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IPBA NEWS AND LEGAL UPDATE



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IPBA JOURNAL

The Official Publication of the Inter-Pacific Bar Association

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The President's Message



Dear Colleagues,

It is with much pleasure that I write.

Many of you were at the Annual Conference in Singapore and we were honoured and delighted that you were able to attend. The Conference was outstanding, with excellent programmes and great speakers.

Best of all, we all enjoyed that friendship and collegiality that the IPBA is so well known for. Thank you again for coming and for making the Singapore Annual Conference a great success.

There were some disappointments with the lack of readiness of the venue and our Singapore Host Committee would like to apologise again for all the venue shortcomings. Some of you may also have followed that there were legal issues between the conference venue and IPBA 2010 Singapore after the Conference. I am pleased to report that these have been fully settled and a public expression of regret over the many shortcomings at our Conference has also been issued by Marina Bay Sands.

POLA Conference in Kuala Lumpur

From 27 to 28 July this year, I attended the 21st Presidents of Law Associations in Asia (POLA) Conference in Kuala Lumpur. The Malaysian Bar Association hosted this Conference and the very topical and interesting theme was 'Rule of Law and Corporate Governance'. A highlight of this Conference was a visit to the Malaysian Palace of Justice at Putrajaya where we had an entertaining talk followed by a candid question and answer session by Tun Dato Seri Zaki Tun Azmi, the Chief Justice of Malaysia, who regaled delegates with his impressive efforts to improve efficiency at Malaysian courts. Several IPBA members also attended this Conference including Shiro Kuniya, our President-Elect from Japan.

IPBA Mid-Year Council Meeting in Stuttgart and IPBA Seminar in Stuttgart

This year's IPBA Mid-Year Council Meeting returns to support our membership in Europe after a long hiatus. It will be held from 16 to 17 October at the offices of Gleiss Lutz and the Mercedes Benz Museum in Stuttgart, Germany.

On 18 October 2010, following our IPBA Mid-Year Council Meeting, the IPBA will be organising a seminar in Stuttgart on 'Asian counterparts in corporate transactions – Asian and European perspectives'. This seminar will be held at the Chamber of Commerce for the Region Stuttgart and will be followed by a lunch at the Chamber of Commerce with meetings with German business leaders and lawyers,

including the Stuttgart Corporate Law and Stuttgart Arbitration Circles. We do warmly welcome you.

IPBA Joint Programme at IBA Annual Conference in Vancouver

The IPBA will be hosting an exciting joint programme at this year's IBA Conference in Vancouver. The focus will be 'Foreign Investment by State-owned Enterprises and National Security Considerations of Target Countries' and will be held on Tuesday afternoon, 5 October 2010.

This session has been the result of considerable effort of our IPBA Canadian membership, in particular Robert Quon, William Scott and Cliff Sosnow and I do hope you will attend, as a gesture of support and because the topic is fascinating.

IPBA as Supporting Organisation

This year, IPBA is being asked more frequently than ever to be a Supporting Organisation for legal and business conferences and seminars around Asia and beyond. In addition to our long-standing relationships with the HKIAC, the ABF, and the IFLR, we have established new ties with innoXcell and Ethical Beacon, among others, to promote the events to our IPBA members via emails, our website, and this publication. In return, IPBA members may participate in the events at special discounted rates. You will find a list of upcoming collaborative events on page 10.

IPBA Kyoto Annual Conference 2011

The IPBA returns to Japan for its 21st Conference to the ancient capital of Japan, Kyoto, which is nestled among picturesque mountains and placid rivers. It is also the centre of innumerable cultural treasures and traditional crafts. The IPBA will mark the new decade of 2011 with sessions on innovation in the Asia-Pacific region and the various legal, business and policy issues related thereto. This conference will also be a rare opportunity to study issues concerning intellectual property law, biotechnology law and other issues on innovation.

Key speakers at this Conference will include John Roos, the United States Ambassador to Japan, Professor Hiroshi Matsumoto, the President of Kyoto University, Shinya Yamanaka, MD, PhD, a brilliant Japanese physician involved in stem cell research, and Yasuchika Hasegawa, the President and CEO of Takeda Pharmaceutical Co Ltd.

The Conference will be held from 21 to 24 April next year, dates which you should mark in your diary. Please support the Host Committee led by President-Elect Shiro Kuniya by registering early for our Annual Conference. It promises to be a special not to be missed event in the IPBA Calendar. See you there.

*Lee Suet-Fern
President*

The Secretary-General's Message



Dear IPBA Members,

The strength of the IPBA derives from the commitment and dedication of its members to the IPBA's purposes as stated in the *IPBA Constitution*. These include providing

opportunities for its members to contribute toward the development of the legal profession in the Asia-Pacific Region and the development and improvement of its status and organisation, to contribute toward the development of law and legal structures within the Region, to meet and exchange ideas with other lawyers who reside in or are interested in this Region, to study and discuss legal issues involving the Region, and to share information about legal developments affecting the Region. The two remaining purposes are to serve IPBA members fairly and equitably and to promote the rule of law.

In the almost two decades since its founding, the IPBA has successfully fulfilled these purposes as it has evolved in response to pervasive changes within the Region and in each of the jurisdictions in the Region. Globalisation is transforming not only the economies within the Region but has also spurred the growth of law schools, bar associations and law societies, and increasing numbers of lawyers and legal professionals. They now play critical roles as cross-border business, investment, trade and commerce have increased exponentially within the Region in recent decades, in part due to foreign direct investment from outside the Region, and today increasingly from within the Region itself. As the Asia-Pacific regional economies continue to expand and deepen their own economic integration, the legal profession meets increasing business and commercial needs within economies as most of the Region's countries continue programs of economic and social development.

The IPBA has benefited from, but also helped to support and facilitate, these expansive dimensions of globalisation. Its very purposes highlight the developmental role that it foresaw as its fundamental contribution to this Region. The IPBA's founders thus determined that the IPBA should have as members only practising lawyers involved in transnational business activities within the Region. They then worked

hard and continuously to promote and strengthen the opportunities for IPBA members to form not only productive professional relationships and networks, but perhaps more important, long-lasting friendships based on mutual respect, trust and shared human interests. As the IPBA's membership grew over the years and successive generations of lawyers strengthened its organisation and expanded these professional and personal relationships, so too did those members grow and benefit from their association with the IPBA.

To ensure its continuing success into the future, the IPBA follows a systematic process to provide members with opportunities for active participation and leadership within the organisation, and to identify potential leaders who could assume key positions in the IPBA. The formal process occurs approximately six months before the Annual Conference and Meeting when the Nominating Committee presents its nominees for those positions to be filled to the Council at its mid-year meeting. The final list of nominees approved by the Council is then presented to the IPBA membership for its decision at the Annual Meeting. The informal process involves a continuing search for and assessment by the IPBA leadership, including committee chairs of members who express a desire to assume leadership roles and/or who show promising leadership capabilities. Such members are then suggested to the Nominating Committee for consideration.

For many members, the *IPBA Committees* are attractive opportunities for participation, particularly for new members. This is especially true for the practice area committees that develop and conduct substantive programmes at the Annual Conference, the Mid-Year Council Meeting, as well as other venues. These provide speaker and panelist, as well as publication opportunities, and also committee vice-chair and chair positions. Other committees administer special programmes, such as the IPBA Scholarship Committee and the Legal Training and Development Committee, or provide special networking fora, such as the Women Business Lawyers Committee. The Publications Committee prepares the *IPBA Journal*, which is IPBA's official publication.

The *IPBA Council* is the IPBA's administrative body and directs and acts on behalf of the IPBA on matters not specifically reserved to the Annual Meeting of the IPBA members. It comprises Council Members from each of the IPBA jurisdictions (ie, a jurisdiction with an autonomous

and distinctive legal system which has at least 25 IPBA members; these are the Jurisdictional Council Members); six At-Large Council Members (who represent regions that are not jurisdictions but wish to contribute to, and benefit from, the IPBA), the IPBA Officers and Deputy Officers, the Committee Chairs, and the IPBA Regional Coordinators.

Finally, the *IPBA Jurisdictional Leadership Committees* comprise IPBA members who are prominent within their key jurisdictions and work with the IPBA Jurisdictional Council Member to promote IPBA programmes and activities within that jurisdiction and on a regional basis. This is particularly important and valuable for geographically large jurisdictions.

As many have found to their great satisfaction and professional and personal benefit, serving in any of these positions provides important and often unique opportunities to work with leading and upcoming members of the legal profession throughout the Asia-Pacific Region, contribute to

and benefit from IPBA programmes and activities, develop lasting collegial personal relationships with other lawyers, and led to other opportunities to serve in leadership positions within the IPBA.

We are continuously looking for those members who want to be part of IPBA's succeeding generation of leaders and strongly encourage you to let your Committee Chair, IPBA Officer or other Council Member or Nominating Committee member know of your interest and desire. Many have done so over the years with very mutually rewarding results. We welcome your interest and participation.

With all best wishes,

Gerald A Sumida
Secretary General



Dear IPBA Member:

We are eagerly looking forward to the next IPBA Annual Meeting and Conference in Kyoto/Osaka, Japan, April 21–24, 2011. Those of you who have attended an IPBA Annual Meeting know what a wonderful opportunity it provides to meet old friends, make new friends and develop professional contacts with other attorneys who are working in the Asia-Pacific Region.

This year we are asking IPBA Members to start the fun and fellowship early by donating items to the First Annual IPBA Scholarship Committee's Silent Auction to raise money to help fund the IPBA Scholarship Programme. The IPBA Scholarship Committee awards scholarships to attend the IPBA Annual Meeting to deserving young attorneys and attorneys from developing countries, who otherwise would not be financially able to do so. Over the years, the recipients of the IPBA's annual scholarships have come to represent the best of the IPBA.

We invite you to personally contribute to the Scholarship Programme by donating an auction item. The Scholarship Committee is seeking donations of a wide variety of exciting and exotic auction items. Members of the Scholarship Committee have already pledged vacation home stays, exquisite wines and rare books. Donations such as hotel and travel packages, restaurant gift certificates, artworks, collectibles and antiques are being sought, and unique items, especially those that represent the various cultures of our members' countries, are certainly welcome.

The Silent Auction will be held at the IPBA Annual Meeting and Conference in Kyoto/Osaka, Japan, in conjunction with the Gala Dinner, the third night's social event, at the prestigious Westin Miyako Hotel. Each donation will be individually highlighted and each donor will be prominently identified. Hundreds of lawyers will attend the Silent Auction and being a donor and/or bidder at this event promises to be very rewarding.

Please consider donating an item to the Silent Auction. Your generosity is appreciated. Please contact Richard Goldstein at richardgoldstein@goldsteinvisa.com or Mark Shklov at mark@shklovwonglaw.com to coordinate donation of items and for any questions you may have about the Silent Auction.

Very truly yours,

Suet Fern Lee
IPBA President

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Scholarship Committee Co-Chair

Shiro Kuniya
IPBA President-Elect

Varya Simpson
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Gerald Sumida
IPBA Secretary General

The International Dispute Resolution Conference, Kuala Lumpur, 7 May 2010

The 7th of May 2010 epitomised the strength of the IPBA network of friendship. Three Committees of the IPBA: the Arbitration, the Women Business Lawyers, and the Maritime Committees, in collaboration with the Malaysian Institute of Arbitrators and the Malaysian Bar Council, empanelled four dynamic sessions in Kuala Lumpur at The International Dispute Resolution Conference. The Conference focused on contemporary issues, ranging from energy charter and maritime forum shopping to women lawyers in dispute resolution.

In his Welcome Address, the Chairman of the Malaysia Institute of Arbitration, also the Co-Chair of the IPBA Dispute Resolution and Arbitration Committee, Mohanadass Kanagasabai, reflected on the manner in which the Conference was conceived – over several glasses of intoxicants at the Manila Conference of the IPBA in 2009! True to their word, the IPBA members who had committed to speaking at the Conference promptly arrived a year later, in Kuala Lumpur, immediately following the IPBA 2010 Conference in Singapore to facilitate the continuing awareness of Malaysians in the evolution of dispute resolution.

This Dispute Resolution Conference opened to a unique start with an interactive panel of six eminent women from around the world, including members of the IPBA: Michelle Sindler (Sydney), Suchitra Chitale (New Dehli), Juliet Blanch (London) and Rashda Rana (Sydney), together with Past President of the Malaysian Bar, Ambiga Sreenevasan (Kuala Lumpur) and the Judge of the Dubai International Financial Centre, Tan Sri Dato' Seri Siti Norma Yaacob (Kuala Lumpur), in their provocative discussion on 'Women in Dispute Resolution: Bringing Down Barriers'. The audience was enthralled by clear statistics and fascinating insights into the strength that women bring to disputes, despite the obvious and subtle challenges they face.

Co-Chair of the IPBA Dispute Resolution and Arbitration Committee, Sumeet Kachwaha (New Delhi), and members of his Committee including: Urs Lustenberger (Zurich), Juliet Blanch (London), Mohan Pillay (Singapore), Francis Xavier (Singapore), Shanti Mogan (Kuala Lumpur) and Mohanadass Kanagasabai (Kuala Lumpur) formed two formidable panels at the Conference, burrowing deep into the topic of 'Energy Charter Treaty and Dispute Resolution in the Oil and Gas Industry', and highlighting the 'Pitfalls and Remedies in International Arbitration' from the perspectives of different countries.

Shuji Yamaguchi (Tokyo), Chairman of the Maritime Committee, enlisted the expertise of members of his Committee including: Raymond Burke (New York), Jon Zinke (Hong Kong), Alex Emmerson (Dubai), Sitpah Selvaratnam (Kuala Lumpur) and Cecil Abraham (Kuala Lumpur), to hone in on the traditional home grounds for maritime dispute resolution whilst providing an interesting glimpse of other emerging maritime fora in their contemplation on 'Forum Shopping in Maritime Dispute Resolution'.

The Conference was officiated by the new Director of the Kuala Lumpur Regional Centre of Arbitration, Sundra Rajoo. IPBA jurisdictional council member for Malaysia, Dinesh Baskaran, ensured a fitting end to this IPBA event by providing an official Closing Address for the Conference.

A post-conference cocktails reception for speakers and a formal conference dinner featuring magnificent Chinese drummers and other ethnic intrigues encouraged IPBA alliances to continue to thrive.

Sitpah Selvaratnam
Chair
Women Business Lawyers Committee



Mohanadass Kanagasabai delivering the Opening Address.



The Dispute Resolution and Arbitration Committee Session – Energy Charter Treaty & Dispute Resolution in the Oil & Gas Industry.



The Maritime Committee Session – Forum Shopping in Maritime Dispute Resolution.



The WBLC Session – Women in Dispute Resolution: Bringing Down Barriers.



Participants including Urs Lustenberger, Mohanadass Kanagasabai, Dinesh Baskaran and T Selvinthiranathan, Judge of the Malaysian Court of Appeal.



The Dispute Resolution and Arbitration Committee Session – Pitfalls & Remedies in International Arbitration: Country Perspectives.



Dinesh Baskaran delivering the Closing Address.



The Conference Dinner – Sumeet Kachwaha, Shuji Yamaguchi, Mohanadass Kanagasabai, Sitpah Selvaratnam, and Sundra Rajoo, Director of KLRCA.

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 *19 November 2010* 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.

IPBA Event Calendar

Event	Location	Date
Annual Meeting and Conference		
21st Annual Meeting and Conference	Kyoto/Osaka, Japan	April 21–24, 2011
22nd Annual Meeting and Conference	New Delhi, India	Feb/March, 2012
Mid-Year Council Meeting and Seminar		
2010 Mid-Year Meeting and Seminar (Oct 18 Seminar: Asian Counterparts in Corporate Transactions – Asian and European Perspectives)	Stuttgart, Germany	October 16–18, 2010
Supporting Events		
(Ethical Beacon) Anti-Corruption, South & SE Asia Summit	Singapore	September 14–16, 2010
China Mega Forum	Beijing, China	October 25–26, 2010
InnoXcell e-Discovery	Singapore	October 27–28, 2010
(ABA) International Law Section, 2010 Fall Meeting	Paris, France	November 2–6, 2010
HKIAC 25th Anniversary Conference	Hong Kong	November 18–19, 2010
(Ethical Beacon) Anti-Corruption, China Summit	Beijing, China	November 30–December 2, 2010
(AIJA) International Business and Arbitration: Is India Still Different? <i>Le business international et l'arbitrage: L'Inde est-elle toujours différente?</i>	Mumbai, India	December 2–3, 2010
IQPC Identifying & Structuring M&A Deals Southeast Asia 2010	Singapore	December 8–10, 2010

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

Implementation of the OECD International Tax Standard in the Pacific



John Ridgway



Anthony McFarlane

The OECD's International Tax Standard is now considered the agreed norm for tax cooperation between countries including those in the Pacific. One method of implementing this standard is through the signing of tax information exchange agreements (TIEAs).

This article discusses the key TIEA provisions and highlights the main features of enabling legislation that Pacific Island Governments are now considering. Stakeholders such as financial institutions, intermediaries and investors should be aware of the implications of this structural shift towards greater transparency.

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The global community continues to crackdown on offshore tax haven activity through legislative initiatives of individual countries including the United States and France¹, strong support from the G20 and the implementation of the OECD's standard of transparency and exchange of information (the 'International Tax Standard'), now considered the agreed norm for tax cooperation between countries. Although international cooperation on tax information still has some way to go, the increasing internationalisation of tax administration is encouraging for revenue authorities in their efforts to secure their tax bases, especially in uncertain economic times.

The Pacific is no exception to this world trend. Countries including Samoa, the Cook Islands, Vanuatu and the Marshall Islands have

either substantially implemented the OECD's Tax Standard or committed to implementation through the signing of TIEAs. Samoa is now on the OECD 'white list' and the Cook Islands is expected to soon join Samoa. It will be interesting to see if this willingness to cooperate translates in structural change.

This global shift and increasing willingness to implement change in the Pacific is of increasing relevance to the Pacific's Asian neighbours. In particular, Asian intermediaries and investors that have historically used Pacific offshore financial centres as part of wealth creation strategies should be aware of the implications that follow a TIEA, including resulting legal changes which are needed to implement the new regime of transparency.

This article discusses the key TIEA provisions (based on an examination of the TIEAs that Australia has entered with Samoa, the Cook Islands and Vanuatu) and highlights the key features of enabling legislation that Pacific Island Governments are currently considering. Key stakeholders such as banks, accountants and trustee companies should be taking an active role in consulting governments throughout this process.

Key TIEA Provisions

Generally, the TIEAs signed by Samoa, the Cook Islands and Vanuatu with Australia are in most part identical. As such, this article generically discusses the key elements of the TIEAs and highlights any key differences.

Object and Scope

The object and scope of the TIEAs is broad. The TIEAs provide for parties to assist one another through the exchange of information that is ‘foreseeably relevant’² to the administration and enforcement of either party’s domestic tax laws. This includes information needed in the investigation and prosecution of tax matters. Taxes which are subject to the TIEAs are ‘taxes of every kind and description’.³

What Type of Information can be Obtained on Request?

The term ‘information’ means: “any fact, statement or record in any form whatever”.⁴

Article 5(4) of the TIEAs gives the requesting party not only access to bank account and financial information but also access to information regarding the ownership structures of companies, partnerships, trusts, foundations including ownership information of all persons/entities in an ownership chain (unless that information is not held by relevant authorities or is not in the ‘possession or control’⁵ of a person/s who is within the territorial jurisdiction of the relevant country).

One key limitation placed on an information request is Article 5(5). It provides that the revenue authority requesting information must also demonstrate to the requested party the ‘foreseeable relevance’ of the information requested. This is done by submitting additional information with an information request, including the identity of the person under examination.⁶ As the Australian Tax Office recognises, fishing expeditions are not permitted under the TIEA: “the information requested can only relate to a specific investigation occurring at the time”.⁷ Article 5(5) also makes it clear that a specific investigation must identify actual names of people to be an eligible request and not just ‘classes’ of persons. Otherwise a requested party can decline the request under Article 7(1) of the TIEAs.

What About Secrecy and Confidentiality Provisions?

In Samoa, the Cook Islands and Vanuatu it is generally an offence to disclose information to any other person in relation to entities such as international companies, trustee companies and international partnerships including information about the beneficial owners, management, account

and transaction information, assets held and the general affairs of the entity (unless the disclosure falls within an exception).⁸

However, the TIEAs contain provisions to circumvent local secrecy provisions by providing the relevant revenue authority with the power to obtain and provide information held by banks, other financial institutions and any person acting in an agency or fiduciary capacity such as trustees and information regarding the ownership of an entity/bank account or asset.

Pacific Island countries must enact enabling legislation nationally to give effect to the terms of the TIEAs before revenue authorities can circumvent secrecy or confidentiality provisions. To date the OECD has not been informed of any such legislation.

What if the Investigated Conduct is not a Crime in the Other Country?

Article 5(1) of the TIEAs states that requested information must be exchanged regardless of whether the conduct being investigated is a crime under the laws of the other country. This provision curbs any argument that the ‘double criminality rule’ must be satisfied before information can be obtained, an argument which, in some Pacific Island countries, could prevent mutual assistance legislation being used to obtain information.⁹

When do the TIEAs Come into Effect?

In Samoa and the Cook Islands the TIEAs have effect:



1. for criminal matters – from 1 July 2010 with retrospective effect; and
2. for all other covered tax matters from 1 July 2010, but only in relation to taxable periods from 1 July 2010 onwards or tax liabilities that otherwise arise on or after this date.

In Vanuatu, the TIEA enters into force on the last notification (from either the Australian or Vanuatu Government to the other government) and will, from that date, have effect for criminal tax matters and for all other matters covered in the TIEA from 1 January 2011.

Termination

The TIEAs continue indefinitely unless terminated by a party. The Australia/Samoa TIEA and the Australia/Vanuatu TIEA can be terminated on six months' notice after three years; whereas the Australia/Cook Islands TIEA can be terminated on six months' notice after one year.

TIEA Implementation

Signing a TIEA is only the first step towards implementation of the International Tax Standard. What comes next is vital to giving effect to TIEA commitments. Treaty partners must implement legal and administrative frameworks to support their commitment to the exchange of information and transparency. Key stakeholders including banks, accountants and trustee companies should be taking an active role in this process.

The OECD Global Forum's peer review

process is now checking the progress of countries that have committed to implementing the required changes. This will take place in two phases:

1. phase one – will assess the adequacy of a jurisdiction's legal and regulatory framework for the exchange of information and transparency; and
2. phase two – will look at practical operation and implementation of that framework.

The review process will identify jurisdictions that are not implementing the International Tax Standard and provide guidance on the changes required, including deadlines to implement peer review recommendations. Vanuatu will be the first Pacific Island country to be reviewed in the first half of 2011.

Enabling Legislation

Enabling legislation is the next step for Pacific Island countries to implement the International Tax Standard. Enabling legislation is necessary to give legal effect to the TIEA obligations in a country. But it is important that such legislation mirrors the TIEA provisions.

In forming TIEA enabling legislation, the following points are important.

1. **Powers** – A key risk is that enabling legislation could give too wide (or not wide enough) powers to the relevant authority to collect bank account and general ownership information. As the TIEA provisions do not allow the relevant authority to embark on general 'fishing expeditions' for classes of taxpayers, a specific taxpayer must be identified. Depending on the drafting of the enabling legislation, the relevant authority may be able to succeed in making a broader-than-permitted information request.
2. **Foreseeably relevant** – The enabling legislation should only permit the exchange of information that is in accordance with the relevant TIEA (ie exchange of information that is 'foreseeably relevant'¹⁰ to the determination and assessment of taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters).
3. **Jurisdiction** – The information must be held by authorities in the requested jurisdiction or be in the 'possession or control'¹¹ of persons who are within the requested jurisdiction.
4. **Applicable date** – Article 13 of the Australia/Cook Islands and the Australia/Samoa TIEA clearly state that requests for information (other than for criminal tax matters) are prospective and therefore can only relate to taxable periods from 1 July 2010.¹² Article 13 of the Australia/



Vanuatu TIEA is silent on this point and, if left unqualified in the Vanuatu enabling legislation, would permit the Australian Tax Office to make information requests for matters prior to 1 January 2011.¹³

5. **How a request will work?** – The enabling legislation should set out clear procedures to make and fulfil an information request. When making a request, the applicant jurisdiction must also provide the necessary supporting information to demonstrate the foreseeable relevance of the information requested.¹⁴ The requested jurisdiction, on confirming that the information request is TIEA compliant, should in the first instance be given the authority to issue a written notice requiring the production of the information. Alternatively, the requested jurisdiction may need to apply for a court order for the production or seizure of the information. Currently, the abovementioned TIEAs do not impose a time limit to fulfil a request.
6. **Opportunity to dispute a request** – For tax matters other than criminal tax matters, it may be appropriate to give the recipient of the information request the right to make a written submission stating the grounds which he or she wishes the requested authority to consider in making a decision whether or not the request is in compliance with the terms of the TIEA.¹⁵
7. **Respect for taxpayer rights** – Confidentiality of any information received must be maintained under the terms of the relevant TIEA. Further, legal professional privilege must be preserved including confidential communications between a client and lawyer where the communications are for the purposes of legal advice or for use in existing or contemplated legal proceedings.
8. **Circumvention of secrecy provisions** – Enabling legislation should provide that disclosure of information by a person will not result in an offence under banking or offshore legislation which prohibits the disclosure of certain information. Alternatively, all relevant legislation containing secrecy or confidentiality provisions should provide an exception for disclosures by compulsion of law.

It is yet to be seen how TIEA obligations will be legislated across the Pacific although government departments are aware that time is running out before requests from treaty partners commence. Key stakeholders should be taking an active role in consulting governments on the drafting of TIEA enabling legislation. It is also important that stakeholders such as banks ensure

their systems can efficiently respond to taxpayers' specific requests.

Structural Change Necessary

Although enabling legislation will be effective in overriding secrecy and confidentiality provisions, it is likely to be ineffective in improving the inherent transparency limitations of certain ownership structures. For example, international company legislation which permits the issue of bearer shares to company members.¹⁶ On the share certificate of a bearer share, the word 'bearer' is inserted instead of the true owner, effectively masking the ownership of the shares.

To improve the transparency of this type of ownership structure, changes will need to be made at source level. For example, pursuant to the amendments introduced in Samoa under the International Companies Amendment Act 2008 all bearer shares and bearer debentures must be registered (ie 'immobilised') within a six-month transitional period with the trustee company which provides the registered office (for the relevant international company).¹⁷ Where a holder fails to lodge the bearer debenture or bearer share within the specified transitional period, all rights exercisable by the beneficial owner are suspended until lodgement of the relevant certificate.

Other Methods for Tax Information Exchange

The use and effectiveness of TIEAs to request tax information is yet to be seen. Depending on the country from which the information is sought, other avenues may be open to revenue authorities, including:

1. international tax agreements (DTAs) (which include an exchange of information provision); and
2. mutual assistance legislation.

The method which is selected will depend on a range of factors including whether the request relates to a civil or criminal tax matter, what type of tax, who and the proven effectiveness of a method in successfully obtaining information.

Only a TIEA can provide authorities with access to information in relation to criminal and civil tax matters for all types of taxes. For example, mutual assistance legislation in Samoa and the Cook Islands relates to criminal matters only¹⁸ and DTAs (for example the Australia–Papua New Guinea DTA)¹⁹ limit the tax information that can be exchanged to the taxes listed under the DTA.

However, mutual assistance legislation may also be an effective means (and broader tool) through which revenue authorities can obtain information albeit in criminal matters only. In the Vanuatu

case of *Partners of PKF Chartered Accountants v Supreme Court of the Republic of Vanuatu*; *Batty v Supreme Court of the Republic of Vanuatu*; *Moore Rowland (a Firm) v Attorney General*²⁰ (the 'PKF Case'), the validity of a warrant to obtain account information in relation to an Australian tax offence was upheld because, amongst other things, the conduct was deemed to be a 'serious offence'²¹ in Vanuatu under the mutual assistance legislation. The applicant argued that the definition of 'serious offence' also invoked the double criminality rule and since Vanuatu does not have income tax legislation, the double criminality rule could not be satisfied. However, the court rejected this submission finding that the alleged offence (ie fraud) was also an offence under the Penal Code Act 1981 (Cap 135) of Vanuatu.²²

It is possible that revenue authorities could, for example in the Cook Islands, adopt a similar approach to the PKF Case (in collecting information), through the Mutual Assistance in Criminal Matters Act 2003, by showing that the offence under investigation in a foreign country is also an offence in the Cook Islands. To establish this would be even less onerous in Samoa given that the definition of 'criminal matter'²³ is broader. Nevertheless, the use by revenue authorities of TIEAs as an effective tool for tax information exchange in the Pacific is yet to be seen. Of critical importance will be the way in which enabling legislation allows a TIEA to be implemented and administered and whether that process is an effective alternative to the existing mechanisms.

Notes:

- ¹ For a summary of the US and French measures please see the following articles 'US Focuses on Overseas Account Holders: New Obligations for Foreign Financial Institutions' at www.pln.com.au/ and 'France Creates Tax Haven Black List' at www.pln.com.au/.
- ² For example, see Art 1, Agreement between the Government of Australia and the Government of the Cook Islands on the Exchange of Information with Respect to Taxes and Article 1; Agreement between the Government of Australia and the Government of Samoa on the Exchange of Information with Respect to Taxes.
- ³ Art 3, note 2.
- ⁴ For example, Art 4(1)(j), note 2.
- ⁵ For example, Art 2, note 2.
- ⁶ For a list of the information that the requesting party must provide: see Art 5(5), *Ibid*. The Cook Islands–Australia TIEA adds an additional requirement being that the requesting authority must state the grounds for believing that the information requested is foreseeably relevant to the tax purpose of the request: Art 5(5)(d).
- ⁷ 'Tax Information Exchange Agreements – Overview', Australian Tax Office viewed at www.ato.gov.au dated 27 August 2010.
- ⁸ See 'The Pacific Islands Region: Being on the OECD Grey List' at www.pln.com.au/ for further discussion of Pacific Island secrecy provisions.
- ⁹ For example, in the Cook Islands under the *Mutual Assistance in Criminal Matters Act 2003* and in Vanuatu under the *Mutual Assistance in Criminal Matters Act (Cap 285)*.
- ¹⁰ For example, see Art 1, Agreement between the

Government of Australia and the Government of Vanuatu on the Exchange of Information with Respect to Taxes.

- ¹¹ For example, see Art 2 note 10.
- ¹² For example, see Art 13, Agreement between the Government of Australia and the Government of the Cook Islands on the Exchange of Information with Respect to Taxes.
- ¹³ For example, see Art 13, note 10.
- ¹⁴ For example, see Art 5(5) note 10.
- ¹⁵ The Cayman Islands enabling legislation provides a similar right to information request recipients, see cl 17(1) Tax Information Authority Law (2009 Revision).
- ¹⁶ For example, s 22 of the International Companies Act (Cap 222) (Vanuatu).
- ¹⁷ See ss 6 and 8 of the International Companies Amendment Act 2008 (Samoa).
- ¹⁸ See s 2 of the Mutual Assistance in Criminal Matters Act 2003 (the Cook Islands) and s 3 of the Mutual Assistance in Criminal Matters Act 2007 (Vanuatu).
- ¹⁹ International Tax Agreements Act 1953, Sch 29 – Papua New Guinea Agreement, Art 25.
- ²⁰ [2008] VUCA 15; Civil Appeal Case 15, 16 and 17 of 2008 (25 July 2008). For a further discussion of this case please see 'The Pacific Islands Region: Being on the OECD Grey List' at www.pln.com.au/.
- ²¹ An act or omission that, had it occurred in Vanuatu, would have constituted an offence under the Mutual Assistance in Criminal Matters Act (Cap 285) for which the maximum penalty is imprisonment for at least 12 months.
- ²² PKF Case at para 19.
- ²³ Section 2 of the Mutual Assistance in Criminal Matters Act 2007 (Samoa).

The New Arbitration Rules of the Singapore International Arbitration Centre



Richard Tan



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The new edition of the Singapore International Arbitration Centre (SIAC) Rules introduces a new Emergency Arbitrator procedure and other measures to make SIAC arbitration more efficient and arbitration-friendly, and reflects best practices in international arbitration.

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The SIAC recently introduced a new edition of the SIAC Rules, 1 July 2010 (4th ed), which replaced the SIAC Rules 2007 (3rd ed). These arbitration rules apply to any arbitration commenced on or after that date to which parties have agreed to refer their disputes to the SIAC for arbitration.¹

The introduction of an updated version of the SIAC Rules represents another milestone in the history of the SIAC² and will reinforce the image and reputation of Singapore as a leading hub for international arbitration, both in terms of the choice of venue, as well as the seat. This year and the last saw both the opening of the Maxwell

Chambers in Singapore, a purpose built, state-of-the-art complex with world class arbitration hearing facilities that houses the SIAC and the offices of a number of other arbitral institutions,³ and also amendments made to the Singapore International Arbitration Act.⁴ These developments aim to ensure that Singapore's arbitration infrastructure remains cutting edge, arbitration-friendly and competitive.⁵

Key Features

The new SIAC Rules 2010⁶ introduce several new exciting and modern features – the key ones being an emergency interim relief procedure and an expedited procedure. Certain streamlined procedures aimed at facilitating and improving the effectiveness and efficiency of SIAC arbitrations are also included to reflect best practices in international arbitration.

New Emergency Relief and Emergency Arbitrator
In certain situations, it is not uncommon that a party may need to apply for interim measures or relief, on an urgent basis, prior to the constitution of the arbitral tribunal. The formation of the tribunal

usually takes some time especially when three arbitrators are to be appointed. In such cases, what is a party to do? It may be possible for that party to apply to a state court,⁷ prior to the constitution of the tribunal for interim measures. Under the former edition of the SIAC Rules (as would be the case under many other institutional rules), that would be the only option available.

Rule 26.2 of the SIAC Rules 2010, however, allows a party to seek 'emergency interim relief' from an 'Emergency Arbitrator' prior to the constitution of the tribunal. (Such emergency procedures are also found in the AAA/ICDR Rules⁸ and the Stockholm Chamber of Commerce Rules.⁹ The London Court of International Arbitration (LCIA) Rules take a slightly different approach. Those rules allow a party, in exceptional circumstances, to apply for the expedited formation of the arbitral tribunal.)

The Emergency Relief procedure is set out in Schedule 1 to the SIAC Rules 2010. In brief, a party desiring such relief may make an application at the time of filing the notice of arbitration (or thereafter) but prior to the constitution of the tribunal, for such relief. The party must notify the Registrar and the opposite party in writing of the nature of the relief sought and the reasons such relief is required on an emergency basis, and why the party is entitled to such relief. The Chairman of the SIAC will then have to determine if the application should be accepted and if he or she so determines, an Emergency Arbitrator will be appointed *within one business day* of receipt of the application and payment of the requisite fees.

The Emergency Arbitrator once appointed must then, *within two business days*, establish a timeline for consideration of the application. He or she may hear the parties by telephone conference or receive written submissions as an alternative to a formal oral or physical hearing.

The Emergency Arbitrator is empowered to 'order or award any interim relief'¹⁰ that he or she deems necessary and must give reasons for his or her decision¹¹ in writing. The Emergency Arbitrator may condition his or her order or award, on the basis that security is provided. The Emergency Arbitrator may, however, modify or even vacate his or her own order later for good cause.

The Rules state that the Emergency Arbitrator must provide a 'reasonable' opportunity to all parties to be heard. Before accepting the appointment, the Emergency Arbitrator must make any necessary disclosures of circumstances that may give rise to justifiable doubts as to his or her impartiality or independence (in the same way an arbitrator appointed to hear normal disputes would.). The appointment may be challenged but

it must be made within one business day of the communication to the parties of the appointment. The Emergency Arbitrator also has power to rule on his or her own jurisdiction.

The Emergency Arbitrator's order or award is, however, only temporary as once the arbitral tribunal has been constituted, the tribunal may reconsider, modify or vacate the Emergency Arbitrator's order or award and will not be bound by his or her reasons. In any event, the order or award will cease to be binding if the tribunal is not constituted within 90 days of the order or award, or at such time as the tribunal makes its final award or if the claim is withdrawn. However, until such time as the order or award ceases to have effect, the Emergency Arbitrator's order or award is to be 'binding'¹² on the parties.¹³ The Emergency Arbitrator will not be allowed to act as the arbitral tribunal to hear the substantive disputes unless the parties agree.

In some situations, a party may, however, feel it necessary¹⁴ to apply to a court or judicial authority prior to the constitution of the tribunal rather than to the Emergency Arbitrator under the emergency procedure. In that case, the Rules¹⁵ provide that this would be permissible and not incompatible with the provisions on interim and emergency relief.

The introduction of the Emergency Arbitrator and emergency interim relief procedure fills a gap in the arbitral process and will provide users of SIAC arbitration with an additional valuable option at their disposal.

New Expedited Procedure

A new procedure under Rule 5 has been introduced which allows a party to apply to the SIAC for the entire arbitration to be conducted in accordance with a certain 'Expedited Procedure'. The application must, however, be made prior to the constitution of the tribunal. An application may be made if any of the following criteria is satisfied:

- the amount in dispute does not exceed the amount of S\$5 million;¹⁶
- in cases of exceptional urgency; or
- the parties agree.

The Chairman will decide whether or not the Expedited Procedure will apply, after considering the views of the parties. If he or she so decides, the Expedited Procedure allows, among other things, a shortening of time limits prescribed under the Rules,¹⁷ the reference of the case to a sole arbitrator,¹⁸ the award being made within six months from the date the tribunal is constituted¹⁹ and the reasoned award being made in a summary form.²⁰

This Expedited Procedure will be particularly

helpful where the disputes involve only a small amount of money or where there are very few disputed issues of fact or the disputes involve only questions of law. In these cases, the Expedited Procedure would result in a saving of time and costs.

There may also be situations of unusual or exceptional urgency which require a final award to be made relatively quickly. The availability of an Expedited Procedure – even when it is against the wishes of one of the parties to the arbitration – gives additional flexibility to the SIAC arbitral process.

It should be noted that the Expedited Procedure is not an optional procedure that requires the parties to specially enter into, for example, a separate arbitration agreement or use a different version of the current model SIAC arbitration clause. The Expedited Procedure forms an integral part of the new SIAC Rules but will apply only in certain circumstances and under certain conditions. There may be disagreement between the parties as to whether the circumstances are of such ‘exceptional urgency’ as to warrant the Chairman determining that this procedure should be applied.²¹ If the parties do not wish such a procedure to apply (or are unwilling to take the risk that one party may apply to invoke this procedure against the other’s wishes) they can exclude this procedure but they should make it clear, at the time of drafting their arbitration agreement, that Rule 5 is to be excluded.

More Efficient and Greater Flexibility in the Conduct of Proceedings

There is now greater flexibility in the conduct of the arbitration proceedings (under Rules 16 and 17) with, *inter alia*, the following revisions:

- *Removal of the memorandum of issues:* The previous edition of the Rules provided for a memorandum of issues to be drawn up and signed, defining the issues to be determined by the tribunal following the exchange of the parties’ written statements. The memorandum of issues was the equivalent of the list of issues that forms part of the terms of reference in ICC arbitrations but, in practice, the requirement for a memorandum of issues was regarded as perhaps an unnecessary procedural step that could be dispensed with, without making much of a difference to the efficiency of the arbitral process. The removal of this requirement will speed up the process and is likely to be regarded by many practitioners as a welcome change.
- *Removal of certain fixed timelines:* The fixed timelines²² for the exchange of the

statement of claim and statement of defence under the previous edition of the Rules have been removed. The new Rules provide that a preliminary meeting will be held, as soon as practicable, following the constitution of the tribunal at which time the tribunal will discuss with the parties the procedures that will be most appropriate and efficient for the case²³ and then issue directions. The tribunal’s powers to manage the proceedings and issue directions are fairly wide.²⁴

- *Presiding arbitrator to make procedural rulings alone:* It is now expressly provided that a presiding arbitrator may make procedural rulings alone²⁵ although such rulings may be subject to revision by the tribunal.²⁶

Appointment of the Tribunal in Multi-party Situations

The new Rule 9 (which replaces the former Rule 8 of the previous edition) seeks to streamline and make clearer the procedure for appointment of the arbitral tribunal in the difficult situations where multiple parties are involved in the arbitration. The new Rule 9.1 states that where there are more than two parties in the arbitration and three arbitrators are to be appointed, the claimants (if more than



one) are to jointly nominate one arbitrator and the respondents (if more than one) are to jointly nominate another arbitrator, and the two arbitrators will appoint the third. In the absence of both such joint nominations being made within 28 days of the filing of the Notice of Arbitration or within a period of time agreed by the parties, the Chairman of the SIAC will appoint all three arbitrators and designate one of them as the presiding arbitrator.

The former Rule 8 used different language. It did not contain the same admonition now found in Rule 9 (that the parties should 'jointly' nominate their arbitrators) but adopted the approach that if the parties could not agree on the procedure for the appointment of arbitrators or 'if the agreed procedure failed', the Chairman of the SIAC would appoint the arbitrator(s). The new Rule 9 is worded in clearer terms although the earlier version would probably have achieved the same result.

Communications with Arbitrators

Rule 10.7 lays down certain requirements relating to communications and contact with potential arbitrators. These are not mere guidelines. This rule states that no party is to have any *ex parte* communication relating to the case with any

candidate for appointment as party-nominated arbitrator, except to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability or independence in relation to the parties. While this is not exceptional, the rule goes on to further mandate that the parties may not discuss with any such candidate the suitability of candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection.

Removal of an Arbitrator

The Chairman of the SIAC is given a new discretionary power to remove an arbitrator following consultation with the parties who refuses or fails to act, or in the event of a *de jure* or *de facto* impossibility of performing his or her functions, or if the arbitrator is not fulfilling his or her functions in accordance with the Rules or within the prescribed time limits. This allows the Chairman of the SIAC the ultimate power to remove an arbitrator if the arbitrator does not discharge his or her functions properly or acts in a dilatory manner and allows the SIAC to exercise greater supervisory control over the arbitral process. In some jurisdictions, the power to remove an arbitrator would lie with the courts but under these new rules, the power also rests with the Chairman.²⁷

Joinder of Third Parties

It is now provided under Rule 24(b) that upon the application of a party, the tribunal may allow one or more third parties to be joined in the arbitration, provided that such applicant is a party to the arbitration agreement and the written consent of the third party has been obtained. This gives greater flexibility to the process. The Rules do not stipulate that such application must be made within a certain period of time.

Majority Award

Under the former Rules, if the arbitrators were not unanimous in their decision and one arbitrator refused to sign the award, the reason for the omitted signature had to be stated. Under the new Rule 28.5, it is no longer required that the majority have to state the reason for the omitted signature.

Interest

The new Rule 28.7 empowers the tribunal to award interest until the date the award is complied with. Under the previous Rules, the tribunal was only empowered to award interest until the date of the award. The new Rules better reflect commercial realities and the needs of the parties.



Interpretation of the Award

Rule 29.4 allows a party to give written notice to the Registrar and to any other party, within 30 days of the receipt of the award, to request that the tribunal give an interpretation of the award. Any other party may comment on such request within 15 days of its receipt. If the tribunal considers the request to be justified, it must give the interpretation in writing within 45 days after the receipt of the request and the interpretation will form part of the award. The current position under Singapore law²⁸ is that a party may request the tribunal to give an interpretation of the award, provided all the parties to the arbitration agree to a request being made. The new rule will therefore give the parties additional rights beyond those given by the law.

Unpaid Share of Fees and Deposits

It is not uncommon that one of the parties may refuse to pay its share of the advance payable to the SIAC for the costs of the arbitration leaving the other party to have to pay the other party's share in order to proceed with the arbitration. Rule 30.6 now expressly provides that on the application of a party, the tribunal may issue an award for unpaid costs against the party, which has failed to pay its share of the advances or deposits. The tribunal would most likely already have power under the former Rules to make such an order but the express power now given by the new Rules against a recalcitrant party makes this clear.

Sanctions for Breach of Confidentiality

It is an important feature of arbitration that the proceedings are kept confidential and this requirement is expressly set out in both the new and the former editions of the Rules. However, there is the problem of a lack of teeth to enforce these provisions and punish infractions. Rule 35.4 empowers the tribunal to take appropriate measures, including issuing an order or award for sanctions or costs, if a party breaches the confidentiality provisions.

Decisions on Challenge

Under the former Rules, the Chairman of the SIAC made decisions on challenges to an arbitrator. Under Rule 13, a Committee of the Board of the SIAC will now make these important decisions.

The Seat of the Arbitration and the Law Governing the Conduct of the Arbitration

An important change to the SIAC Rules is that under the new Rule 18, it is no longer provided²⁹ that the International Arbitration Act of Singapore will automatically apply to the conduct of the arbitration proceedings where the seat of the arbitration is Singapore. The consequence of this change is that where the seat of the arbitration is Singapore, then the *lex arbitri* will depend on whether, on the facts, the arbitration is an 'international arbitration' or a domestic arbitration, or whether the parties have expressly opted into one or the other of the two arbitration regimes, as they are allowed to do.

Where no express choice has been made, then whether the International Arbitration Act or the Arbitration Act applies will depend on the facts.³⁰ In the case of an international arbitration, the International Arbitration Act (Cap 143A) will apply, while in the case of a domestic arbitration, the Arbitration Act (Cap 10) will apply.

As there are certain differences³¹ between the international and domestic arbitration regimes, parties should be aware of the differences and decide whether having regard to those differences they should opt in specifically into one regime or the other. They should make their choice clear in their arbitration clause or agreement.

Waiver of any Rights of Appeal, Review or Recourse to the Courts

Rule 28.9 provides that by agreeing to arbitration under the SIAC Rules 2010, the parties 'waive their rights to any form of appeal, review or recourse to any state court or other judicial authority, insofar as such waiver may be validly made'.³² The former Rules merely provided that the award should be 'final and binding', which does not mean that there can never be recourse to the courts.

Conclusion

The objectives of the new SIAC Rules 2010 are to provide a more efficient and effective framework for the resolution of disputes conducted under the auspices of the SIAC. The new provisions certainly have the potential for achieving those aims. However, as would be the case for any new set of rules, there will no doubt be a period of growing pains as users interpret, test and grapple with the new provisions.

Notes:

- ¹ Parties who have entered into arbitration agreements incorporating the SIAC Rules generally prior to 1 July 2010 but who commence arbitration after that date will have their arbitrations subject to the new SIAC Rules 2010.
- ² The SIAC was established in 1991.
- ³ Amongst the arbitration institutions that maintain offices at the Maxwell Centre are the ICC, ICDR, WIPO, SCMA and SI Arb.
- ⁴ The International Arbitration Act (Cap 143A) is based on the UNCITRAL Model Law of International Commercial Arbitration.
- ⁵ Speech by Professor S Jayakumar, Senior Minister, at the opening of the Maxwell Chambers on 21 January 2010 and see: www.news.gov.sg.
- ⁶ The new SIAC 2010 Rules were drafted after a period of public consultation by the Rules Committee of the board of the SIAC. The SIAC Rules were amended on two previous occasions, on 22 October 1997 (2nd ed) and on 1 July 2007 (3rd ed).
- ⁷ Whether a state or national court would entertain an application for interim relief, where there is an arbitration agreement providing for disputes to be referred to arbitration, would depend on the law of the country of that particular court and the arbitration agreement itself. In respect of at least those countries which have adopted the UNCITRAL Model Law, Art 9 of the Model Law provides that it is not incompatible with an arbitration agreement for a party to request, and for a court to grant, an interim measure of protection before or during the arbitral proceedings.
- ⁸ Art 37 of the ICDR International Arbitration Rules, 1 May 2006.
- ⁹ SCC Rules 2010, 1 January 2010.
- ¹⁰ Sch 1 para 5. It is not entirely clear under what circumstances an emergency arbitrator's decision should take the form of either an 'order' or an 'award'.
- ¹¹ It would appear that reasons will have to be given whether the decision takes the form of an order or an interim award. Interestingly, unlike the Expedited Procedure in Rule 5, the Emergency Procedure does not provide that the reasoned award may take a 'summary form'. One might have thought that given the urgency with which the Emergency Arbitrator should issue his or her reasoned order or award, it might have been provided that written reasons might be given in summary form or allowed to be deferred for a very brief period after the decision is issued (or even dispensed with). Another interesting question is whether the Emergency Arbitrator's power to issue a decision ends if a reasoned decision has not been issued by the time the actual arbitral tribunal has been appointed.
- ¹² Sch 1 para 9.
- ¹³ Presumably an interim award of the Emergency Arbitrator would be enforceable in the same manner as a partial or final award of an arbitral tribunal, at least in Singapore. If an order is made by the Emergency Arbitrator it should also be enforceable by leave of a court in Singapore under s 12(6) of the International Arbitration Act where that Act applies.
- ¹⁴ The application to the Emergency Arbitrator is made *inter partes* which means that the party against whom the interim relief is sought would be aware of the pending application and may take steps to frustrate the interim relief before the order is made. In that case, a party may need to take urgent steps to maintain the element of surprise by applying for *ex parte* relief to a court. If the court grants interim relief, a question will then arise as to whether the court order can be reviewed or varied by the arbitral tribunal. This would depend on the laws of the country of the national court that made the order. At least in Singapore, under the International Arbitration Act, an interim order made by the court would cease to have effect if the arbitral tribunal, after its constitution, decided to make an order itself in relation to the subject-matter of the court order: s 12A (7) of the International Arbitration Act.
- ¹⁵ Rule 26.3 SIAC Rules 2010.
- ¹⁶ The amount would be the aggregate of the claim, counterclaim and any set-off.
- ¹⁷ The shortened time periods will be decided by the Registrar of the SIAC.
- ¹⁸ It should be noted that Rule 5.2 (b) provides that the Chairman of the SIAC has a discretion to whether or not to refer the dispute to a sole arbitrator. Accordingly, if the parties expressly provide that three arbitrators should be appointed, the Chairman may be prepared, in appropriate circumstances, not to override the parties' original choice. An interesting question may arise as to whether an express choice of the parties as to three arbitrators should be regarded as an agreement that effectively excludes this part of Rule 5.2 (b). To avoid any doubt, when drafting their arbitration agreement incorporating the SIAC Rules, the parties should, if they wish to exclude the application of Rule 5 or any part thereof, use clear and

unambiguous language.

¹⁹ The Registrar of the SIAC is allowed to extend the six-month period for the making of the award if there are ‘exceptional circumstances’. This is of course a necessary safeguard to prevent the tribunal from being *functus* in the event the proceedings are delayed for valid reasons and the award is also accordingly delayed.

²⁰ It is not entirely clear what ‘summary form’ means in terms of the reasons to be given.

²¹ It is unclear whether the Chairman’s decision can be challenged. Unlike certain other provisions found in the Rules, the Chairman’s decision is not stated to be final and binding and not subject to appeal.

²² Former rule 16 SIAC Rules (3rd ed).

²³ Rule 16.3.

²⁴ Rule 16.4 gives the tribunal wide powers to direct the order of the proceedings, bifurcate proceedings, exclude irrelevant testimony or other evidence and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

²⁵ By not having to consult his or her co-arbitrators, this might allow procedural decisions to be made much more quickly.

²⁶ Whether this may allow a party to further delay matters by making further representations to the whole tribunal if he or she is unhappy with the presiding arbitrator’s views remains to be seen. In practice, a party may be unaware whether the presiding arbitrator consulted with his or her co-arbitrators before arriving at the procedural decision.

²⁷ The Rules are silent as to whether a party who is dissatisfied with the Chairman’s decision may seek recourse from the courts.

²⁸ Art 33(1)(b) of the Model Law.

²⁹ This was the position under the former Rule 32.
³⁰ Section 5(2) of the International Arbitration Act provides that an arbitration is international if: (a) one of the parties to the arbitration agreement has its place of business in a country other than Singapore; (b) if the place of arbitration or the place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected, is a place that is situated outside the country in which the parties have their places of business; or (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country. In some situations, it may not always be clear on the facts whether an arbitration is an international one or not.

³¹ A key difference between the Arbitration Act and the International Arbitration Act is that there is greater scope for court intervention under the former as compared with the latter. The former also provides that the court’s power to stay court proceedings in favor of arbitration is discretionary while the latter provides for a mandatory stay.

³² If the Arbitration Act applies, a question may nevertheless arise as to which precise forms of recourse may be validly waived. The right to appeal and to apply for a preliminary point of law to be determined by the court under the Arbitration Act may be validly waived or excluded by agreement, but less clear perhaps is the right of a party to seek from the court the removal of an arbitrator who is alleged to have failed to properly conduct the proceedings.

New Headquarters of Multinational Companies Law in Panama



With tax benefits and immigration and labour incentives, Panama's Law 41 of 2007 not only aims to encourage multinational companies to establish their corporate regional headquarters in Panama, but it also enhances the country's social and economic growth.

Jorge A Quijano

Associate, Arosemena Noriega & Contreras

International companies throughout the world are constantly in search of new jurisdictions where they can establish their business activities and at the same time receive tax, labour and immigration benefits. In view of these needs, Panama has enacted Law 41 of 2007 (the 'Law') for the purpose of attracting the establishment and operations of company headquarters of multinationals, which has undoubtedly benefited Panama's economy by attracting foreign capital investments, use of local goods and services, creation of jobs and the transfer of technology. By the same token, the Law serves to increase Panama's competitiveness in the global economy by taking advantage of its geographical position and legal and institutional structures geared to offer international commerce services.

The benefits granted by the Law may only be obtained by those multinational companies that carry out the following operations from Panama to their main branch or subsidiaries:

- management and/or administration of operations in a specific or global geographical area of a company belonging to the same economic group, referring to strategic and business development, personnel training, control of operations and/ or logistics;
- logistics and/or storage of components or parts, required for the manufacture or assembly of products;
- technical assistance to companies of the economic group or customer service to clients that have acquired products or services of the company;
- financial management, including treasury and accounting services for the economic group;
- drafting of plans that are part of design and/ or constructions, which constitute part of the typical business activity of the main branch or any of its subsidiaries;
- electronic processing of any activity, including the consolidations of the economic group operations including their network;
- counselling, coordination and follow-up on market guidelines and information regarding the goods or services produced by the economic group; and
- operations and investigation support and

development of products and services for the economic group.

In this respect, foreign companies involved in any of the aforementioned services will qualify for the 'Multinational Headquarters Companies License' (MHCL) and will be required to submit an annual report containing the statistics relating to its operations within Panama. Any changes in the status of its operations in Panama and of its personnel must be notified immediately to the Multinational Headquarters Companies Commission of the Ministry of Commerce and Industries.

As for the type of company, multinational companies that wish to obtain the corresponding license must operate either as a foreign company registered in Panama or as a Panama subsidiary wholly-owned by the parent company of their subsidiaries or affiliates.

Tax Benefits

Pursuant to the Law, companies with an MHCL are granted the following tax benefits:

- income tax exemption in respect to the net or gross income generated in Panama for services provided to any individuals or legal entities domiciled abroad, that do not generate taxable income in Panama; and
- the Value Added Tax (ITBMS) exemption on services provided to any individuals or legal entities abroad.

The above tax benefits are only applicable to the company and not to the employees.

Panama's tax regime is based on the concept of territoriality and thus only Panamanian source income, that is income produced in or derived from or obtained in Panama, is subject to income tax. However, in the event that any of the services provided by the multinational company have an effect on the production of local income or its conservation, and at the same time such income is considered to be a deductible expense by the receiver, the said services will be taxable.

Taking this exception as rule, the multinational company rendering the service will apply the following tax rates on 50% of the amount that is forwarded to the Multinational Headquarters Company (MHC):

Fiscal Period	Rate
From 1 January 2010	27.5%
2011 and beyond	25%

Those companies whose main business activities are the generation and distribution of electric energy, telecommunications, insurance, reinsurance, cement manufacture, operation and administration of casinos, mining and banking services will be subject to the following tax rate:

Fiscal Period	Rate
From 1 January 2010	30%
From 1 January 2012	27.5%
From 1 January 2014	25%

Furthermore, the Law allows companies that hold an MHCL to reach tax agreements with the Ministry of Economics and Finance of Panama to consolidate profits and pay taxes on the income obtained in various countries. In the event of participation in tax agreements with other countries, the effective date of payment, as well as other modalities agreed must be clearly established. The multinational company must present such agreements before the Technical Secretary of the Multinational Headquarters Company License Commission.

Foreign employees applying for the MHC work visa have the following tax benefits:



- total exemption from import tax on household items when travelling for the first time to Panama, provided they are duly verified and confirmed by the Customs department; and
- total exemption on income tax, social security and education tax when the salaries are paid by the main branch abroad.

Because the present provisions of Law do not require payment of social security contributions to foreign employees holding the personnel visa, the MHC is responsible for the health insurance coverage of their personnel.

Immigration Incentives

Another benefit contained in the Law is the creation of specific visas for foreign employees hired by the MHC. The visas are requested from the Ministry of Commerce and Industries and are divided into two categories.

1. Visa for permanent personnel: granted for a term not to exceed the term of the employment contract and in any event for no more than five years and renewable every three years. The holder of this visa does not require a work permit.
2. Visa for temporary personnel: granted for a

period of no more than three months which can be extended for an additional three months to employees that must come to Panama for any activity related to the MHC. The holder of this visa does not require a work permit.

The holders of these visas are allowed to participate in any events held by the MHC in Panama, such as training, meetings with customers and suppliers, strategy meetings and conventions. In this respect, the MHC must obtain the corresponding temporary permit for the said purposes.

Labour Incentives

The Labour Code of Panama provides that each employer can hire ordinary foreign personnel in a proportion of no more than 10% of its regular labour force and foreign specialised or technical personnel that does not exceed 15% of the total labour force. Notwithstanding, the Law provides that an MHC holding a licence is exempted from the limitations in hiring foreign personnel, as long as the personnel falls within the category of 'employees of trust', which are generally considered as executives. This incentive can only be obtained by the company employees and not their dependents.

Legal Requirements for Obtaining an MHCL

In order to obtain an MHCL, the company must provide the Multinational Headquarters Company Commission with the following information:

- financial statements declaring the assets of the multinational company;
- an approximate estimate of initial investment in Panama;
- principal activities or trade operations to be developed by the multinational company;
- information about the countries where the multinational company operates;
- a description of the headquarters and subsidiaries of the economic group to which the multinational company will render its services;
- the value of the shares of the multinational company in local and international stock markets, as well as any other relevant information that the Multinational Headquarters Company Commission deems appropriate to establish and evaluate as a requirement;
- the number of foreign employees of trust holding management positions in the company; and
- social responsibility plans of the multinational



company in Panama within the areas of technology and education.

In the event that the multinational company complies with all legal requirements, the corresponding license will be granted by means of a written resolution. The license is granted for an indefinite term and will contain a tax payer number which will be used in all administrative procedures necessary to carry out the company activities in Panama. Any additional or different activities from those authorised in the resolution must be previously approved.

Finally, the MHC must present a yearly report within the first five days of the upcoming year following the granting of the license. Such a report must contain the following information:

- the name of the legal representative and identity description;
- the name of the company, registration number at the Public Registry of Panama, number and date of resolution granting the MHCL;
- a description of the main branch or subsidiaries of the same economic group to whom the services covered by the MHCL have been effectively rendered;
- investments carried out in Panama during the preceding year;
- a list of names, general descriptions and positions of the foreign employees hired by the MHC and their dependents holding visas for personnel of the MHC;
- any changes in foreign personnel registry throughout the year;
- a list of the local employees hired by the MHC, positions and the amount of the payroll of the said personnel;
- any activities involving technology transfer and/or education carried out during the corresponding fiscal year; and
- any future plans the company may have.

Infringements and Penalties

Any action or omission breaching the provisions contained in the Law and its regulations will be penalised in any of the following scenarios.

- If the MHC carries out activities in Panama other than those authorised by the license. In this case, the license will be cancelled and a fine imposed which will be equivalent up to three times the non-perceived income due to tax benefits granted.
- Foreign employees entering the Panama under the protection and benefits of the Law and remain in the country without working in the MHC will be penalised with a fine of up to US\$5000. Moreover, their work visa will be cancelled and they will be repatriated at the company's expense.
- By the same token, the MHC that fails to report the change of status of its foreign employees or does not comply with the dispositions established in the Law will be subject to a fine of up to US\$100,000.

Conclusion

The excellent benefits granted by the Law serve as an encouragement for multinational companies around the world to establish their corporate regional headquarters in Panama. The success of the Law is reflected in the well-known companies that have established their regional headquarters in Panama, such as: Procter and Gamble, LG, Maersk, Hyundai, Caterpillar, Roche, Inelectra, Western Union and Petroleum and Chemical Corporation (SINOPEC), to name a few.

The Law is not only attracting companies but, at the same time, it is generating more employment and serving as a vehicle for the transfer of high-tech knowledge, which taken as whole, are key elements in the economic and social growth of Panama.

Financial Stabilisation Measures for Endangered Germany-Based Credit Institutions



The German Federal Government has implemented measures for the financial industry on the basis of the Financial Markets Stabilisation Act. For long-term stabilisation, it has introduced measures that place emphasis on the restructuring and reorganisation of German financial institutions, including the establishment of a restructuring fund.

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The financial crisis has faced the worldwide capital market with new challenges. Banks worldwide have applied for insolvency and states have implemented numerous financial stabilisation measures. In Germany, the Federal Government has implemented a rescue package for the financial industry on the basis of the Financial Markets Stabilisation Act (*Finanzmarktstabilisierungsgesetz*). In addition thereto, the government draft aims at implementing further, long-term stabilisation measures with emphasis on the restructuring and reorganisation of German financial institutions.

On 25 August 2010, the Federal Government (*Bundesregierung*) published a government draft of the Act for the Restructuring and Orderly Liquidation of Credit Institutions for the Establishment of a Restructuring Fund for Credit Institutions and for the Extension of the Limitation Period of Corporate Law Management Liability (Restructuring Act) (*Regierungsentwurf eines Gesetzes zur Restrukturierung und geordneten Abwicklung von Kreditinstituten, zur Errichtung*

eines Restrukturierungsfonds für Kreditinstitute und zur Verlängerung der Verjährungsfrist der aktienrechtlichen Organhaftung [Restrukturierungsgesetz]). Furthermore, a restructuring fund in the form of a bank levy (*Bankenabgabe*) will be introduced in order to involve the financial sector to the rescue costs of future crises.

Key Points of the Government Draft

The government draft provides primarily new pre-insolvency measures aiming to prevent insolvency through the restructuring or reorganisation of endangered banks, in Germany, as contemplated in the Key Points on Financial Markets Regulation (*Eckpunkte zur Finanzmarktregulierung*) of the German Federal Cabinet, issued on 31 March 2010. The restructuring procedures take place with regard to financial institutions that are facing an insolvency risk but where the crisis appears to be manageable. Furthermore, in the case of serious, existence-destructive financial problems, the reorganisation procedures will be applicable. Ultimately, the Restructuring Act introduces measures that obligate banks to transfer all or part of their assets to another bank by order of Germany's Federal

Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, or the BaFin) if the bank's existence is endangered and the result of its closing would pose a potential systemic risk to the financial system.

The second main proposal of the government draft refers to the introduction of a restructuring fund managed by the Federal Authority for Financial Market Stabilisation (*Bundesanstalt für Finanzmarktstabilisierung*, or FMSA). Under the new rules the banks are forced to affect a bank levy whereby the respective amount must be calculated in relation to the systemic risk of the bank's failure. Beyond this, the government draft introduces an extension of the liability of the management board and its members by expanding the limitation period.

New Bank Reorganisation Act

The Restructuring Act introduces in the new Bank Reorganisation Act (*Gesetz zur Reorganisation von Kreditinstituten*) three different measures for restructuring:

1. voluntary restructuring proceedings (*Restrukturierungsverfahren*) where a restructuring adviser (*Sanierungsberater*) will be appointed and a restructuring plan will be implemented in consultation with the BaFin (Art 1, ss 2–6);
2. reorganisation procedures (*Reorganisationsverfahren*) are initiated by the BaFin in cases where restructuring measures cannot be implemented successfully (Art 1, ss 7–23); and
3. a transfer order (*Übertragungsorder*) must be issued by the BaFin forcing the bank to transfer all or part of its business to a public or private bank, if the BaFin decides that the bank's existence is endangered which might cause a systemic risk for the financial system (Art 2, ss 48a–48s of the draft German Banking Act).

Restructuring

As stated above, restructuring procedures can be initiated by the financial institution itself if it estimates that there is a need for restructuring. However, if financial stabilisation measures are needed and the bank does not initiate the respective procedures, the BaFin can threaten the bank with certain supervisory measures (in particular, prohibit distribution of profits, order the bank to reduce risk positions or dismiss managers).

If the financial institution decides to apply for restructuring procedures, it must submit a restructuring plan that contains appropriate

restructuring measures and the nomination of a restructuring adviser. The BaFin must examine the restructuring plan and if it accepts the proposed measures, the BaFin will file for the opening of restructuring proceedings with the Higher Regional Court (*Oberlandesgericht*). The court must approve the implementation of restructuring procedures and appoint a restructuring adviser. The restructuring adviser is in charge of the implementation of the restructuring plan in close cooperation with the BaFin.

In addition, the BaFin is entitled to issue further measures in the context of restructuring (eg, dismissal of managers, changes of the remuneration and bonus payment systems of the bank or the appointment of a restructuring adviser to the board) where such measures are necessary to protect the interests of creditors.

Reorganisation

Reorganisation procedures are initiated where the restructuring measures cannot be implemented successfully or in cases where restructuring procedures seem to fail. In such cases, the BaFin is entitled to apply for the initiation of the reorganisation procedures with the competent court.

First, the bank must submit a reorganisation plan



to the BaFin. The content of such a reorganisation plan is very similar to an insolvency plan under the German Insolvency Act (*Insolvenzordnung*). The reorganisation plan must contain the reorganisation measures that will apply including:

- capital measures like the reduction or the increase of capital;
- corporate measures like spin-offs of determined business parts;
- the limitations of creditors' rights; and
- debt-equity swaps.

The reorganisation procedures will be implemented after the competent court has heard the respective financial institution, the BaFin and the Deutsche Bundesbank, and has approved the respective reorganisation procedures.

Transfer Order

Ultimately, if the BaFin decides that the bank's existence is endangered, the BaFin is entitled to issue a transfer order. As result of such an order, the financial institution will be forced to transfer all or part of its assets to another entity. However, a transfer order can only become relevant when the financial institution is endangered in its existence

(*Bestandsgefährdung*) and the result of its closing would mean a risk for the stability of the whole financial system (*Systemgefährdung*).

Another condition for a transfer order is that there are no other, less harmful means to reorganise the financial institution. In particular, the BaFin must set a deadline for the credit institution to present a recovery plan (*Wiederherstellungsplan*) to solve the crisis before the implementation of the transfer order as a potential last resort to solve the crisis. Furthermore, the shareholders might be able to add further capital in accordance with a capital increase or other measures that could change the financial situation of the bank. If the bank has already initiated restructuring or reorganisation procedures, the BaFin must prove that the plan is sufficient to solve the crisis. Therefore, the reorganisation plan can also be regarded as a recovery plan.

A precondition for the transfer order is the notarised consent of the adopting entity. Furthermore, it will be inevitable that the adopting entity is located in Germany, has two trustworthy and qualified managers and is sufficiently capitalised. The transfer order will be effective as of the date of its notification to the financial institution and the adopting entity. In the following period, all assets and liabilities are transferred to the adopting entity. The endangered bank will receive a contribution in equity from the adopting entity if the value of the transferred assets exceeds the liabilities.

Under the Restructuring Act, the BaFin has extensive rights against the adopting entity in order to safeguard the transferred assets or business units. Generally, the transfer order is supposed to enable the BaFin to separate the endangered part of the business from the rest of the business in order to restructure the relevant business part. The restructuring of the systemically risky part of the banking business can take place without the involvement of the shareholders of the financial institution. Moreover, the insolvency risk of the endangered bank can be avoided.

Restructuring Fund

A restructuring fund which will be administered by the FMSA based on the Act for the Establishment of a Restructuring Fund for Credit Institutions (*Gesetz zur Errichtung eines Restrukturierungsfonds für Kreditinstitute*) will be established under the Restructuring Act. The restructuring fund will be financed through a bank levy in which all German credit institutions have to pay an annual contribution. The specific amount of the annual contributions will be calculated in relation to the systemic risk of the bank's failure.



The obligation is limited to credit institutions that are listed in section 1, clause 1 of the German Banking Act (*Kreditwesengesetz*) and not to financial institutions (*Finanzdienstleistungsinstitute*) pursuant to section 1, clause 1a of the German Banking Act. The amount of the annual contributions will be calculated based on figures from the bank's most recent financial statements, in particular the subscription relevant liabilities and the nominal value of the bank's off-balance sheet derivative transactions. The credit institution is obliged to pay a minimum contribution as a percentage of the regular contribution even if it did not make any profit at all. The fund is used for restructuring measures in future crises which are decided by the FMSA and the BaFin.

Extension of the Limitation Period of the Management Liability

The Restructuring Act introduces an extension of the limitation period for the liability of the management board members of Germany-based

credit institutions (*Vorstände and Aufsichsräte*) from five years to a maximum of 10 years.

Limitation of Termination Rights

The Restructuring Act also regulates the limitation of the rights of counterparties to terminate contractual relationships with financial institutions entering into reorganisation proceedings or receiving a transfer order from the BaFin.

The underlying agreements with the financial institutions cannot be terminated until the day following the publication of the reorganisation plan. The consequences of such limitations of termination rights have been controversially discussed.

Further Steps

According to the government draft, the proposed implementation date for the Restructuring Act is 31 December 2010. However, whether this date can be achieved mainly depends on the legislative process in the forthcoming months.



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 and was established in April 1991 at an organising conference in Tokyo, which was 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 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 Beijing and Los Angeles. Our most recent annual conference in Singapore attracted over 1000 delegates.

The IPBA has organised regional conferences and seminars on subjects such as the 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 – the International Financial Law Review's Asia M&A Forum and the Hong Kong International Arbitration Centre's ADR Conference, both held in Hong Kong each year.

The IPBA also publishes a membership directory and a quarterly IPBA Journal. More details can be found at the IPBA homepage at www.ipba.org.

Membership

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

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|--|-------------------|
| • Standard Membership | US\$195 / ¥23,000 |
| • Three-Year Term Membership | US\$535 / ¥63,000 |
| • Corporate Counsel | US\$100 / ¥11,800 |
| • Lawyers in developing countries with low income levels | US\$100 / ¥11,800 |
| • Young Lawyers (under 30 years old) | US\$50 / ¥6,000 |

Annual dues cover the period of one calendar year starting from 1 January and ending on 31 December. 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 July.

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 (US\$500/ ¥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 the 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 | US\$500 / ¥50,000 |
|--|-------------------|

Payment of Dues

Payment of dues can be made either in US dollars or Japanese yen. However, the following restrictions shall apply to payments in each currency. Your cooperation is appreciated in meeting the following conditions.

1. A US dollar check should be payable at a US bank located in the US. US dollar checks payable in Japan may be returned to sender depending on charges.
2. A Japanese yen check should be payable at a Japanese bank located in Japan.
3. Japanese yen dues shall apply to all credit card payment. Please note that the amount charged will not be an equivalent amount to the US dollar dues.
4. Please do not instruct your bank to deduct telegraphic transfer handling charges from the amount of dues. Please pay related bank charges 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 Email: 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.....US\$195 or ¥23,000
- Three-Year Term Membership.....US\$535 or ¥63,000
- Corporate Counsel.....US\$100 or ¥11,800
- Lawyers in developing countries with low income levels.....US\$100 or ¥11,800
- Young Lawyers (under 30 years old).....US\$ 50 or ¥6,000

Name: Last Name _____ First Name / Middle Name _____

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

Firm Name: _____

Jurisdiction: _____

Correspondence Address: _____

Telephone: _____ Facsimile: _____

Email: _____

CHOICE OF COMMITTEES (FOR YOUR INVOLVEMENT):

- | | |
|---|--|
| <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 | |

METHOD OF PAYMENT (Please read each note carefully and choose one of the following methods):

- US\$ Check/Bank Draft/Money Order (Mail to the Secretariat at the address below.)
– limited to checks payable at US banks in the US only (others will be returned to sender)
- Japanese yen ¥ Check/Bank Draft (Mail to the Secretariat at the address below.)
– limited to checks payable at Japanese banks in Japan only (others will be returned to sender)
- Credit Card – **Please note that Japanese yen dues shall apply to payment by 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 WITH MEMBERSHIP FEE OR PROOF OF PAYMENT TO:

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