates and Prospects', 'Rule of Law' and 'Multi-Jurisdictional Practice for Asian Lawyers'. The attendees also visited the Constitutional Court. The next POLA Conference will be held in Manila in 2012.

The IPBA Joint Programme at the IBA Annual Conference in Dubai

The IPBA will host a joint programme at the IBA Annual Conference. The programme is 'Asian Investment in the Middle East'. I appreciate the continuous effort for such joint programmes organised by our committee leaders. I will be attending the IBA Annual Conference in Dubai.

The ABA

Mr Gerald Libby, Past President of the IPBA, attended the annual meeting of the ABA in August.

UNCITRAL

Mr Ken Stuart, Jurisdictional Council Member for USA, attended the 11-15 April Session of the Working Group for UNCITRAL in New York.

The AIJA

Under the Friendship Agreement with the AIJA, Mr Urs Lustenberger, Committee Coordinator, attended the AIJA Conference 2011 held in August in Amsterdam.

4. Develop closer relationships with local bar associations in each jurisdiction

In the event of a visit by the Host Committee of the New Delhi 2012 IPBA Conference to various jurisdictions, I would like to make an appeal to local members of the IPBA in the relevant jurisdiction to actively cooperate with their local bar association(s). Cooperation with local bar association(s) through the events will develop and strengthen the relationship with the IPBA.

5. Collaborate with APEC

The APEC Summit Meeting will be held in Hawaii from 9-14 November. We would like to organise some seminars or other events with APEC. The Chairman of the IPBA APEC

Special Committee, the 11th IPBA President, Nobuo Miyake, left the hospital at the end of July and is undergoing a rehabilitation process. I wish him a speedy recovery so that he can continue his work and collaboration with APEC.

6. Increase the number of 'corporate counsel' members

About 100 corporate counsels attended the 2011 Annual Meeting and Conference in Kyoto/Osaka. Given the important status of India for corporations, I believe more corporate counsels will attend the New Delhi 2012 IPBA Conference. I urge members of the Host Committee to make every effort to solicit the attendance of corporate counsels.

7. More opportunities for younger members

India is a very active and dynamic jurisdiction that can attract younger potential members. I urge all IPBA members to ask your younger colleagues and friends to participate in the New Delhi Conference and to take an active role in the IPBA.

8. Development of scholarship activities

The IPBA Mid-Year Council Meeting 2011 will be held in Hanoi. The number of IPBA

members in Vietnam has been steadily increasing and holding the Mid-Year Council Meeting there will enhance the recognition of the IPBA among Vietnamese lawyers. We are very pleased to report that some former scholars selected from developing jurisdictions are now strong supporters of IPBA activities in their jurisdictions and Vietnam is a conspicuous example of such support by former scholars. The IPBA Scholarship Committee will develop its activities and the Japan Fund established this year will assist with those activities.

The New Delhi 2012 IPBA Conference

Since the last Annual Meeting and Conference in India in 2003, India has shown great development. Our annual conference will be held from 29 February to 3 March, 2012 in New Delhi. The Host Committee, headed by President-Elect Lalit Bhasin and many Host Committee members supporting him, is working very hard to make sure that the IPBA will achieve another successful annual conference in India.

I hope to see all of you there, especially those who could not come to Kyoto this year.

Shiro Kuniya
President

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 by *11 November 2011* to both **Kojima Hideki** at kojima@kojimalaw.jp and **Caroline Berube** at cberube@hjmiasialaw.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 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, specialisation, 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.

The Secretary-General's Message



Dear IPBA Members,

By the time you are reading this message, the officers and council members of the IPBA will have completed its Mid-Year Meeting in Hanoi, Vietnam. A Mid-Year Meeting was originally planned to

be held in Hanoi in November 2008 but torrential rains that caused major flooding in the city led to the cancellation of that meeting. Upon further planning by the Secretariat and the officers of the IPBA, the IPBA was able to hold its meeting at the Melia Hanoi Hotel. Details will be reported in my next message.

The Annual Conference – New Delhi 2012

In the meantime, the New Delhi Host Committee is deep into its planning for the 2012 Annual Conference to be held in New Delhi, India from 29 February to 3 March, 2012. The topic of the conference will be *Legal Trends, Thoughts and Times*. China and India have now assumed major roles in the world economy. China has now surpassed Japan in terms of Gross Domestic Product and is now the second leading economy in the world. India's economy is growing significantly.

You should plan on attending the Annual Conference in Delhi and encourage your colleagues to do so as well. At this conference, you can learn about this region's economy, trade and legal issues and perhaps find opportunities there. The 2012 Annual Meeting and Conference in India will undoubtedly build upon the accomplishments of the past two conferences in Singapore and Kyoto to provide innumerable opportunities for IPBA members.

The Third Decade

The IPBA, which was organised in 1991, has entered its third decade of existence.

The first annual conference was held in April 1991 in the aftermath of the Persian Gulf War. With lingering fears that people would be hesitant to travel in such times, the Host Committee for the first conference needed to arrange a venue for the conference. Three hundred and fifty hotel rooms

at the Tokyo Bay Hilton Hotel were reserved under the individual name of Nobuo Miyake, our first Secretary-General and 11th President, since the IPBA did not exist as an organisation at that time. If the attendees had not shown up, Mr Miyake would have ended up with a hefty hotel bill. Fortunately, the first annual conference was attended by 519 individuals, and the IPBA was on its way.

In the 10th Anniversary Commemorative Issue of the *IPBA Journal*, issued in 2001, the then President-Elect, Nobuo Miyake wrote: "As Mark Shklov perfectly commented in an article in the *IPBA Journal* (Issue No 6, December 1997), the IPBA has been characterised by friendship, fellowship, candid discussions, sensitivity to each other's ideas and opportunities for expression. The IPBA has had dedication, devotion and love from its members, and I firmly believe that it is these intangible assets that form the traditions of the IPBA and which shall be carried forward into the 21st century."

Mr Miyake's comments are most applicable 10 years later. For those of us who have been involved with the IPBA for many years, the 'intangible assets' are certainly a major reason we remain involved with the IPBA.

In our third decade, the IPBA continues to look forward to more and better ways to benefit its members. The M&A Conference held in Hong Kong each spring has become a fixture in the international legal education circuit. We will be looking to possibly develop other programmes of such stature possibly in Competition Law which may lend itself to cooperation with other organisations that may have expertise in the area.

The strategic planning that was started after the annual conference in Bali in 2005 which resulted in the IPBA Manual for officers and council members will be revised. The revision of the IPBA Manual is under way with the able assistance of Mr Jerry Sumida, our immediate past Secretary-General, and Mr Wai Ming Yap, our current Deputy Secretary-General.

The Legal Development and Training Committee, which had fallen on lean times will be revived under the leadership of Mr Larry Foster, former Dean of the University of Hawaii School of Law. Suggestions on how we may be best able to foster legal development and training in the jurisdictions of the IPBA will be welcomed.

The IPBA website is undergoing changes

to keep up with developments in technology under the leadership of Sylvette Tankiang, our Webmaster. Members can look forward to a more user-friendly website that will allow our members to access more information.

The relationship with the Asia Pacific Economic Cooperation that started with the friendship agreement that was executed in Kyoto will be an ongoing benefit for members with APEC gaining access to membership information where the members have approved such access. Other projects with APEC are also being planned for the future.

We are now well into the 21st century, and the

IPBA will remain committed to exploring the most current and critical legal issues of our time for its members. But at the same time, the commitment to the ‘intangible assets’ noted above will continue as the IPBA moves on into its third decade of cultivating more opportunities for its members. I personally look forward to joining all of you in this journey into the future of the IPBA.

Aloha Nui-Loa,

Alan S Fujimoto
Secretary-General

IPBA Event Calendar

Event	Location	Date
IPBA Annual Meeting and Conference		
22nd Annual Meeting and Conference	New Delhi, India	Feb 29–Mar 2, 2012
23rd Annual Meeting and Conference	Seoul, Korea	TBD
24th Annual Meeting and Conference	Vancouver, Canada	TBD
IPBA Mid-Year Council Meeting		
2011 Mid-Year Council Meeting for Officers and Council Members	Hanoi, Vietnam	Sep 2–4, 2011
Joint Program		
“Asian Investment in the Middle East” at the IBA Annual Conference	Dubai, UAE	Oct 31, 2011
Supporting Events		
Beacon’s 4th Annual Anti-Corruption South & SE Asia Summit	Singapore	Sep 13-15, 2011
ABA and LACBA’s “IP Meets the Pacific Rim: Cross-Border Branding in an Era of Multi-Platform Licensing, Privacy, and Trade Secrets”	Los Angeles, California, USA	Sep 21, 2011
HKIAC’s ADR in Asia	Hong Kong	Sep 28, 2011
AIPPI Forum & ExCo 2011	Hyderabad, India	Oct 11, 2011
China Entrepreneurs’ China-US Cross-Border M&A Forum	New York, New York, USA	Oct 20, 2011
IBC’s Asia Pacific Transfer Pricing Summit	Hong Kong	Oct 20–21, 2011
Beacon’s 6th Anti-Corruption China Summit 2011	Beijing, China	Nov 15–17, 2011
innoXcell’s Asia Supply Chain and Procurement Fraud Exchange	Shanghai, China	Nov 16, 2011
IFLR’s Asia M&A Forum	Hong Kong	Feb 22–23, 2012

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

The Honorable Tun Dato' Seri Zaki Tun Azmi, Chief Justice of Malaysia



Caroline Berube



Dhinesh Bhaskaran

On 23 February 2011, we were given the opportunity to interview The Honorable Tun Dato' Seri Zaki Tun Azmi for the *IPBA Journal*.

Interviewed by Caroline Berube*
Managing Partner, HJM Asia Law & Co LLC

Interviewed by Dhinesh Bhaskaran
Partner, Shearn Delamore & Co

Q: Thank you very much for taking time out of your busy schedule for this interview. I would like to begin by asking about your motivation to become a lawyer and to read law?

A: My father was a lawyer who became a judge and subsequently, the third Lord President of Malaysia (Chief Justice). I wanted to do economics but my father insisted that I read law. Besides practising law, a bachelor of law can also be treated as a general qualification. If I was not able to get a job, I could still open a small office and run a law practice. I have no regrets about this decision. I really enjoyed being in private practice for 22 years before accepting the judgeship.

Q: What are the most important qualities that a good lawyer should possess?

A: Honesty and integrity. These are the very important elements that every lawyer should possess and are essential to gain the public's trust. Public trust is important, since the public entrusts lawyers with their properties and possessions. For corporate lawyers, knowledge about business is also very important, but honesty and integrity is paramount.

Q: What are the most important qualities that a good judge should possess?

A: Judges, just as with lawyers, should possess the qualities of honesty and integrity – these are qualities expected from every judge by the public. I would like to quote from my late father who said: "The parties appearing before the judge expect to be given a fair and full hearing, and not a biased hearing." A judge is expected to be patient and honest and to make fair make decisions to the best of his abilities. Recently, there was a case where a lady was suing for damages because she had suffered, but no lawyer wanted to act on her behalf because the record of appeal was incomplete.

* Caroline Berube is currently serving as the Vice-Chair of the Inter-Pacific Bar Association's Publications Committee.

Although we ultimately had to dismiss the action due to an incomplete record, we listened to her patiently and hope she felt like she was given a fair hearing in the end.

Q: Given that fact-finding is an important skill that judges must use to render judgments, do you have any advice on how lawyers who hope to become judges can improve this skill?

A: In my opinion, an experienced litigation lawyer should be able to evaluate the facts presented by both parties and genuinely come to a conclusion approximating the decision of the judge. A good litigator must assess the facts so that he or she can plan his or her strategy accordingly. My advice for young lawyers who wish to improve their fact-finding skills is to develop these through their own experiences. This skill is not something you can read from the books, it is something that needs to be improved through experience.

Q: In the United States, which is a country with many minority communities, the judiciary includes judges from such minority communities. In Malaysia, which is a nation with a multi-racial population, is there a focus placed on ensuring that minority communities are represented in the judiciary?

A: Malaysia is a country with a diverse population. Our population is divided into different languages, cultures, food, apparel and a lot more. We have the Malays, the Chinese, the Indians and also the native population from Sabah and Sarawak. We have been living peacefully together for many years. Therefore, we believe it is important that these communities are represented in the judiciary, and we try to retain the same proportion of these

communities in the judiciary in our appointment of judges.

One of the problems that I am facing is getting good lawyers from private practice to join us. Most of our judges are promoted from judicial and legal services, such as magistrates and session court judges. The majority of these are Malay and only a small number from the services are non-Malay. Although our judges are now relatively well-paid, one of the difficulties we face when inviting non-Malay practitioners in private practice to join the judiciary is that there are not many good lawyers willing to leave their lucrative private practice to become a judge. When I set up a panel to sit in the Federal Court, we do our best to have judges from different communities. However, since we do not have enough judges from various communities, we cannot achieve this structure each time. We will continue our efforts to ensure that minority communities are represented in the judiciary, but I am proud to say that we have not received any complaints from the Bar saying that our judges' decisions are based on religion, race or language. The primary goal is to ensure that we appoint competent and fair judges to hear the trial or appeal.

Q: I understand that until recently, the Malaysian Judiciary faced some challenges from its administrative system, such as a backlog of cases etc. However, I was also informed that you have transformed the entire system in a remarkably short period of time. Can you expand on the changes that were made, and how you were able to implement these so quickly?

A: Since I joined the judiciary, I have been fortunate enough to work with a team of very qualified individuals, such as Tan Sri Arifin

Table 1: Overall Registration, Disposal, and Pending Cases

Court	B/F from 2008	CIVIL CASES			B/F from 2008	CRIMINAL CASES		
		Pending 2009 (as at 1 Jan 2010)	Pending 2010 (as at 1 Jan 2011)	Pending 2011 (as at 1 May 2011)		Pending 2009 (as at 1 Jan 2010)	Pending 2010 (as at 1 Jan 2011)	Pending 2011 (as at 1 May 2011)
High Court	95,523	44,873	33,639	28,254	4544	3514	3313	3738
Sessions Court	94,554	61,659	47,841	46,546	8750	9377	7992	6997
Magistrates Court	156,053	71,681	66,791	54,198	665,221	53,087	28,920	22,882

Zakaria, the Chief Judge of Malaya, and others who contribute helpful ideas and assist with this on-going project.

When the project was first introduced, we managed to reduce the outstanding High Court civil cases in 2008 from 95,283 cases to 28,254 cases (see Table 1). Generally, our courts have cleared most of the backlog and we are looking at the aging cases now so that the old cases can be

disposed of earlier.

Apart from that, there is one very interesting aspect that I would like to share. In September 2009, we introduced the new Commercial Courts in Kuala Lumpur. All the commercial cases in the High Court have to be registered through the new Commercial Courts. Two judges were appointed for this new court, and the cases are heard in the new Commercial Court within a period of nine months,

Table 2: New Commercial Courts (Pending According to Month)

	Monthly Registration	NCC : MONTHLY PENDING																					
		2009				2010								2011									
		Sep	Oct	Nov	Dec	Jan	Feb	Mac	Apr	My	Jun	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mac	Apr		
2009	Sep	289	282	252	174	114	88	76	39	26	15	4	4	4	3	2	2	1	0	0	0	0	
	Oct	389		372	334	259	131	99	77	48	32	15	5	3	1	1	1	1	1	0	0	0	
	Nov	328			306	277	237	103	74	53	34	12	5	3	2	2	0	0	0	0	0	0	
	Dec	363				342	308	266	145	90	57	40	19	11	5	3	1	1	0	0	0	0	
2010	Jan	289				285	255	168	127	105	76	62	41	31	17	10	9	8	8	6	5		
	Feb	299					287	252	160	139	88	70	62	37	26	22	14	8	7	5	3		
	Mac	426						412	355	273	201	161	136	87	58	41	29	13	10	9	8		
	Apr	370							356	336	241	170	125	85	52	39	30	16	5	2	2		
	May	367								348	308	232	168	124	84	59	40	29	21	15	14		
	Jun	361									341	296	235	148	108	86	54	37	26	18	8		
	July	345										327	265	199	119	90	67	50	39	29	16		
	Aug	352											339	306	210	116	84	61	48	42	35		
	Sep	317												288	227	127	86	51	26	13	5		
	Oct	345													315	254	163	94	52	26	8		
	Nov	357														327	274	148	104	71	45		
	Dec	369															360	293	172	98	59		
2011	Jan	336															329	259	135	78			
	Feb	222																215	149	78			
	Mac	362																	340	234			
	Apr	315																		292			
TOTAL		6801																				CURRENT PENDING CASES:	890

although there are a few cases that have taken up to one year. For example, of the 289 cases that were registered in September 2009, only three remained in September the following year (see Table 2). Most (98%) of the 1369 cases registered were either withdrawn, settled or received judgment in default etc (see Figure 1).

The judges and the registrars monitor the registered cases very closely. If a plaintiff fails to serve the defendant after three months, they will be called-up and asked why. We are also very strict with the calendar deadlines – once we fix the case for hearing, the date is set. In fact, the Bar complained that we are overly strict with regard to postponements, but I do not agree, and it seems that many lawyers are quite happy with the way the judges deal with postponements.

While we are disposing of the new commercial cases in the new Commercial Court, the old commercial cases will continue to be disposed of as well. By March 2011, which was only a year and a half from the introduction of the new Commercial Courts, we had cleared most of the cases in the old commercial courts (see Figure 2).

In light of the successful results achieved in the new Commercial Courts in Kuala Lumpur, we are now introducing this system to all of the other states throughout the country. Our target is for all cases to be current by the end of this year. This means that all civil cases in the High Court will be disposed of within nine months to one year, Session Court within nine months, and the Magistrates' Court within six months. For criminal cases, it is slightly different because every criminal case must be heard at a full trial with witnesses.

In addition to the new courts, we have

increased the appointment of judges and have also introduced a computerised system, whereby any hearing in open court is now recorded by way of an audio-visual recording. Previously, judges had to take down notes, which greatly slowed the hearing process. However, with the new system, this is no longer an issue, and we eventually aim to have all our courts go paperless. We have also restructured the work management for our support team. We have organised our files in a proper order so that even if the employee-on-duty is on leave, others will be able to locate the files.

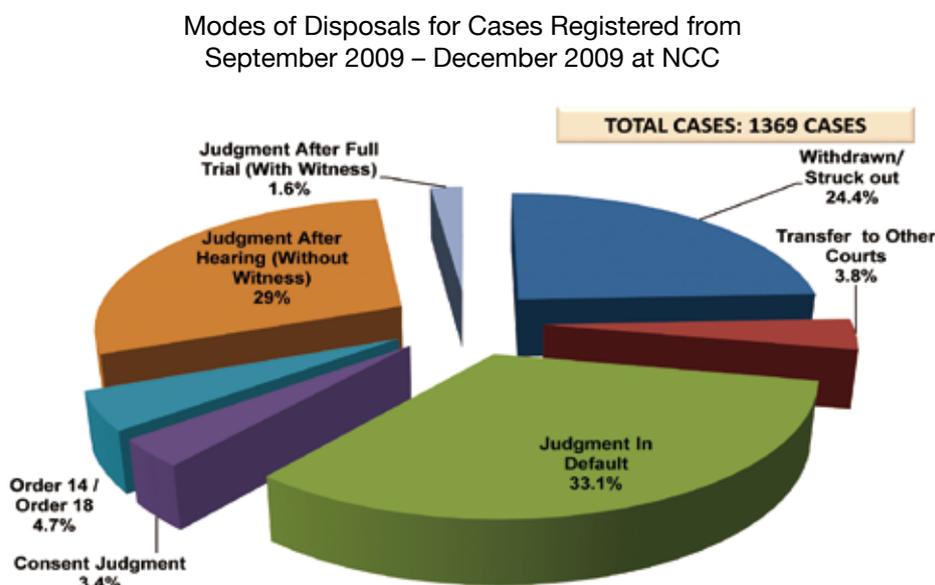
We also provide training to the judges on a regular basis, which has greatly improved the quality of judgments. For criminal cases, we are working closely with the police force to make sure that the cases are ready for trial.

As a part of case management, we went through every individual file to check their status. We realised that a large number of the files could be closed because the case had expired, been withdrawn, or the parties had reached a settlement. Hence, the court must be active in checking the status of cases. In doing so, we have appointed senior judges as Managing Judges to monitor the courts.

Another important point to note is that we now encourage mediation led by judges. Through mediation, we have even been able to close some files from the Court of Appeal and the Federal Court.

By implementing all these changes at the same time, we have greatly reduced the backlog of cases. No doubt all these changes require a lot of my time and commitment, but I am very pleased with what we have been able to achieve so far.

Figure 1: Modes of Disposal of Cases



Q: Your background is really a combination of judicial and legal services, private practice with exposure to the corporate world, so on and so forth. How has your varied background assisted you in dealing with the problem?

A: My role here is primarily management, and I have gained experience in this from my 22 years in the private practice. I was on the boards of publicly-listed companies and I have chaired the boards of audit committees and other management committees. My management approach, which I share with my fellow judges, is that: “One cannot manage a shop if he does not know what he has in his inventory.” This was why we took the effort to go through the files individually. I am proud to say that most of the judges who are assisting me in the management have adapted to my management style very quickly. Tan Sri Arifin often contributes constructive management ideas.

Q: We have seen an unprecedented level of accessibility to the judiciary by members of the public in terms of complaints or issues they may have. They can even find the email addresses of judges on the judiciary website. How do you think increasing public access has improved the administration of justice in Malaysia?

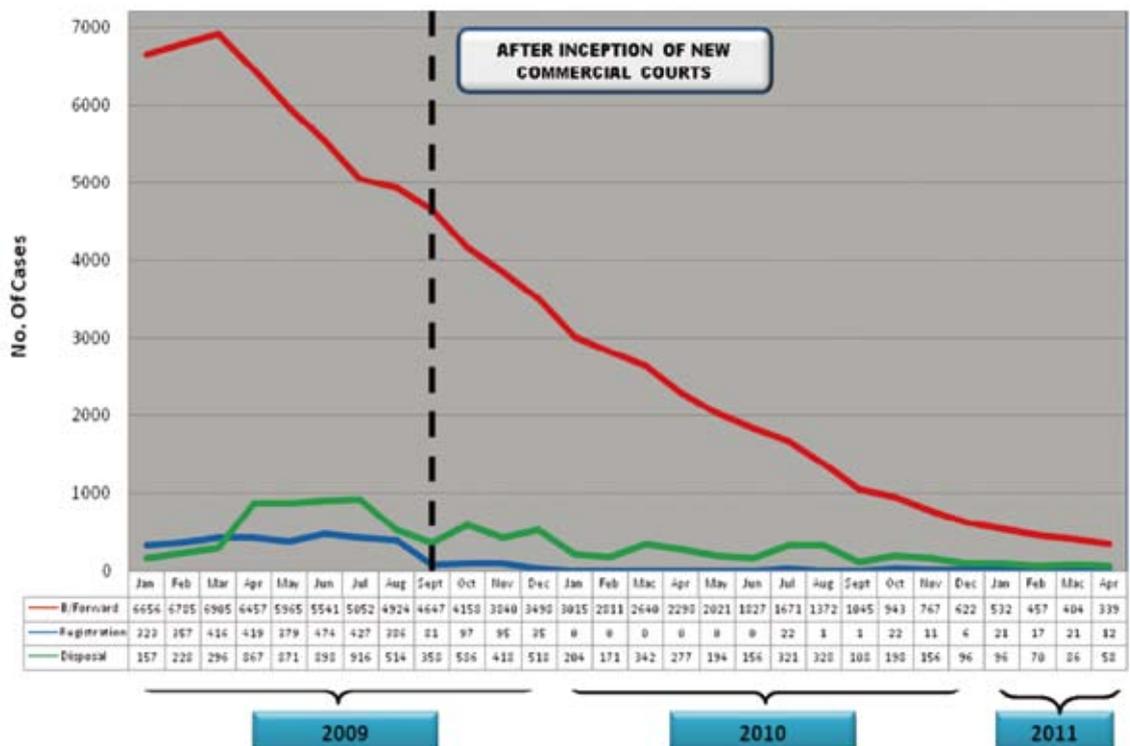
A: With this feature, we can attend to complaints

and take immediate action. For example, Tan Sri Arifin received a handwritten complaint that was faxed to his office saying that no other judges were willing to hear a case while the judge-in-charge was away. Tan Sri Arifin took immediate action and that case was heard before the end of the day. We believe public access to the judiciary is very important and we take all complaints we receive very seriously, no matter how big or small the complaint. Our goal is to resolve the problem before it gets out of control.

Q: As this interview will be published in the *IPBA Journal*, do you have any specific message for IPBA members?

A: The IPBA is a proven organisation which will foster a closer rapport amongst lawyers within the Asia-Pacific region. This will lead to the development of laws, as lawyers and judges will learn from each other regarding the laws of neighbouring and regional countries. As business becomes increasingly global, the good practices of the judiciary of one country should be imitated by others. We can see how England has developed its common law by introducing, consciously or otherwise, civil law principles. Malaysia too should look at developments in other countries, such as the good aspects of Japanese law, and incorporate these into Malaysian law where appropriate.

Figure 2: Chart of Pending Cases at the Old Commercial Courts



Efficient Arbitration and Best Practices: An Indian Perspective



Ad-hoc arbitration or institutional arbitration, which is preferred in India? This and other questions are answered in this article which examines efficient arbitration best practices from an Indian perspective.

Kumkum Sen

Partner, Bharucha & Partners

As a newly-appointed Committee Co-Chair, I felt there could be no more befitting tribute than to use the material I had collated for my presentation for the Arbitration Committee Session on Efficient Arbitration Best Practices at the Kyoto Conference to write this article. The article is written in a Q&A format devised by the Moderators.

Ad-hoc Arbitration vs Institutional Arbitration, which is preferred?

Both processes have their own set of advantages and drawbacks. The preferred option would depend on the parties, the nuances of the contractual relationship and the anticipation of the possible areas of disputes that may emerge.

Ad-hoc Arbitration

Ad-hoc arbitration, if properly structured with agreed procedures including lucid outlines for submission of pleadings and documents, sanctity

of agreed timelines/dates, costs on adjournments, a restriction on the number of sittings, conclusion and delivery of award, is the perfect model. In an ideal situation, ad-hoc arbitration is more efficient because the mechanism is specifically structured for a particular subject matter. If the parties cooperate, it works out cheaper and faster because no administrative fees are payable. Ad-hoc arbitration agreements usually provide for procedures which are specific to a party's business and provide time frames, rendering the ADR process meaningful and not an expensive post closure formality.

Ad-hoc arbitration is common in project contracts, where the performance of the contract itself involves potential areas of dispute. The triple-tier dispute resolution mechanism is structured with the intent to escalate only major issues for determination before the tribunal. Large corporations often have dedicated and trained teams which are committed to arbitration management as the customised negotiations.

The drafting of provisions may involve time and expense in case it does not work, and litigants very often end up paying far more than they budgeted

for with delays, legal costs and undue engaging of executive time. The absence of a secretariat often imposes an administrative burden on the parties.

Institutional arbitration in India is still in its infancy. Resorting to ad-hoc arbitration is a Hobson's choice, largely because of the absence of domestic institutional options. Yet historically, this is not entirely correct. Merchant guilds, Panchayats and similar structures have been traditionally prevalent in India. There is a sense of mistrust of foreign jurisdictions and courts on the part of the parties, who are unfamiliar with the structure, and this is coupled with perceptions and misgivings arising from earlier experiences.

Institutional Arbitration

With cross border business interactions on the rise, parties are realising the benefits of Institutional Arbitration and using a 'tried and tested' process, and a proven set of terms and conditions to rely upon.

Advantages

- The availability of established rules and procedures ensure that the arbitration will get off the ground and proceed to conclusion within the prescribed timeframe. It saves parties and their lawyers the effort of determining the arbitration procedure.
- The administrative assistance of a secretariat, who maintains the records of the arbitration and organises the filings.
- The availability of a list of qualified arbitrators and the mechanism for a panel selection of arbitrators possessing requisite experience and knowledge to resolve the dispute, thereby facilitating quick and effective resolution of disputes.
- The payment of fees is based on valuation of the combined claims and counter-claims, and payment is disbursed on attaining established milestones. Either the last tranche or the arbitrators' fees (in entirety) is paid only after the decision/award is delivered, thereby motivating the tribunal to quickly dispose of the case.
- The availability of facilities and support services for arbitration, and assistance in ensuring that a counter-party does not derail the arbitration process. Parties and arbitrators can seek clarification and advice from institutional staff, who can also assist in resolving a deadlock without court intervention. Institutional staff constantly monitors the arbitration to ensure that the arbitration is completed and an award is made within the prescribed time frame.

Should I adopt one of the many arbitration clauses?

Arbitration clauses are very often the last item to be finalised in the contract. Usually, a standard format such as the model clauses under UNCITRAL or ICC Arbitration Rules are adopted. Some standard model clauses are reproduced below:

UNCITRAL

"Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force."

"UNCITRAL notes that Parties may wish to consider adding:

- (a) The appointing authority shall be ... (name of institution or person);
- (b) The number of arbitrators shall be ... (One or three);
- (c) The place of arbitration shall be ... (town or country); and
- (d) The language(s) to be used in the arbitral proceedings shall be...."

ICC Arbitration Rules

"All disputes arising in connection with the present contract shall be finally settled under the Rules of [Conciliation and] Arbitration at the International



Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.” Parties should also designate the place of arbitration in the clause, otherwise, the ICC will choose.”

However, boilerplate clauses do not always work. An arbitration clause requires determination on the following critical items:

- (a) the definition of the scope of arbitration;
- (b) the selection and appointment of arbitrators or the choice of adopting an institutionalised procedure, even if the process is not institutionalised; and
- (c) the express choice of applicable laws (substantive law and procedural law) and the location or seat of the arbitration and jurisdiction.

Standard clauses can fail to anticipate diverse dispute scenarios in the unique facts of each case. An arbitration clause might limit the authority of the arbitrator to award particular types of relief, such as the attorney’s fees, punitive damages, declaratory relief and the like.

Should I incorporate a particular set of procedural rules and which one?

It is an unfair question and there can be no standard response. However, the safer bet can be

the standardised procedures laid down by SIAC, UNITRAL and ICC, but not necessarily in that order.

What do I need to know about challenges to the tribunal? How often are challenges raised, (and what are the implications from a delay and cost standpoint)?

Challenges may be made to the tribunal in the following circumstances where there is a conflict of interest of the arbitrator such as where:

- A person who is approached in connection with his/her possible appointment as an arbitrator must disclose in writing ‘any circumstances likely to give rise to justifiable doubts as to his/her independence or impartiality’.
- A party can challenge the appointment of an arbitrator only if: (a) circumstances exists that give rise to justifiable doubts as to his/her independence or impartiality; or (b) he/she does not possess the qualifications agreed to by the parties.
- The ‘circumstances’ in which the arbitrator is to disclose are those in which he/she considers relevant so as to raise a justifiable doubt as to his/her independence or impartiality.
- Unless the arbitrator withdraws from his/her office or the other party agrees to the challenge, the arbitral tribunal must decide on the challenge.
- If the challenge is not successful, the unsuccessful party may also make an application to set aside the arbitral award on this ground.

The Competence of the Arbitral Tribunal to Rule on an Aspect that is Outside of their Jurisdiction

The objections challenging the competence or jurisdiction of the arbitral tribunal are made to the tribunal itself and not to the court. The arbitral tribunal is empowered to rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement and even adjudicating upon the plea that it is exceeding the scope of its authority.

However, due to judicial pronouncements, serious or complicated questions of law and fact, and allegations of fraud are not treated as arbitrable disputes. Moreover, the arbitral tribunal would not have jurisdiction to adjudicate upon such disputes.

The arbitral tribunal is at liberty to either decide the objection as a preliminary issue or decide the challenge along with the arbitral award.

The objection, if accepted, gives the other party a right to appeal to the court under the statute. However, the scheme of the Arbitration and Conciliation Act, 1996 (the Act) is clear in that if



the objection is not entertained, the order cannot be treated as an interim award and can only be challenged along with the arbitral award.

Grant or Refusal of Interim Relief by the Arbitral Tribunal

The Act entitles either party to seek interim relief from the arbitral tribunal. However, there is no provision in the Act for enforcement of interim orders made by the Arbitral Tribunal under s 17. An applicant must therefore approach the court for such orders under s 9 of the Act. This adds to multiplicity of proceedings and often renders the entire exercise under s 17 before the tribunal otiose.

The order for granting or refusing to grant an interim order is appealable under s 37(2)(b) of the Act.

Challenge to the Interim and/or Final Award

In the Supreme Court decision *ONGC (2003) 5 SCC 705*, the court held, on a challenge to an award on the grounds of it being opposed to the public policy of India, that a wider meaning should be given so that a 'patently illegal award' could be set aside. The court further held that 'giving limited jurisdiction to the court for having finality to the award and resolving the dispute by a speedier method would be much more frustrated than by permitting an illegal award to operate. A patently illegal award is required to be set at naught, otherwise it would promote injustice'.

It is believed that amendments to the law are being considered to restrict the implications of this ruling, which creates a distinction between a patently illegal award and what is contrary to public policy.

Conclusion

It would not be entirely incorrect to say that the arbitration process in India (whether Ad-hoc or Institutional) has not lived up to the expectations the new law has generated, ie minimal judicial intervention and maximum judicial support, to make arbitration the preferred mode of alternate dispute resolution and leaving courts free to administer justice. The Ministry of Law in recognising this shortcoming has released a consultation paper proposing extensive amendments to minimise judicial intervention, such as empowering the tribunal to decide on preliminary issues, involving serious or complicated questions of law and fact, or allegations of fraud. Meanwhile, as lawyers, we can make our contribution to the process by making arbitration clauses more effective and minimise costs by addressing location, tribunal composition and fee structure in the main document. Separate mechanisms for classifying and addressing complex and small disputes should be adopted and time frames for all activities including written oral submissions, the number of hearings and milestones for release of a tribunal's fees should also be provided. Finally, judicious and innovative adaptation of boiler plates can make arbitration more meaningful.

An Examination of Australia's Current Foreign Policy Stand with Fiji



Australia's current foreign policy aims to build more interdependent relationships with its regional neighbours in Asia. This article examines the factors in play with respect to Australia's relationship with Fiji.

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The end of the Cold War presents Australia with major challenges to its external interests.¹ Its traditional stalwarts of foreign policy which largely revolved around the American and British Alliance have become less relevant against a new emerging international order.² The influences of the larger East Asian States are rising in the Pacific. Such a change to this regional balance was seen as isolating for Australia and its foreign policy direction. Post-Cold War, Australia is adjusting to its new circumstances by building a more interdependent relationship with its regional neighbours.³

Like most nations, the factors that shape Australian foreign policy are: (i) domestic factors that encapsulate geographic and historical experience, and social values; (ii) political, security and economic interests; and (iii) good international citizenry.⁴ It is to be noted from the onset that

such factors do not function independently but are interrelated with one another.

This article will specifically focus on the factors in play with respect to Australia's foreign policy and how such factors are currently applied towards its relationship with Fiji and why. It should be noted that certain factors are currently more dominant than others given the current political situation in Fiji while others have a more subtle analytical underpinning. Such factors, or what will later be termed as 'key factors', is of importance and warrants specific analysis as Fiji strategises for the future.

Australian Dynamics: a Case for Regionalism

With the ending of the Cold War gridlock and of the discipline imposed by the superpowers and their allies, the world is, in many ways, less peaceful. In shaping its national interests, Australia is seen as weighing heavily on three broad factors: (i) geopolitical/strategic interests; (ii) economic and trade interests; and (iii) good international citizenry.⁵ Each factor will briefly now be discussed with specific focus in relation to Fiji.

Geopolitical and Strategic Interests

As seen in the Australian 1987 Defence White Paper, Australia has adopted a constructive commitment approach towards the Central and Western Pacific. The idea of constructive commitment was first enunciated in 1988.⁶ It primarily involves maintaining and developing partnerships with Pacific Island countries which promote regional stability and encourage shared perceptions of strategic and security interests.⁷

Fiji is, in a sense, unique as it has long been an exception to most Pacific Island economic generalisations about the region. This is largely because of its comparatively larger population, flourishing tourist industry, developed sugar industry, tax free zones and its garment and transport sectors. However, the prospect of illegal fishing, customs breaches and more recently human trafficking and terrorism, amongst a whole raft of other similar issues, pose threats to such flourishing capabilities. This negative predisposition is of concern to Australia.⁸ It is then obvious that Australia has significant strategic and security reasons quite apart from human rights value preferences, for wishing to see a stable, prosperous and harmonious Fiji. The recent riots at the Villawood Detention Centre involving some Fiji nationals seeking asylum⁹ serves as a good example of the threat that Australia faces with instability in the Pacific. Furthermore, Australia has an extensive network of people-to-people links, through tourism, business, education and official visits that also serve Australia's interests apart from the more obvious, such as the long history of working together in the South Pacific and Commonwealth Forums.¹⁰

The coups since 1987 have posed constraints for the full utilisation of such networks but never the abandonment of it.¹¹ Australia has a direct interest in ensuring that the countries around it remain peaceful, stable and well disposed, or at least neutrally disposed towards it. The deposition towards Fiji is seen as not an inner area of direct military interest but rather, as a larger area of primary strategic interest. International cooperation is seen as the sole bastion which can fully protect national security interests.¹²

Economic and Security Interests

At the end of the Cold War, Australia had to operate within narrow constraints when pursuing its economic objectives. The principle of size saw Australia's Gross Domestic Product less than 5-7% when compared to countries such as the United States, Japan, South Korea and Mexico.¹³ This comparative weak stature gave Australia less leverage in terms of powers of exertion in international economic negotiations. This is

further compounded with the fact that Australia is traditionally reliant on a small number of raw primary products which makes it vulnerable to weather and rates of consumption.¹⁴

In relation to the South Pacific, the re-emergence of economic advantage as the primary means of, and motivation for, national interest was one of Australia's five principal features of its post-Cold War strategies.¹⁵ This is primarily because the threat of post-Cold War dominance of the region provided an ever emerging impetus for Australia to compete for Oceania's rich resources and cheap labour trade.¹⁶ However, from the late 1980s, the era of 'heightened sensitivities'¹⁷ began to subside with the various missions of Russia, the United States and the United Kingdom withdrawing from the Region.¹⁸ With the gradual weakening of such an activist strategy, the notion of constructive commitment can be seen to have grown in sentiment.

The Islands in the 1990s only collectively accounted for 5% of Australia's total external trade.¹⁹ However, this is offset to a degree by the security importance of the transport routes running through or near the region.²⁰ There is also no denying the current two way trade between Australia and Fiji amounting to US\$1.6 billion annually.²¹ In 2002, Australian merchandise exports to the South Pacific (excluding New Zealand) were worth US\$2.5 billion while direct Australian investment stock was estimated at US\$2.3 billion.²²



Nevertheless, Australia's focus is on countries seeing greater returns from its own states' resources²³ with the ultimate aim of reducing the demand for Australian aid over the longer term.²⁴ This constructive commitment approach has been confirmed with a recent publication on the Australia Department of Foreign Affairs and Trade website. It is cited:

“In response to the 2006 coup, Australia imposed travel restrictions on Bainimarama, his supporters and their families ... Defence cooperation and ministerial-level contact with the Interim Government have been suspended. *However, contact at officials-level continues to take place in order to pursue key interests.* Australian aid sets out to support the people of Fiji, but does not support activities which have rendered our programs ineffective or have compromised their integrity. *Australia has not withdrawn significant portions of its aid program* in response to either the 2006 coup or the abrogation of the Constitution in April 2009. Although some existing and planned programs were suspended immediately following the December 2006 coup, assistance has not been removed where removal would harm the people of Fiji. Australia's aid program has, however, been *reoriented* to help mitigate the impact of the

global economic crisis and ongoing political instability.”²⁵ (emphasis added)

Whilst not so apparent in the discussion concerning geopolitical and strategic interests, what is seen to be emerging is a conflict of ‘motives’. While Australia is embarking on advocating its country's principles of humanity, constitutional democracy, free speech and representation, at the same time it is empowering itself via the very nations that they are condemning via economic trade leading to wealth generation on both sides. How should such a condescending balance be addressed and what will now be the emerging ‘key factors’?

Good International Citizenry: Purpose Driven Operational Dimensions

Evans and Grant states that:

“In a sense the dichotomy between realism and idealism is a false one. Whether the context is human rights, the environment, or any other of the good international citizenship issues which is so often raise this apparent dilemma, the issue is one of means and ends. The ends remain clear, but it is a matter of tempering what we want to achieve with what we can deliver, and at what cost.”²⁶

The environment of the South Pacific and in the policy context of constructive commitment, there is little that any country can do but continue to make clear its views of the issues of principle involved, and hope that attitudes will gradually change. Australia can neither be the region's policeman nor its arbiter of political legitimacy.²⁷ In realisation that all societies in the Pacific region have their own distinctive characteristics and values, Australia does not believe in being trapped into embracing crude cultural relativism. In playing its role of ‘good international citizen’, Australia continues to advocate for raising human rights and related issues and expects others to acknowledge the integrity of its values.²⁸ This ultimately involves a spirit of partnership rather than dominance, mutual respect and promoting national individuality.²⁹

Australia's aid to the South Pacific is an integral part of its constructive commitment programme to promote regional development and stability. During the Keating era of Australian politics, he stated that the South Pacific's problems were largely the result of shameless exploitations by outsiders.³⁰ Aid is largely focused on building the capacity of Pacific countries to manage the economic, security and social challenges they face.³¹

Given Fiji's current political situation and



Australia's approach towards constructive commitment, Australia has strategically withdrawn significant portions of its aid programme in response to either the 2006 coup or the abrogation of the Constitution in April 2009. Although some existing and planned programmes were suspended immediately following the December 2006 coup, assistance has not been removed. Australia's aid programme has, however, been reoriented. Australia's re-strategised position is to ensure essential services are maintained, particularly in health and education, enterprise development and financial inclusion programmes, and to assist vulnerable groups.³²

It is important to note that Australia's aid programme is not a 'bleed' on Australia's wealth but it can be interpreted more correctly using the 'cost to benefit' analysis. Upon examination of Australia's continued aid funding, it is apparent that there are direct returns that flow. An international reputation as a good citizen tends to enhance Australia's standing in the world and will at times prove helpful in pursuing other international interests, including commercial ones.³³ It is to be noted that Australian aid is not purely humanitarian.³⁴ If Australia was really concerned with humanitarian motives, their aid would be going to places such as Angola, Tanzania and Sudan. Yet, comparatively, we see more Australian aid going to Samoa than to India.³⁵ The Australian aid programme has a regional focus rather than an international focus because it underpins the security of Australia not only in the traditional sense.³⁶ According to the Australian Government, sharpened focus on the Pacific arose from strengthened realisation that a porous, underdeveloped and an insecure region can increasingly feed instability; inhibit development and pose a threat to Australian national security.³⁷ Australian aid to South-east Asia stems from a premise that the national interest is best served by a Region that is prosperous with the ultimate aim of reaping commercial rewards and future government contracts.³⁸

An example is seen in the case of East Timor. Canberra's decision not to do very much was because such efforts may well have been seen as damaging to Australia's security and economic interests. Paradoxically, Portugal now does more for dissident East Timorese than Australia. Portugal has nothing much to hope or fear from Indonesia. Australia, however, does, so the Australian government is more cautious.³⁹ Such strategy may equally be working in the Fiji context. Data from the Fiji Bureau of Statistics in 2008 shows Australia as Fiji's largest trading partner with its export deficit amounting to

US\$526 million far surpassing the United States deficit of only US\$63.5million.⁴⁰

The aid issue is marred with recent revelations as to whether AusAID is achieving its desired objectives. There has been deep concern within the aid sector about the programme having no relevance towards alleviating poverty. Furthermore, the scheme was criticised as it was also used to train several students in courses of dubious merit such as interior design, photography and real estate studies. In addition, AusAID also paid for the children of government ministers in at least two countries – Papua New Guinea and Laos – to study in Australia.⁴¹ Idealism and realism in this context need not be competing objectives in foreign policy, but getting the right blend would be the desired end-state.

Partnerships

International Trade has increasingly become an important determinant of economic growth in most countries of the world and Fiji is no exception. The last 10 years has seen Fiji adopt an export-orientated, outward looking approach to trade relations. Australia is, however, Fiji's biggest trading partner (about 60% of Fiji's total trade is with Australia.)⁴² However, bilateral relations with Japan, South Korea and China have always been cordial with potential for growth. Fiji's revitalised 'Look North Policy' is credence to the fact and is seen as a mechanism to further strengthen such relationships.

The search for alternative foreign partners has also been borne out of necessity, as a way to counter the effects of Fiji's suspension in 2009 from key regional and international groupings such as the Commonwealth. Other key initiatives have been the proposed establishment of embassies in Indonesia, Brazil and South Africa, and Fiji's first ever participation in Small Island Developing States, the Arab League Summit and the hosting of a Russian delegation in Fiji to name a few.⁴³ This shift reflects a mix of opportunism, pragmatism and geo-political design while there is an overall threat that a generation of foreign affairs stakeholders will emerge who will only know and want to 'Look North'.⁴⁴

Australia is conscious of the Fiji situation as it has had and still is experiencing the same paradox. During the Cold War, countries in the Asia Pacific Region had seldom identified themselves principally by region. The Non-Aligned Movement, or the communist movement (Beijing or Moscow Branch) or, in the case of Australia, the British Commonwealth were the prime external groupings.⁴⁵ Traditionally, Australia had strong political, economic and military links with the

United Kingdom and the United States. However, over the past 30 years, a number of trends had diminished the relative importance of such traditional links. For example, the United Kingdom joined the European Union (EU) where Australian imports became subject to EU tariff and quotas.⁴⁶ Simultaneously, from the mid-1980s there was the growing consciousness of Asia as a 'region'. If an economic miracle was happening in Asia, everyone wanted to be in Asia. Asian economies grew the fastest and were the most integrated in the global economy.⁴⁷ East Asia especially had accounted for almost one-third of the world's imports and ASEAN (Association of South East Asian Nations) countries were larger than the United States.⁴⁸ The prime driver was their governments drive towards economic globalisation.⁴⁹

Australia, as a result, had to take into account the newfound sense of regionalism. Australia, for example, had to take ASEAN more seriously and determine how it might participate in regional cooperation.⁵⁰ In doing this, Australia had to accept the reality of communist power in Indo-China. A gradual shift in the orientation of Australia's external policy, from a global to a regional approach, developed as a consequence.⁵¹

Hence, in dealing with the South Pacific there is a need for Australians to be conscious. If Australia were insufficiently attuned to cultural differences, political problems and cultural sensitivities they will be perceived as uncomprehending, domineering or patronising. Australia must be more open and tolerant. Given its unstable history with Asia, from seeking protection against it by the United Kingdom and the United States during WWII, to being a strategic partner with the United Kingdom and the United States in the Malaya and Vietnam War,⁵² Australia must tread carefully. Australia is aware that diplomatic initiatives, economic strategies and development assistance all interact with each other. This is coupled with the reality that multilateral security organisations such as the AESAN Regional Forum itself has been unsuccessful in delineating confidence building measures such as in the Taiwan and the Korean peninsula.⁵³

With Fiji's inclination in developing fostering relations with the 'North', Australia at this point in time has been treading carefully so as not to jeopardise its 'Asian Fixture' and at the same time holding dear to its fundamental values. A recent example can be seen when Australia and China concluded a joint statement on the bilateral relationship during Executive Vice-Premier Li Keqiang's visit in October 2009. The joint statement, the first since 1972, reaffirmed the two sides' willingness to enhance cooperation and promote the expansion of the relationship. In the joint statement, the two sides agreed to strengthen coordination in multilateral institutions and development assistance in the Pacific. The joint statement also reaffirmed Australia's and China's commitment to open trade and investment policies, and to advance economic cooperation.⁵⁴

Conclusion

Australia is now in a position whereby there is a growing realisation that Fiji will not wholeheartedly embrace its core internal fundamentals which takes the form of its constructive commitment policy. There is an obvious awareness that riding roughshod over Fiji is not the way forward. Recent revelations from the 'Wikileaks' saga may have already prompted Australia to undertake damage control as reports reveal Australia's failed bid to discourage Chinese Vice-President Xi Jinping from visiting Fiji in 2009.⁵⁵ However, this does not mean that Australia is surrendering its position completely. Australia has strategically reoriented its aid packages to Fiji while at the same time it has affiliated itself with Asian counterparts towards development incentives in the Pacific. Hence, two dominant 'key-factors' have emerged that dominate Australia's foreign policy stand in Fiji. These are 'economic motivations' and the threat of what can be termed as the 'Asian Alliance' which some may interpret as just another form of an economic motivation. While the factors of strategic interests and constructive commitment should not be discounted, it can be seen to be subservient given the current political climate.

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- ¹⁸ *Ibid*, 242.
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Setting up a Regional Operating Headquarters in Thailand



The Thai government has relaunched the regional operating headquarters (ROH) scheme with the aim of increasing inbound investment and domestic consumption, and transferring knowledge into Thailand. This article compares the differences between ROH I and II.

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The Thai government introduced the structure of regional operating headquarters (ROH) in 2002 under Royal Decree on Reduction and Exemption of Tax (No 405) BE 2545. Under the legislation, the government may grant tax privileges through the ROH structure to persuade multinational companies to establish their management and support centres in Thailand. The objectives of the ROH scheme are to increase inward investment and domestic consumption, and to transfer knowledge into Thailand. The scheme was received with modest success that fell short of the government's expectations.

In 2010, the government relaunched the ROH scheme with tax privileges that were more generous, although the initial ROH scheme was retained. As a consequence, two ROH schemes are now available to foreign investors with each offering privileges to foreign multinationals for operating management and support centres in Thailand.

This article will compare the characteristics, eligibilities for ROH registrants, tax privileges, conditions and registrations under both ROH I and II. Further, the differences and apparent advantages and disadvantages under both schemes will be discussed.

ROH and Application for ROH Status

An ROH is a company providing managerial, technical and/or support services to its associated enterprises or branches located in Thailand or foreign countries. The services include: general management, business planning, procurement of raw materials, research and development, technical assistance, marketing and sales promotion, human resource management, financial advisory services, economic and investment analysis, and credit management and control. The scope of services under ROH I and II is very similar.

To be eligible to apply for both ROH types, the company must be incorporated under Thai law. Such a company can be a newly-established company or an existing company which also operates other businesses. Nonetheless, if the ROH

business is to be set up as a unit in an existing company, the company must also comply with corporate income tax computation and submission requirements, for example:

- the net profits for each (ie non-ROH, ROH-tax exempt and ROH-tax reduced) business must be separately computed (and any expenses which cannot be identified to which business they belong must be allocated by a ratio of revenue);
- the company must separately file corporate income tax returns for ROH and non-ROH businesses (by using one Tax Identification Number); and
- ROH tax losses, tax exempt businesses or ROH-tax reduced businesses, if any, must be retained by such businesses only, and cannot be offset against each other or against non-ROH businesses.

Tax Privileges

The government grants numerous tax privileges that cover corporate income tax, withholding tax and personal income tax.

Corporate Income Tax

Under ROH-I, a company is entitled to a reduced corporate income tax rate of 10% (with the normal rate being 30%) on ROH service income, royalties and interest income. Dividend income is corporate income tax exempt. There is no time limitation for such corporate income tax reduction and exemption.

Pursuant to ROH II, a company receives similar corporate income tax privileges except that the ROH service income received from overseas is also exempt from corporate income tax. However, all corporate income tax privileges under the new scheme are limited only for 10 years. This could be extended to 15 years if certain conditions are met.¹

Withholding Tax

Both ROH schemes are exempt from withholding tax on the dividend paid to foreign companies not carrying on business in Thailand (with the normal rate being 10%).

Personal Income Tax

Under ROH-I, all expatriates employed by the ROH receives a personal income tax rate reduction of 15% (with the normal rate being progressive rates from 0-37%) on the income received from onshore positions. Income received from offshore positions is corporate income tax exempt. Such privileges are provided for four years.

ROH-II provides similar personal income tax privileges for eight years, but only for top management or specialist positions registered with the Revenue Department.

Contrary to expectations, one may infer that the new scheme does not necessarily outweigh its predecessor in terms of privileges. Although ROH-II is not subject to corporate income tax on its offshore service income, one must be aware that such privileges are invalid after 10-15 years, meaning that the ROH will pay corporate income tax at the normal rate of 30% on all income after the privileged period expires. However, ROH-I corporate income tax privileges are provided throughout the lifetime of the ROH. Further, ROH-I personal income tax privileges for expatriates are extended from four years to eight years. However, expatriates who will enjoy the benefits under the new scheme will only include top management and specialists registered with the Revenue Department. See Figure 1 on p 27 for more details and comparisons of tax incentives between both ROH schemes.

Conditions for ROH Tax Privileges

To receive tax privileges, the ROH must meet conditions required by the law. An ROH-I is subject to three major conditions. It must:

1. have a paid up capital of at least THB10 million at the end of each accounting period;



2. provide services to affiliates in at least three foreign countries; and
3. earn a minimum income from overseas ROH services or royalties as provided below:
 - (a) in years one to three – at least 33.33% of total income; and
 - (b) in years four and onwards – at least 50% of total income.

There are added conditions under ROH-II which seem more complicated. An ROH-II must:

1. provide services to affiliates in foreign countries:
 - (a) in years one and two – in at least one country;
 - (b) in years three and four – in at least two countries; and
 - (c) in year five and onwards – in at least three countries;
2. have operating expenses² annually paid to recipients in Thailand of at least TBH15 million or have capital expenditure under s 65 ter (5) annually paid to a recipient in Thailand of at least TBH30 million;
3. have real substance eg foreign affiliates must actually operate according to their business objectives and have employees;

4. have employees with minimum knowledge levels, ie a high school (Grade 12) education or a preliminary vocational certificate or its equivalent (and from year three and onwards, the ROH-II must have at least 75% of its total workforce with those qualifications);
5. from year 3 and onwards, the ROH-II must pay to at least five employees not less than TBH2.5 million per person per year; and
6. earn a minimum income from overseas ROH service or royalties of at least 50% of its total income to enjoy withholding tax and personal income tax incentives.

Further, the ROH-II is obliged to strictly comply with all conditions (except the last condition about minimum revenue portion) throughout the tax privilege periods, otherwise it would be deemed as not qualifying for the corporate income tax privileges from the first accounting period. This would mean that the ROH will be liable for corporate income tax, including applicable penalties and surcharges, of all previous accounting periods during which it utilised the benefits. Thus, to establish ROH II, the company would need to assure and commit that it can fulfil all the conditions throughout the 10 to 15-year period.

It is still debatable whether expatriates would also be subject to retroactive personal income tax and applicable penalties and surcharges if the ROH II does not fulfil the conditions. The Revenue Department would likely claim, according to the information currently published on its website, that expatriates will also be subject to such liabilities. However, by strictly applying the provision in the Royal Decree, expatriates will not be liable for such liabilities, as the provision clearly states that only corporate income tax privileges will be withdrawn from the first accounting period.

This feature does not exist under ROH-I and is believed to have been implemented into the new ROH scheme to ensure that Thailand benefits from its ROH promotion. However, this feature is possibly a major drawback of the ROH-II because, although a company would initially be certain of its compliance with all the conditions, it might not be able to ultimately fulfil all of them over the longer term. As such, the company might be subject to significant liabilities without having intended initially to violate the rules. See Figure 2 on p 27 for more details and a comparison of conditions between ROH I and II.

Establishing the ROH and Foreign Participation

Thai companies that want to register as ROHs are required to submit an application form (ie form Sor.



Por.Phor.1 for ROH-I and Sor.Por.Phor.2 for ROH-II) together with required documents that include: an affidavit (containing key corporate information, eg names, address, directors, registered capital etc), a VAT registration form (Phor.Phor.01), a VAT certificate (Phor.Phor.20), a group shareholder structure, evidence supporting the establishment of entities in foreign countries and evidence supporting tax payment in foreign countries to the Large Business Tax Administration Office (LTO) or the Area Revenue Department Office where the ROH is to be situated.

The registration for an ROH-II must be made within five years from 15 November 2010 (the enforcement date of the ROH-II's enabling legislation). There is no time limitation for registration of an ROH-I.

If the major shareholders of the company are not Thai nationals, then the Foreign Business Act, in principal, prohibits the entity from operating all service businesses in Thailand. Therefore, the company may consider also applying for investment promotion under the category of ROH from the Board of Investment (BOI). Conditions are similar to those of ROH-I.

Upon approval, the BOI ROH will be granted non-tax privileges, eg the relaxation of immigration visas and work permit approvals and import duty exemptions. To enjoy non-tax privileges, the applicant must first submit the application form to the BOI then await notification of approval or rejection. If the BOI grants approval, the applicant must accept notification to receive the BOI Certificate. Unlike the ROH under the Revenue Department, the applicant for the BOI ROH can initially be an ordinary person but a company must then be established before the issuance of the BOI Certificate. After obtaining an investment promotion, the company can obtain a business certificate from the Ministry of Commerce and then lawfully commence the ROH business.

Change of ROH Scheme

A current ROH can convert to ROH-II by notifying the Revenue Department of termination of the current ROH and then registering for ROH-II by submitting to the authority relevant documents as stated above. Upon registration, the company can enjoy corporate income tax privileges under ROH-II for 10 years. Further, expatriates registered with

the Revenue Department, who can also be those who have received personal income tax privileges under ROH-I, will receive personal income tax privileges for another eight years. The company must also comply with all ROH-II conditions throughout the entire tax privilege period.

It is worth noting that, at the time of writing this article, despite the introduction of the ROH-II, conditions of the BOI ROH remain the same. Therefore, the relaxation of the service recipient under the ROH-II does not appear to be applicable to entities with majority foreign shareholdings that apply for BOI ROH because service recipients in at least three countries are still required.

Conclusion

The ROH-II seemingly provides more tax privileges such as the corporate income tax exemption for ROH service income received from overseas and the extension of personal income tax reduction/exemption of expatriates from four years to eight years. Only time will tell whether the new ROH scheme will be a success among foreign investors. One must consider that additional privileges carry more complicated conditions eg annual minimum operating amounts or annual capital expenditures paid to recipients in Thailand, workforce quotas and their expertise, and minimum remuneration. Moreover, conditions must be fulfilled throughout the period of tax privileges as the ROH would otherwise be subject to retroactive tax liabilities, penalties and surcharges. As such, an ROH-II applicant would need to ensure that it can fulfil all the conditions throughout the 10 or 15-year period. It is also worth bearing in mind that there is no application process for revision of the ROH conditions in the event the commercial environment changes for the worse.

Notes:

- ¹ At year 10, if the ROH has accumulated operating expenses of more than THB150 million over the 10-year period, the corporate income tax privileges can be extended for another five years.
- ² Operating expenses do not include: depreciation, the expenses paid to foreign countries, the cost of raw materials, goodwill, royalties or other rights, components and packaging.

Figure 1: Comparison of Tax Privileges between ROH-I and ROH-II

Tax Privileges	Normal rate	ROH-I	ROH-II
Group I Corporate Income Tax Rate of ROH			
A. ROH service income			
– Overseas	30%	10%	Exempt, 10 years*
– Local	30%	10%	10%, 10 years
B. Royalties income	30%	10%	10%, 10 years
C. Interest income	30%	10%	10%, 10 years
D. Dividend	30%	Exempt	Exempt, 10 years
Group II Withholding Tax on Dividends Paid to Foreign Co Not Carrying On Business in Thailand			
Dividend from income of ROH business	10%	Exempt	Exempt
Group III Personal Income Tax of Expatriates			
• Onshore position/work	0 – 37%	15%, 4 years	15%, 8 years
• Offshore position/work	0 – 37%	Exempt	Exempt

* Not subject to condition. For ROH-II, the corporate income tax on service income received from overseas is exempt from corporate income tax for a period of 10 years.

Figure 2: Comparison of Conditions between ROH-I and ROH-II

No	Conditions	ROH-I	ROH-II
1	Paid up capital		At least TBH10 million at the end of each accounting period
2	Minimum foreign countries receiving ROH services	3 countries	Years 1 and 2 – 1 country Years 3 and 4 – 2 countries Year 5 and onwards – 3 countries
3	Amount of operating expenses or capital expenditure	N/A	Has annual operating expenses paid to recipients in Thailand of at least TBH 15 million, OR annual capital expenditures under s 65 ter (5) paid to recipient in Thailand of at least TBH30 million in each year.
4	Substance of foreign affiliates	N/A	Foreign affiliates must actually operate according to their business objectives and have management and employees.
5	Employee qualification	N/A	Have employees with minimum knowledge level ie high school (Grade 12) education or preliminary vocational certificate or its equivalent. From Year 3 and onwards those qualified employees must comprise at least 75% of total workforce.
6	Amount of remuneration paid to employees	N/A	From Year 3 and onwards must pay not less than TBH2.5 million per person per year to at least 5 employees.
7	Portion of overseas ROH service income and royalty income to total income	Years 1 to 3 – at least 33.33% Year 4 and onwards – at least 50%	At least 50% (<i>not applied to the corporate income tax rate reduction/exemption of ROH service income</i>)

Creating a Level Playing Field for Vietnam's Mining Sector



By improving the management of mineral resources and streamlining mining license procedures, Vietnam's new mining law aims to draw international interests and foreign investment in the country's mining activities.

Phan Anh Vu
Partner, Indochine Counsel

Vietnam's large mineral reserves combined with high commodities prices worldwide have appealed to international interests and foreign investment in mining activities. In order to strengthen the attractiveness of the mining sector, the National Assembly adopted, on 17 November 2010, the Mining Law No 60/2010/QH12 (the 'New Mining Law'), which became effective on 1 July 2011, and it replaces the 1996 Mining Law (as revised in 2005). The New Mining Law introduces new changes that are summarised below.

Governing Scope

The New Mining Law covers the following: (i) the basic geological surveys of mineral resources; (ii) the protection of untapped minerals; (iii) mineral exploration and mining; and (iv) the State administration of minerals located in the territory of Vietnam. However, the exploration or exploitation of oil and gas, as well as natural water (other than mineral water and natural thermal water), is not under the scope of the New Mining Law.

Rationalisation of Mineral Areas

In order to better conduct the mineral policy and improve the management of minerals, mineral areas have been classified into:

- areas where mineral activities are allowed;
- areas where mineral activities are prohibited;
- areas where mineral activities are temporarily prohibited; and
- areas of national mineral resources reserves containing untapped minerals.

Auction of Mineral Exploitation Rights

Pursuant to Art 78 of the New Mining Law, the auction for mineral exploitation rights will be conducted for mining areas, except for those areas determined by the competent authorities as non-auctioned mining areas. The principles and conditions required for such auctions will be provided by the government. It remains to be seen how Art 78 will be implemented. However, auctioning mineral exploitation rights is expected to enhance transparency and abolish the current 'ask-give' mechanism in licensing.

Moreover, the New Mining Law requires exploiters to pay a new fee for the issuance of a mining license, in addition to the current licensing

charge. This fee will be collected via an auction or non-auction of a mining area. The fixation of such a fee will be based on the auction price or reserves, the quality of mineral, the types of minerals and mining conditions. The calculation method and rate of this fee will be specified by the government.

Mineral Licensing Streamlined

A welcome reform in licensing is that a prospecting license is no longer required to be obtained. In particular, Art 37 of the New Mining Law provides that a person intending to conduct field surveys as well as a specimen collection for mineral exploration purposes will only be subject to a written approval from the Provincial People's Committee where the mineral exploration area is located.

Furthermore, the scope of mineral mining activity is expanded to include mineral processing activity as mineral classification and beneficiation. As a result, an exploiter who has obtained a mining license will automatically have the right to process the products exploited from the licensed mine without having to obtain a separate processing license.

The New Mining Law sets forth only two types of mineral licenses: exploration and mining. To harmonise with international mining practices, the term for a license for each type has been increased. To obtain a mineral mining license, a mining investment project must be formulated during the term of the mineral exploration stipulated in the mineral exploration license.

In order to engage in mineral exploration, an organisation must satisfy the following conditions:

- be established or newly-established in accordance with law;
- have a person in charge of technical matters who has graduated from a university faculty of geological exploration with at least five years' work experience in mineral exploration and a thorough understanding of the technical standards and requirements for mineral exploration;
- have technical staff trained in the specialties of exploration geology, hydrogeology, engineering geology, geophysics, drilling, excavation and other related specialties; and
- have specialised equipment and apparatus necessary for building the mineral exploratory works.

In order to be granted a mineral exploration license, an entity must satisfy the following conditions:

- be selected by the competent State body or win an auction of mining rights to an unexplored area (and any such entity not satisfying the conditions for practising mineral exploration must sign a contract with an organisation which does satisfy such conditions);
- have a mineral exploration proposal which is consistent with the mineral master planning



(and in the case of toxic minerals, have written permission from the Prime Minister); and

- have equity that is at least equal to 50% of the total investment capital to implement the mineral exploration.

In order to be granted a mineral mining license, an entity must satisfy the following conditions:

- have a mineral mining investment project for an area which has already been explored and for which the mineral reserves have been approved in accordance with the master planning (and the mineral mining investment project must contain a plan for employing specialised manpower, a plan for using equipment and technology, an appropriate technologically advanced progressive mining plan, and written permission from the Prime Minister in the case of toxic minerals);
- have an environmental impact assessment report or an environmental protection undertaking, in accordance with legislation on environmental protection; and
- have equity that is at least equal to 30% of the total investment capital of the mineral mining project.

The Licensing Authority

The Provincial People's Committees are authorised to issue licenses for mineral exploration, mining minerals used for common construction materials, harvesting peat, and mining minerals in areas which contain scattered and small-scale minerals as delineated and announced by the Ministry of Natural Resources and Environment (MONRE); and also for individual mining. For other cases, the MONRE is the authority for the licensing of mineral exploration and mineral mining.

The State licensing authority, which has issued a license for mineral exploration and mining or individual mining, also has the authority to extend, withdraw or consent to the surrender of that same license. Further, it can consent to the surrender of part of the exploratory or mined site, and consent to the transfer of the mineral exploration or mining rights stipulated in such a license.

Financial Condition to Obtain an Exploration and Mining License

Under the New Mining Law, an investor is required to present an owner's equity capital equal to at least 50% and 30% of the total investment capital to implement the exploration project and the mining project respectively.

Tighter Control of Transfers of Mineral Exploration and Exploitation Rights

The New Mining Law allows the transfer of mineral exploration and exploitation rights. However, the following conditions apply:

- the transferor of mineral exploration rights must have implemented at least 50% of the budget of the plan for the mineral exploration proposal;
- the transferor of mineral exploitation rights has completed a capital construction of the mine and has commissioned the mine for use; and
- the transferee must satisfy all the conditions for issuance of the mineral exploration license or the mineral mining/exploitation license.

The transfer of exploitation and exploration rights must be approved by the competent licensing authorities. The transferee will be provided with a new issue of the respective license to replace the previous one.

Transitional Provision

Any license of mineral exploration or mining prior to the effective date of the New Mining Law will be permitted to continue to implement such a license until the expiry of its duration as prescribed in such license.

Any entity currently conducting activities in accordance with a mining license issued prior to the effective date of the New Mining Law must pay fees for the issuance of the mineral mining right to that part of the mineral reserves which have not yet been mined.

Conclusion

With the foregoing reforms, the New Mining Law is expected to level the playing field for Vietnam's mining sector. However, responsible exploitation of minerals should be encouraged in order to preserve the country's natural environment.

Discover Some of Our New Officers and Council Members



Hanspeter Wüstiner
Jurisdictional Council Member,
Switzerland

What was your motivation to become an IPBA member?

I joined the IPBA in 1995 in Manila. As a young lawyer, when I started out on my own, I wanted to join an international bar association. At the

time, it was obvious to me that the Asia Pacific region would become one of the most interesting areas in the world and the IPBA seemed to be the right organisation to join. In addition, the IPBA is a smaller organisation compared with the IBA and the former appealed to me more.

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

My experience in New York as a foreign associate with White and Case and the cases where I could provide creative solutions for the mutual benefit of the clients and all the other parties involved.

What are your interests and/or hobbies?

I love playing tennis, skiing, fishing and art.

Do you have any special messages for IPBA members?

I am always looking forward to the annual conferences to meet friends and new and interesting people.



Young-Moo Shin
Vice President

What was your motivation to become a lawyer?

I believed that becoming part of the legal profession would be best way for me to contribute to society. I saw huge political changes when I was at university and believed that

the rule of law needed to be settled. My legal education and career has been very dynamic to say the least, but I have enjoyed it greatly and I am thankful for the feeling that I have contributed something to society.

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

In the 1980s, the Korean capital market began to open its doors to overseas markets gradually. As the first Korean lawyer to gain a doctorates degree in securities law, I was involved from the beginning in the liberalisation of the Korean capital market, the launch and operation of the Korea International Trust in Korea and the Korea Fund in the United States. It was a remarkable process, and I have felt very privileged to have been a part of it.

What are your interest and/or hobbies?

I enjoy hiking and golf which are great ways to keep me fit and enable me to socialise with others.

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

I like betting, regardless of the amount involved. One of my most memorable bets was a golf round I had in Singapore with Mr Nobuo Miyake (past president of IPBA) and two others. I remember I was not playing very well at the beginning, but with luck, I came from behind and won S\$10. It was an exhilarating experience. I also felt very privileged to have played the game with Mr Miyake and getting to know him better on a personal level. He is a great man of charisma and vision. I send my warm regards to him and hope that he recovers soon.

Do you have any special messages for IPBA members?

The IPBA may be a relatively small organisation compared to other international lawyers' associations. However, the nature of the IPBA encourages camaraderie among its members, which I, myself, have greatly benefited from. I would encourage all members to actively participate in the IPBA's activities to benefit from its networks so that we can move forward together to the centre stage in global affairs.

Members' Notes

Isao Kyo

The great earthquake in March has badly affected the economy in many areas. I have been specialising in medical malpractice disputes for a long time in Osaka, Japan. I have noticed that in order to maintain the high quality of medicine, many research projects such as finding the cause of death when medical malpractice is suspected have been suspended from a lack of subsidies. However, there are also positive influences. For example, my daughter drew a set of illustrated postcards that have been sold and the proceeds were sent to those who have suffered from the earthquake. As her father, I will also work harder. Cheer up, Japan!

Mark T Shklov

The IPBA was well represented at the Hawaii State Bar Association's (HSBA) 2011 Annual Fundraising Dinner on 16 July 2011. IPBA Members Jerry Sumida, Alan Fujimoto, Larry Foster, Doug Codiga and Mark Shklov purchased a table for the event in the name of the IPBA. The proceeds from this Hawaii Bar event will benefit various public service projects. Louise Ing, the current HSBA President and new IPBA Member, danced a beautiful hula for those in attendance.

Dennis Unkovic

I have been a member of the IPBA for 20 years. I serve on the Board of Directors of the Japan America Society of Pennsylvania, which heads up a Committee that is soliciting donations to aid the tsunami relief efforts in Japan. Since April, the Committee has collected over US\$450,000 in donations from more than 2000 contributors throughout the United States. Many of contributions came from school children wanting to help other students in Japan. The Committee hopes to award grants to organisations in Japan by the end of the year. One likely recipient of a grant is a Japanese non-profit organisation that helps care for children who are orphans. The grant will target orphans and children in the areas most damaged by the tsunami. The Committee is now also investigating other good projects which it may fund.

Amit Acco

As a past young lawyer scholar at the Seoul conference and the current Vice Chair of the IPBA Scholarship committee, I wanted to share with you how the scholarship programme assisted me and can assist other young lawyers in promoting their professional careers. Since my attendance as a scholar at the Seoul IPBA Conference, I have participated in most IPBA conferences and I have formed a great professional network with IPBA members. My firm receives frequent referrals from the network regarding professional legal issues in Israel. I have gone from a staff solicitor to a partner in my law firm mainly thanks to the connections I have made through the IPBA and the scholarship programme. Thank you, IPBA!

Hayao Ohtani

I am one of the IPBA Charter members. I have participated at IPBA Conferences on many occasions and I have made a lot of friends with overseas lawyers. Not only have I broadened my knowledge but my experiences have also been enlarged through the IPBA. One of my pleasures is to renew old friendships formed within the IPBA.

Lalit Bhasin

The Government of India has recently appointed me as the Chairman of the Film Certification Appellate Tribunal which is the appellate body of the Censor Film Certification Board. I have also been elected as the Chairman of the Services Export Promotion Council set up by the Ministry of Commerce to promote the export of services such as hospitality, healthcare, maritime, education, entertainment, legal, accountancy and consultancy. On 8 August, I called on Her Excellency The President of India to invite her to inaugurate the IPBA 2012 New Delhi on 29 February 2012. Two Ministers of India, namely the Law and Justice and Corporate Affairs have already confirmed their participation.

Bart Kasteleijn

HIL International Lawyers & Advisers, a Dutch law firm with offices in Amsterdam and Shanghai, in conjunction with the OSR Post Academic Institute in Utrecht, The Netherlands, have, in May 2011 organised a second study trip to China for a group of 14 senior lawyers, qualifying for Permanent Education points certified by the Dutch Bar. The format proved very successful as the attorneys-at-law and in-house counsels received a one-week crash course in Chinese corporate and contractual law by visiting law firms, universities, courts and institutes including the All China Lawyers Association and the Chinese chamber of commerce CCPIT. HIL is willing to share their know-how with law firms from other countries who plan to organise similar study trips.

Rory J Radding

I joined the New York office of the international law firm of Edwards Angell Palmer & Dodge LLP in its IP Department as of 1 July 2011. I maintain my practice of full service intellectual property including procuring, exploiting and enforcing IP with an emphasis on IP litigation in the US courts and the International Trade Commission.

Raj Bhala

I am proud to announce that my book on *Understanding Islamic Law* (Sharī'a) has been published by LexisNexis. It took me three years to complete this 1500-page book with 50 chapters. This book will help to build a greater understanding, and thereby appreciation and respect for Islamic Law. It is designed for use as a textbook for law schools and other graduate and professional schools, and as a reference for practitioners, scholars and interested readers. This book is useful for comparisons with American law courses on banking, business associations, contracts, criminal law, family law (including women's rights), finance, inheritance, international law and property. The book also provides systematic comparisons with Catholic Christianity. Additionally, I have been appointed as the Associate Dean for International and Comparative Law at the University of Kansas School of Law, where I hold the Rice Distinguished Professorship.

Cathy Guo Xin

I am a Chinese attorney-at-law mainly practising in Tianjin and Beijing and specialise in corporate investment and finance involving international M&A, FDI, regulatory compliance and related business matters. I am now serving clients from America, Malaysia, India and Brazil. I am also serving as a daily counsel for the Tianjin Municipal Commission of Commerce.

Bithika Anand

I am the founder and CEO of Legal League Consulting (LLC). LLC is the first Indian management consulting firm to offer strategic and operational solutions to law firms. I am a chartered accountant with over 23 years of experience in professional services domain. Before founding LLC, I was the CFO and COO at Amarchand Mangaldas in their Delhi office, during which time I lead the implementation of management processes and compliance with global best practices.

Hisashi Hara

I am the Chairman of Nagashima Ohno & Tsunematsu, and serve as the President of the IPBA's Japan Chapter. I formerly served as an the IPBA Jurisdictional Council Member (Japan) from 2003-09. At the Chambers Asia-Pacific Awards 2011 ceremony in Hong Kong, I was presented with the Chambers Lifetime Achievement Award 2011 in the Asia-Pacific Region in recognition of my contributions to the development of business law in Japan. I am sincerely honoured to have received this award and will continue to support new developments in the law with an emphasis on my principal practice areas of M&A and real estate transactions.

Turena Ramirez

My latest deals, among others, include the analysis, design and implementation of international trade transactions that reduce the fiscal impact of duties and logistics costs for fabric manufacturers, used vehicles, beverages, chemical products and the railroad sector. In addition to this work, I have successfully concluded NAFTA audits for locks, valves and textiles, and the negotiation of Mexican Official Standards and Foreign Trade Rules related to fabrics, toys, jewellery, electronics and leather. I have also represented major producers and exporters in complex origin and tariff rating procedures and negotiations with the secretary general of the World Customs Organisation for customs piracy controls.

Le Quynh Anh

I am an Executive Partner of Vision & Associates Legal with over 19 years of consultancy experience focused on FDI, corporate, M&As, property, engineering, employment and commerce. I also lead a team of practitioners dealing with litigation in mediation and arbitration. I work with several major international clients including Unilever, Boehringer, Toyota, GM, Kume, STX, World Bank etc. Also, I was honoured to receive a Reward Certificate granted by the Hanoi Bar Association for excellent practising and operational results, and constructive contribution to the association for 2010.

Praveen Agarwal

India has always been an important jurisdiction for the IPBA, and lawyers from India are very active in the IPBA. The only IPBA conference held in New Delhi, India in 2003 was a great 'hit' with members in terms of everything – ranging from the friendly welcome, very warm hospitality to the stimulating programmes and wonderful networking opportunities. As a Host Committee member for the 2003 conference, I recall the great effort put in by all Host Committee members for this conference, and I have found great enthusiasm and interest amongst members for the upcoming conference in 2012. The overwhelming response from the members is not surprising and the current Host Committee is working hard to make the 2012 event an even bigger success. We look forward to welcoming all IPBA members to India in February 2012.

Manjula Chawla

I am a senior partner at Phoenix Legal, a full service law firm with years of experience in the fields of FDI, M&A, restructuring, and corporate governance. My practice, which is primarily transactional, covers a wide range of businesses and industries. I was awarded the National Law Day Award 2000 by the Law Minister for 'Excellence in Corporate Law and unique contribution in bringing foreign exchange into India'. I was named as one of the leading 100 lawyers in the Leading Lawyer 100 global list of the *Lawyer Monthly 2011 Guide* in the category of Cross Border Law.



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 (under 30 years old)	¥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@tga.co.jp Website: www.ipba.org

See overleaf for membership
registration form



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 Email: ipba@tga.co.jp Website: www.ipba.org

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 (under 30 years old)..... ¥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:

The IPBA Secretariat, Inter-Pacific Bar Association
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 Email: ipba@tga.co.jp



IPBA SCHOLARSHIPS

The Inter-Pacific Bar Association (IPBA) is pleased to announce that it is accepting applications for the IPBA Scholarship Programme, to enable practising lawyers to attend the IPBA's 22nd Annual Meeting and Conference, to be held in New Delhi, India, from 29 Feb to 3 Mar 2012 (www.ipba2012.org).

What is the Inter-Pacific Bar Association?

The Inter-Pacific Bar Association is an international association of business and commercial lawyers with a focus on the Asia-Pacific region. Members are either Asia-Pacific residents or have a strong interest in this part of the world. The IPBA was founded in April 1991 at an organising conference held in Tokyo attended by more than 500 lawyers from throughout Asia and the Pacific. Since then, it has grown to become the pre-eminent organisation in respect of law and business within Asia with a membership of over 1400 lawyers from 65 jurisdictions around the world. IPBA members include a large number of lawyers practising in the Asia-Pacific region and throughout the world that have a cross-border practice involving the Asia-Pacific region.

What is the Inter-Pacific Bar Association Annual Meeting and Conference?

The highlight of the year for the IPBA is its annual multi-topic four-day conference. The conference has become the 'must attend event' for international lawyers practising in the Asia-Pacific region. In addition to plenary sessions of interest to all lawyers, programmes are presented by the IPBA's 21 specialist committees. The IPBA Annual Meeting and Conference provides an opportunity for lawyers to meet their colleagues from around the world and to share the latest developments in cross-border practice and professional development in the Asia-Pacific region. Previous annual conferences have been held in Tokyo, Sydney, Taipei, Singapore, San Francisco, Manila, Kuala Lumpur, Auckland, Bangkok, Vancouver, Hong Kong, New Delhi, Seoul, Bali, Beijing, Los Angeles and Kyoto. Our most recent annual conference in Kyoto in April 2011 attracted over 800 delegates, despite the devastating earthquake that occurred the previous month.

What is the IPBA Scholarship Programme?

The IPBA Scholarship Programme was originally established in honour of the memory of MS Lin of Taipei, who was one of the founders and a Past President of the IPBA. Today it operates to bring to the IPBA Annual Meeting and Conference lawyers who would not otherwise be able to attend and who would both contribute to, and benefit from attending, the IPBA Annual Conference. The Scholarship Programme is also intended to endorse the IPBA's mission to develop the law and its practice in the Asia-Pacific region. Currently, the scholarships are principally funded by a group of lawyers in Japan to honor IPBA's accomplishments in the 20 years since its founding.

During the conference, Scholars will enjoy the opportunity to meet key members of the legal community of the Asia-Pacific region through a series of unique and prestigious receptions, lectures, workshops and social events. The programme aims to provide Scholars with substantial tools and cross-border knowledge to assist them in building their careers in their home country. Following the conference, Scholars will enjoy a three-year IPBA membership and will be invited to join a dedicated social networking forum to remain in contact with each other while developing a network with other past and future Scholars.

Who is eligible to be an IPBA Scholar?

There are two categories of lawyers who are eligible to become an IPBA Scholar:

[1] Lawyers from Developing Countries

To be eligible, the applicants must:

- be a citizen of and be admitted to practice in Vietnam, Laos, Cambodia, Myanmar, Mongolia or the Pacific Islands;
- be fluent in both written and spoken English (given this is the conference language); and
- currently maintain a cross-border practice or desire to become engaged in cross-border practice.

[2] Young Lawyers

To be eligible, the applicants must:

- be under 35 years of age at the time of application and have less than five years of post-qualification experience;
- be fluent in both written and spoken English (given this is the conference language);
- have taken an active role in the legal profession in their respective countries;
- currently maintain a cross-border practice or desire to become engaged in cross-border practice; and
- have published an article in a reputable journal on a topic related to the work of one of our committees or have provided some other objective evidence of committed involvement in the profession.

Preference will be given to applicants who would be otherwise unable to attend the conference because of personal or family financial circumstances, and/or because they are working for a small firm without a budget to allow them to attend.

Applicants from multi-national firms will normally be considered only if they have a substantial part of their attendance expenses paid by their firm.

How to apply to become an IPBA Scholar?

To apply for an IPBA Scholarship, please obtain an application form and return it to the IPBA Secretariat in Tokyo no later than **31 October 2011**. Application forms are available either through the IPBA website (www.ipba.org) or by contacting the IPBA Secretariat in Tokyo.

Please forward applications to:

The IPBA Secretariat
Roppongi Hills North Tower 7F
6-2-31 Roppongi, Minato-ku
Tokyo 106-0032, Japan
Telephone: +81-3-5786-6796 Facsimile: +81-3-5786-6778
E-mail: ipba@tga.co.jp

What happens once a candidate is selected?

The following procedure will apply after selection:

- IPBA will notify each successful applicant that he or she has been awarded an IPBA Scholarship. The notification will be provided at least two months prior to the start of the IPBA Annual Conference. Unsuccessful candidates will also be notified.
- Airfare will be agreed upon, reimbursed or paid for by, and accommodation will be arranged and paid for by the IPBA Secretariat after consultation with the successful applicants.
- A liaison appointed by the IPBA will introduce each Scholar to the IPBA and help the Scholar obtain the utmost benefit from the IPBA Annual Conference.
- Each selected scholar will be responsible to attend all of the Conference and to provide a report of his/her experience to the IPBA after the Conference.

Please provide this information to any qualified candidate. Thank You.