

No 58 June 2010

IPBA JOURNAL

IPBA NEWS AND LEGAL UPDATE



Environmental Law



LexisNexis
(a division of Reed Elsevier
(Greater China) Ltd)

Publishing Manager
Aley Chang

Editor
Wilda Fong

Editorial
Wong Yuk Yin
Inge Roggeveen

Design
Zoe Yau

Advertising Sales
Jennifer Luk
Tel: 852-2965-1432
Fax: 852-2976-0840
Email: jennifer.luk@lexisnexis.com



An imprint of
LexisNexis
(a division of Reed Elsevier
(Greater China) Ltd)

39/F, Hopewell Centre,
183 Queen's Road East,
Hong Kong

Tel: 852-2965-1400
Fax: 852-2976-0840

Internet:
www.lexisnexis.com.hk

Email address:
aley.chang@lexisnexis.com

ISSN 1469-6495

IPBA Journal is the official journal of the Inter-Pacific Bar Association. Copyright in all material published in the journal is retained by LexisNexis (a division of Reed Elsevier (Singapore) Pte Ltd). No part of this journal may be reproduced or transmitted in any form or by any means, including recording and photocopying without the written permission of the copyright holder, application for which should be addressed to the publisher. Written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature. The journal does not accept liability for any views, opinions, or advice given in the journal. Further, the contents of the journal do not necessarily reflect the views or opinions of the publisher and no liability is accepted in relation thereto.

IPBA JOURNAL

The Official Publication of the Inter-Pacific Bar Association

No 58 June 2010

IPBA News

- 4 **The President's Message**
- 5 **The Secretary-General's Message**
- 7 **New IPBA Membership Benefits for Corporate Counsel**
- 8 **The IPBA 20th Annual Meeting and Conference, Singapore, 2-5 May 2010**
- 10 **Announcements**

Legal Update

- 11 **The Honorable Chan Sek Keong, Chief Justice of the Supreme Court of Singapore**
On 4 May 2010, during the IPBA Annual Conference in Singapore, Mr Hideki Kojima, Chair of the Publications Committee, was granted an interview with The Honorable Chan Sek Keong, Chief Justice of the Supreme Court of Singapore. A condensed version of the interview is published in this issue as the second instalment in a series of interviews with prominent members of the legal community to be published in the IPBA Journal
- 13 **Clean Technology in Taiwan: An Overview of its Policies**
Recent policies and laws of Taiwan are being used to promote clean technology by encouraging the use and development of environmentally friendly technology and products, as it aims to become a responsible and accountable citizen of the Earth
- 17 **Emerging Paths for Climate Change Regulation in the United States**
The US Waxman-Markey energy bill, which includes a cap-and-trade program and greenhouse gas reduction mechanisms, currently languishes in the US Senate. In light of this looming legislation, this article discusses efforts undertaken by federal agencies, as well as state and regional efforts to regulate and control greenhouse gas emissions, and their impact on business
- 24 **Environmental Regulation in Argentina**
The 1994 amendment of the Argentine Constitution granted Argentines the right to a healthy and balanced environment and triggered discussions on environmental protection. This has resulted in legislation at both the national and provincial level. This article briefly discusses the main Argentine laws on environmental matters that have been enacted after the 1994 constitutional reform
- 29 **Generation of Carbon Credits in India**
Carbon Credits have become increasingly popular globally and India and China are the most preferred destinations for investment in clean development mechanism projects today. This article describes the process of approval of such projects and the issuance of Carbon Credits with specific reference to India



INTER-PACIFIC BAR ASSOCIATION

IPBA Council (2010–2011 Term)

Officers

President

Suet-Fern Lee
Stamford Law Corporation, Singapore

President-Elect

Shiro Kuniya
Oh-Ebashi LPC & Partners, Osaka

Vice President

Lalit Bhasin
Bhasin & Co, Advocates, New Delhi

Secretary-General

Gerald A Sumida
Carlsmith Ball LLP, Honolulu

Deputy Secretary-General

Alan S Fujimoto
Goodsill Anderson Quinn & Stifel, Honolulu

Program Coordinator

Kevin Y Qian
*MWE China Law Offices,
Shanghai Pudong New Area*

Deputy Program Coordinator

Christopher To
Construction Industry Council, Hong Kong

Committee Coordinator

Urs Lustenberger
Lustenberger Glaus & Partner, Zurich

Deputy Committee Coordinator

Ada Ko
Lane Powell PC, Seattle

Membership Committee Chair

David A Laverty
International Counsel, Chicago

Membership Committee Vice-Chair

Suresh Divyanathan
Drew & Napier LLC, Singapore

Publications Committee Chair

Hideki Kojima
Kojima Law Offices, Tokyo

Publications Committee Vice-Chair

Caroline Berube
HJM Asia Law & Co LLC, Guangzhou

Past Presidents

Rafael A Morales (2009-2010)
*SyCip Salazar Hernandez & Gatmaitan,
Makati City*

Gerold W Libby (2008-2009)
Zuber & Taillieu LLP, Los Angeles

Zongze Gao (2007-2008)
King & Wood Law Firm, Beijing

James McH FitzSimons (2006-2007)
Clayton Utz, Sydney

Felix O Soebagjo (2005-2006)
Soebagjo, Jatim, Djarot, Jakarta

Sang-Kyu Rhi (2004-2005)
Rhi & Partners, Seoul

Ravinder Nath (2003-2004)
Rajinder Narain & Co, New Delhi

Vivien Chan (2002-2003)
Vivien Chan & Co, Hong Kong

Nobuo Miyake (2001-2002)
Miyake & Yamazaki, Tokyo

John W Craig (2000-2001)
McMillan LLP, Toronto

Dej-Udom Krairit (1999-2000)
Dej-Udom & Associates Ltd, Bangkok

Hon Justice Susan Glazebrook (1998-1999)
Court of Appeal, Wellington

Cecil Abraham (1997-1998)
Zul Rafique & Partners, Kuala Lumpur

Teodoro D Regala (1996-1997)
*Angara Abello Concepcion Regala & Cruz
(ACCRALAW), Makati City*

Carl E Anduri, Jr (1995-1996)
Lex Mundi, Lafayette

Pathmanaban Selvadurai (1994-1995)
Tan Rajah & Cheah, Singapore

Ming-Sheng Lin (deceased) (1993-1994)
TIPLo Attorneys-at-Law, Taipei

Richard James Marshall (1992-1993)
Glencore International AG, Baar

Kunio Hamada (1991-1992)
Mori Hamada & Matsumoto, Tokyo

Jurisdictional Council Members

Australia: David Laidlaw
Maddocks, Melbourne

Canada: William A Scott
Stikeman Elliott LLP, Toronto

China: Xiumei Feng
All China Lawyers Association, Beijing

France: Patrick Vovan
Vovan & Associes, Paris

Germany: Gerhard Wegen
Gleiss Lutz, Stuttgart

Hong Kong: Allan Leung
Lovells, Hong Kong

India: Praveen Agarwal
Agarwal Jetley & Company, New Delhi

Indonesia: Nini N Halim
Hutabarat Halim & Rekan, Jakarta

Japan: Yukukazu Hanamizu
Yuasa & Hara, Tokyo

Korea: Young-Moo Shin
Shin & Kim, Seoul

Malaysia: Dhinesh Bhaskaran
Shearn Delamore & Co, Kuala Lumpur

New Zealand: Neil Russ
Buddle Findlay, Auckland

Philippines: Aleli Angela G Quirino
*Angara Abello Concepcion Regala & Cruz
(ACCRALAW), Makati City*

Singapore: Vi Ming Lok
Rodyk & Davidson, Singapore

Switzerland: Douglas C Hornung
Hornung Hovagemyan Avocats, Geneva

Thailand: Anuphan Kitnitchiva
*Dherakupt International Law Office, Ltd,
Bangkok*

UK: Paul Key
Essex Court Chambers, London

USA: Ken Stuart
*Becker, Glynn Melamed & Muffly LLP,
New York*

At-Large Council Members

China: Hongjiu Zhang
*Jingtian & Gongcheng Attorneys At Law,
Beijing*

Hawaii & South Pacific Islands: Lawrence C Foster
*WM S Richardson School of Law, University of
Hawaii, Honolulu*

Osaka: Masafumi Kodama
Kitahama Partners, Osaka

Webmaster: Sylvette Tankiang
Villaraza Cruz Marcelo & Angangco, Makati City

Regional Coordinators

Europe: Jan Kooi
Kooi Worldwide Tax, Amsterdam

Asia-Pacific: Robin Joseph Lonergan
Macrossans Lawyers, Brisbane

North America: Cedric Chao
Morrison & Foerster LLP, San Francisco

Sri Lanka and Bangladesh: Mahinda Haradasa
Varners, Colombo

Committee Chairpersons

Aviation Law

Domingo Castillo
*SyCip Salazar Hernandez & Gatmaitan,
Makati City*

Banking, Finance and Securities

Hajime Ueno
Nishimura & Asahi, Tokyo

Competition Law

Susan Xuanfeng Ning
King & Wood PRC Lawyers, Beijing

(Special Advisor)
Harumichi Uchida
Mori Hamada & Matsumoto, Tokyo

Corporate Counsel

David L Kreider
Vodafone New Zealand Ltd, Auckland

Cross-Border Investment

Ulf Ohrling
*Mannheimer Swartling Advokatbyrå AB,
Hong Kong*

Yong-Jae Chang
Lee & Ko, Seoul

Dispute Resolution and Arbitration

Sumeet Kachwaha
Kachwaha & Partners, New Delhi

Mohanadass Kanagasabai
Shook Lin & Bok, Kuala Lumpur

Employment and Immigration Law

Fiona Loughrey
Simmons & Simmons, Hong Kong

Energy and Natural Resources

Robert Kwauk
Blake, Cassels & Graydon LLP, Beijing

Environmental Law

Stephen Marsh
Luce, Forward, Hamilton & Scripps LLP,
San Diego

Insolvency

Byung Joo Lee
Shin & Kim, Seoul

Insurance

Angus Rodger
Steptoe & Johnson, London

Intellectual Property

Guan Huat Khoo
Skrine, Kuala Lumpur

Maxine Chiang

Lee, Tsai & Partners, Taipei

International Construction Projects

Philip Trevor Nunn
Fried, Frank, Harris, Shriver & Jacobson LLP,
Hong Kong

International Trade

Jeffrey Snyder
Crowell Moring LLP, Washington, DC

Rafael Vergara

Carey y Cia, Santiago

Legal Development and Training

Ma Melva E Valdez
*JGLaw (Jimenez Gonzales Liwanag Bello Valdez
Caluya & Fernandez)*, Makati City

Legal Practice

Robert Wai Quon
Fasken Martineau DuMoulin LLP, Vancouver

Satoshi Moriguchi

Nagashima Ohno & Tsunematsu, Tokyo

Maritime Law

Shuji Yamaguchi
Okabe & Yamaguchi, Tokyo

Scholarship

Noorjahan Meurling
Soebagio, Jatim, Djarot, Jakarta

Varya Simpson

Sonnenschein Nath & Rosenthal LLP,
San Francisco

Tax Law

Michael Butler
Finlaysons, Adelaide

Technology and Communications

Shanti Mogan
Shearn Delamore & Co, Kuala Lumpur

Women Business Lawyers

Sitpah Selvaratnam
Messrs Tommy Thomas, Kuala Lumpur

Committee Vice-Chairpersons

Aviation Law

Peter Coles, *Barlow Lyde & Gilbert*, Hong Kong
Kala Anandarajah, *Rajah & Tann*, Singapore

Banking, Finance and Securities

Iswahjudi Karim, *KarimSyah Law Firm*, Jakarta
Carine Feipel, *Arendt & Medernach*, Luxembourg

Angela Poey Foon Wang, *Angela Wang & Co*,
Hong Kong

Wai Ming Yap, *Stamford Law Corporation*,
Singapore

Mee-Hyon Lee, *Lee & Ko*, Seoul

Robert Postema, *Piper Alderman*, Sydney

Competition Law

H Stephen Harris Jr, *Jones Day*, Atlanta
Bruce Lloyd, *Clayton Utz*, Sydney
Shawn CD Neylan, *Stikeman Elliot*, Toronto

Corporate Counsel

Grant Tao, *Motorola (China) Electronics Ltd*,
Beijing

Francis H Jardeleza, *San Miguel Corporation*,
Mandaluyong City

Anne Durez, *Total SA*, Paris

Cross-Border Investment

Philip Koh, *Mah-Kamariyah & Philip Koh*,
Kuala Lumpur

Masahisa Ikeda, *Shearman & Sterling LLP*,
Tokyo

Michael Burian, *Gleiss Lutz*, Stuttgart

Jean Paul Chabaneix, *Rodrigo, Elias & Medrano
Abogados*, Lima

Shin Jae Kim, *Tozzini, Freire Advogados*,
Sao Paulo

Yolanda Mendoza-Eleazar, *Castillo Laman Tan
Pantaleon & San Jose*, Makati City

Jose Cochingyan III, *Cochingyan & Peralta Law
Offices*, Makati City

Cheryl Chengyu Luan, *Guantao Law Firm*,
Beijing

Dispute Resolution and Arbitration

Juliet Blanch, *McDermott Will & Emery UK LLP*,
London

Jose Rosell, *Hughes Hubbard & Reed LLP*, Paris

Linjun Cao, *Zhong Lun Law Firm*, China

Bernard Meyer, *MME Partners*, Zurich

Gary Soo, *Gary Soo's Chambers*, Hong Kong

Mohan Pillay, *MPiilay Advocates & Solicitors*,
Singapore

Employment and Immigration Law

Christopher Thomas, *Holland & Hart*,
Denver

Emerico O De Guzman, *Angara Abello
Concepcion Regala & Cruz (ACCRALAW)*,
Makati City

Leonard Yeoh, *Tay & Partners*, Kuala Lumpur

Energy and Natural Resources

Hemmie Chang, *Ropes & Gray LLP*, Boston

Jeffrey Holt, *Saipem SA*, Saint Quentin en
Yvelines

Environmental Law

Keum Sub Park, *Lee & Ko*, Seoul

Lisa Moore, *Blake Dawson*, Singapore

Yani Kardono, *Soewito Suhardiman Eddymurthy
Kardono*, Jakarta

Insolvency

Manolito S Soller, *The Bengzon Law Firm*,
Makati City

Insurance

Tunku Farik, *Azim, Tunku Farik & Wong*,
Kuala Lumpur

Sim Chan Cheng, *Pacific & Orient Insurance
Co Bhd*, Kuala Lumpur

Intellectual Property

Juan Marquez, *Reed Smith LLP*, Falls Church

Alexandra Neri, *Herbert Smith LLP*, Paris

Daniel Lim, *Stamford Law Corporation*,
Singapore

Riccardo G Cajola, *Cajola & Associati*, Milan

Pravin Anand, *Anand & Anand*, Noida

International Construction Projects

Moushumi Chopra, *Foxmandal Little*, Noida

Keith Phillips, *Watt, Tieder, Hoffer & Fitzgerald*,
McLean

International Trade

Suhail Nathani, *Suhail*, Mumbai

Edmund Sim, *Appleton Luff Pte Ltd*, Singapore

Jong Ku Kang, *Bae, Kim & Lee LLP*, Seoul

Takamiki Nishikawa, *Anderson Mori &
Tomotsune*, Tokyo

Ronaldo Veirano, *Verano Advogados*, Rio de
Janeiro

Legal Development and Training

Ann G Miller, *The Law Offices of Ann G Miller*,
San Francisco

Legal Practice

Bengchai Tay, *Tay & Partners*, Kuala Lumpur

Jose Vincente E Jimenez, *JGLaw (Jimenez
Gonzales Bello Valdez Caluya & Fernandez)*,
Makati City

Hee-Chul Kang, *Yulchon*, Seoul

Mark Stinson, *Fasken Martineau DuMoulin LLP*,
Toronto

Maritime Law

Ricardo Rozas, *L&R Abogados*, Santiago

Joseph Rebano, *Del Rosario & Del Rosario*,
Philippines

Timothy Elsworth, *Ebsworth & Ebsworth*,
Sydney

Ikwei Chong, *Clyde & Co Shanghai*, Shanghai

Siva Kumar Kanagasabai, *Skrine*,
Kuala Lumpur

Scholarship

Richard Goldstein, *Law Offices of Richard S
Goldstein, PC*, London

Mark Shklov, *Shklov & Wong, LLP*, Honolulu

Tax Law

Gary Tober, *Lane Powell PC*, Seattle

Pieter de Ridder, *Loyens & Loeff*, Singapore

Technology and Communications

Gordon Milner, *Morrison & Foerster*,
Hong Kong

Chong Kin Lim, *Drew & Napier LLC*, Singapore

Edgar Chen, *Tsar & Tsai Law Firm*, Taipei

Women Business Lawyers

Kaori Miyake, *GE Yokogawa medical Systems,
Ltd*, Tokyo

Priti Suri, *Priti Suri & Associates, Legal
Counsellors*, New Delhi

Helen Haixiao Zhang, *Zhong Lun Law Firm*,
Shanghai

Cristina de A Salvador, *Miguel Neto Advogados
Associados*, Sao Paulo

The President's Message



Dear Colleagues,

Almost 1100 of you came to our Conference in Singapore this year. Thank you. We hope you had a great time despite the limitations of the venue.

Our Conference theme of climate

change continues to dominate issues of the world today. We saw this issue discussed at the Conference in many different ways relevant to us as lawyers, as well as fellow citizens of our planet. At the Conference, we were informed, challenged and provoked by a broad spectrum of extraordinary speakers including former US Vice-President Al Gore and Singapore's Minister Mentor Lee Kuan Yew.

This issue of *IPBA Journal* continues the focus on climate change and includes some outstanding material from our excellent Committee sessions that are interesting and useful.

Time flies. We hope you continue to meet both IPBA colleagues within your jurisdiction and with those abroad, whether at a seminar, as a group for drinks, or just a 'cuppa'. An IPBA colleague is also just a phone call or email away. The IPBA is an amazing network of warm, friendly, able and knowledgeable lawyers with whom I hope you will continue to engage throughout the year.

Best wishes,

Lee Suet-Fern
President

The Secretary-General's Message



Dear IPBA Members,

As many of you know, the IPBA had a very successful Annual Meeting and Conference in Singapore from 2–5 May 2010, drawing over 1000 participants. Our theme was

‘Climate Change and Legal Practice’ and the IPBA has the distinction of holding the first public conference of lawyers in Asia to address this critical issue and the challenges that it poses for humankind. Our distinguished speakers included former US Vice-President Al Gore, Singapore’s Minister Mentor Lee Kuan Yew, chief justices of the Supreme Courts in the Asia-Pacific Region and many others. The many substantive programs were also very well attended, had excellent presentations and spurred spirited discussions, and often addressed key subjects from differing legal practice perspectives. The social and recreational programs greatly enhanced the meeting and provided rewarding networking opportunities for all involved.

It is true that contrary to assurances given to the Singapore Host Committee, the conference hotel and meeting venue was not physically and operationally completed by the time the Annual Meeting and Conference commenced. This was a source of frustration and inconvenience, notwithstanding the good intentions of most hotel and venue staff. But this did not detract from the overall accomplishments of the Annual Meeting and Conference and the warm and generous hospitality of the Singapore Host Committee and their partners who worked tirelessly toward making this meeting a successful and memorable one. We all extend our deepest and sincerest appreciation to them.

The accomplishments of the Singapore Annual Meeting and Conference continue the course that the IPBA set in articulating its vision in its

Strategic Plan: *To be the leading association for business lawyers with an interest in the Asia-Pacific Region.* Underlying this vision are the IPBA’s core values, which the Strategic Plan articulates as: having *respect* for each other and building on the strength of our cultural diversity; creating *friendships* that bind our members; ensuring *integrity* in dealing with and for our members; striving for *excellence* in our performance; being *non-political* in eschewing politically partisan and ideological matters; and *promoting the rule of law* as a basic principle of private and public government.

Based on the Strategic Plan, adopted in 2006, the Singapore Annual Meeting and Conference built upon the work of previous Annual Meetings in Los Angeles and Manila, and continues to strengthen and broaden the IPBA’s organisational, membership and program development capabilities. Our next Annual Meeting and Conference will be in Kyoto, Japan, from 21–24 April 2011. The theme will be ‘Innovation’ and will centre on exploring the legal and business implications of scientific, technological and organisational advances in all areas of human activities. These are the bases upon which globalisation continues to transform how we live, act and interact. The Kyoto Annual Meeting and Conference will also focus on how to deal with current and future societal issues and challenges. As with Singapore’s focus on climate change, Kyoto’s focus deliberately expands beyond the traditional bounds of legal practice issues to identify and explore how law and legal practice are being shaped by, and are helping to shape, the nature of business and how business is and will be conducted in the future.

The Kyoto Annual Meeting and Conference will have added significance. The venue will be the historic Kyoto International Convention Centre, where the Kyoto Protocol to the UN Framework Convention on Climate Change was concluded in December 1997. For the IPBA specifically, 2011 will be the 20th anniversary of the IPBA’s first annual meeting and conference, which was held in Tokyo in 1991. The 2011 meeting will thus mark a

signal accomplishment not only for the IPBA but also for the lasting ties that the IPBA has created and nurtured, binding lawyers throughout and beyond the Asia-Pacific Region to this major part of the world.

Similarly, planning has begun for the IPBA's subsequent Annual Meeting and Conference to be held in New Delhi, India from 29 February to 3 March 2012. As the Asia-Pacific countries continue to strengthen regional economic relationships, emerging economies of India and China have assumed a major role in helping to shape the dimensions of this regional economy. As part of the BRIC group, together with Brazil, Russia and China, India's own economic, trade and investment reach extends beyond this region and is contributing significantly to the global economy. The IPBA 2012 Annual Meeting and Conference in India thus promises to be another important accomplishment that will build upon the Kyoto meeting and enhance opportunities for IPBA members.

The IPBA will also conduct a regional program on issues arising in doing business between Asian and European firms. This program, to be held on 18 October 2010 in Stuttgart, Germany, centres on 'Asian Counterparts in Corporate Transactions – Asia and European Perspectives' and will explore how firms from both regions regard the challenges and opportunities in doing business with each other and in these two regions. This will be held in conjunction with the IPBA Council's Mid-Year Meeting from 15–18 October 2010 in Stuttgart. It will provide an important opportunity for the IPBA to involve our European members and help to strengthen our presence in Europe.

As we are constantly aware, the globalisation of economic relations affects virtually all aspects of business and human affairs. The beneficial aspects of globalisation have encouraged the expansion of business activities, the creation of wealth and the reduction of poverty, the economic and social development of developing countries, the emergence of the middle class in many

countries, the creation and spread of opportunities for many, and, among other benefits, the promotion of the rule of law in public and private dimensions of societies. At the same time, the 'dark side' of globalisation has emerged from many different fronts, including intense vulnerabilities of interdependent economic and financial systems, the rapid spread of economic turmoil globally through 'contagion', increasing disparities of wealth and increasing inequality within and among countries, the spread of crime and corruption, the strains on public and private infrastructure to meeting growing social and economic needs and the demands of growing populations and rising expectations, and, among other problems, much broader issues such as climate change, regional pollution, increasing shortages of potable water, natural food sources and other resources to meet basic human needs.

Many of these issues have not traditionally fallen within the boundaries of what we regard as 'business law'. Yet, as the changing nature of businesses, the evolving manner in which business must be conducted today, and the emergence of multiple 'stakeholders' who are affected by business and the conduct of business and seek to voice their concerns all attest, so too the nature of 'business law' has expanded far beyond its traditional bounds. This is intensified by the transnational and cross-border nature of business today. This has already given rise to major problems for business lawyers but has also created significant and rewarding opportunities for creative and effective approaches to help deal with these. The IPBA remains committed to continuing to address these emerging dimensions of law and business and will continue to involve our members in pursuit of this critically important goal.

With all best wishes,

Gerald A Sumida
Secretary-General



New IPBA Membership Benefits for Corporate Counsel

At our successful 2010 Annual Conference and Meeting in Singapore, the IPBA adopted new policies to welcome the increased participation of corporate counsel as IPBA members and as participants in IPBA annual conferences and other events.

Our IPBA annual conferences have been including sessions for corporate counsel for several years and more recently we launched an IPBA Corporate Counsel Committee as part of our active committee structure to focus on the programming and other needs of corporate counsel.

Recognising the importance of the role of corporate counsel in Asia-Pacific legal affairs, and in light of company budgetary constraints, our new policies include:

- (1) **a reduction of standard membership rates for corporate counsel** to US\$100 or ¥11,800; and
- (2) **a reduction of annual conference fees for corporate counsel** – beginning with Kyoto/Osaka in 2011, our annual conference fees for corporate counsel who are IPBA members will be substantially reduced to a rate at or close to that for accompanying persons. This represents a savings of several hundred US dollars as compared with the conference rates for regular IPBA members. Where possible, other IPBA events will also include a preferential corporate counsel rate.

Corporate counsel add an important dimension to the IPBA's mission, both as providers and consumers of legal services, and with a distinctive set of legal substance, service delivery and cost priorities. The IPBA's collegiality is an asset in expanding corporate counsel membership, as is our open and collaborative culture that is mindful of business priorities yet not aggressively commercial.

Those with questions about the new corporate counsel policies may contact David Laverty (laverty@internationalcounsel.com), Chair of our Membership Committee, our Vice-Chair, Suresh Divyanathan (sureshd@drewnapier.com), David Kreider (david.kreider@vodafone.com), Chair of our Corporate Counsel Committee, or Mitsuru Claire Chino (chino-m@itochu.co.jp), the Corporate Counsel's Committee immediate past co-Chair.

We hope to see you in Kyoto/Osaka and at other IPBA events. Please register to become a member now and advise other corporate counsel of our efforts to welcome their participation!

The IPBA 20th Annual Meeting and Conference, Singapore, 2–5 May 2010



IPBA Scholars receiving certificates at the Welcome Reception. IPBA thanks the Singapore Ministry of Justice for their sponsorship of the Scholars.



Welcome Reception for IPBA Scholars, Women Business Lawyers and New Members of IPBA.



Welcome Reception keynote speaker Mrs Fang Ai Lian.



Minister Mentor Lee Kuan Yew.



Japan Night.



Mr Al Gore and Professor Tommy Koh sharing an amusing repartee.



Dinner reception at the Presidential Palace, Istana.



Secretary-General Gerald A Sumida and his wife, Heidi Wild.



Singapore President SR Nathan graciously greeting the delegates.



Farewell Reception at Universal Studios.



IPBA booth drawing early registrants for Kyoto/Osaka 2010.



The Exhibition Hall during a session break.



The most well-attended AGM ever.



IPBA Officers at the AGM.



Shiro Kuniya fulfilling his promise of wearing a kimono.



Newly instated President of the IPBA, Mrs Suet-Fern Lee.

See more photos on the IPBA website at: <http://ipba.org/messages-and-news/20th-annual-meeting-conference/94/>.

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 *26 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 Meeting and Conference		
2010 Mid-Year Meeting and Seminar (Oct 18 Seminar: Asian Counterparts in Corporate Transactions – Asian and European Perspectives)	Stuttgart, Germany	October 15–18, 2010
Supporting Events		
(innoXcell) e-Discovery & Digital Forensics	Hong Kong	July 7–8, 2010
(ABF) Malaysia Labour Law and Compliance	Kuala Lumpur, Malaysia	August 24–25, 2010
(Ethical Beacon) Anti-Corruption, South & SE Asia Summit	Singapore	September 14–16, 2010
(ABA) International Law Section, 2010 Fall Meeting	Paris, France	November 2–6, 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
* Note the change of venue		

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

The Honorable Chan Sek Keong, Chief Justice of the Supreme Court of Singapore



Hideki Kojima

On 4 May 2010, during the IPBA Annual Conference in Singapore, I was given the opportunity to interview The Honorable Chan Sek Keong for the *IPBA Journal*. The following is a condensed version of the interview.

Interview by Hideki Kojima*

Kojima Law Offices, Tokyo, Japan

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

A: I cannot recall any specific motivation. With that being said, I grew up in Ipoh in Malaysia and back in 1957, when I entered the then University of Malaya, the University had just introduced its law degree course. Before the introduction of the law degree course the only options were to study arts, science or medicine. I recall that it was my English teacher who advised me to read law as he said I had a mind for it. I was a member of the first graduating class of 1961.



Mr Kojima and the Chief Justice during the interview.

* Hideki Kojima is currently serving as the Chair of the Inter-Pacific Bar Association's Publications Committee.

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

A: Although I stopped practising as a lawyer over 20 years ago, to me, the most important qualities are to understand each client's needs and to provide practical answers to each client's questions. Further, I believe that a common sense approach to the law is very important. A lawyer should look after the needs of the client in a comprehensive manner while maintaining and applying a good sense of what is right and wrong.

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

A: Although there are various qualities, I believe that integrity in judgment is the most important.

With that being said, I also believe that having common sense is also important. Particularly for contract cases and cases where the interpretation of statutes is concerned, market knowledge is important. To obtain market knowledge it is important to read law journals, books and current information which are available on the internet. As in all things, knowledge is power, and I myself do this daily. It is important for judges to keep an open mind, to be impartial and to not let personal views affect their judgments.

Q: Given that fact-finding is an important skill that judges must use to render sensible judgments, do you have any thoughts on how this skill can be improved?

A: Skepticism is a good approach to start with. Life experience and common sense are important. Generally speaking, I think it is important to not believe everything that you hear or accept everything that counsel may say on behalf of his or her client.

Q: In the United States, which is a country with many minority communities, the judiciary includes judges who are from such minority communities. In Singapore, which is also a country with many minority communities, is there significant

importance placed on ensuring that minority communities are represented in the judiciary?

A: Our judges are appointed on merit. Character is paramount. While it is important for there to be a fair representation of the different races in the judiciary, in a society with minority communities, it is even more important that the public believes that judges are competent, honest, impartial and independent. I do not believe that affirmative action is in the national interest in the case of the judiciary. However, I would concede that, where all other things are equal, it is only right that minority communities be represented in the judiciary.

Q: Currently in Japan, lawsuits claiming unequal voting rights in the national election have brought the issue of the independence of the judiciary into the spotlight. In Singapore, are there any similar issues that have brought the independence of the judiciary into the spotlight?

A: I have no knowledge of unequal voting rights in Japan. With that being said, in Singapore, every eligible voter has one vote in a general election. For further information regarding the independence of the judiciary in Singapore, please refer to my article published in the March 2010 issue of the *Singapore Academy of Law Journal* entitled 'Securing and maintaining the independence of the court in judicial proceedings'.

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

A: Yes. As the Pacific region becomes more integrated economically, organisations like the IPBA have a critical role not only in fostering a mutual understanding of the legal systems of its members but also their legal norms and values. The IPBA provides an important forum to facilitate exchanges and the sharing of best practices between jurisdictions and can play an important role in showcasing the best legal talent in the region, as well as helping less developed jurisdictions by reaching out to them. Asian law firms and lawyers have made great progress in the last decade and many more are now able to provide first class legal services beyond their home countries. This trend is likely to accelerate in the years ahead. Some of the largest and most prominent legal firms are likely to be Asian firms in the decades ahead.



The Honorable Chan Sek Keong

Clean Technology in Taiwan: An Overview of its Policies



Recent policies and laws of Taiwan are being used to promote clean technology by encouraging the use and development of environmentally friendly technology and products, as it aims to become a responsible and accountable citizen of the Earth.

Jaclyn Tsai

Senior Partner, Lee, Tsai & Partners

Taiwan has continuously been recognised for its high-tech products with prominent market share worldwide. To name a few, more than 90% of laptops,¹ and 70% of power supply for computer related products were made by Taiwan manufacturers.² Further, the LED industry in Taiwan is rapidly growing and it is estimated that more than 40% of the world's market share for the LED industry output will be from Taiwanese firms, which is a significant increase compared to 25.2% in 2007.³

In this connection and with Taiwan's accession to the WTO in 2002, the Taiwan government has adopted various policies to promote the utilisation and development of green technology by, among other things, employing high technology that Taiwan has been well-known for, as well as passing laws and regulations to implement such policies. With such effort, according to the survey conducted by CLSA Asia-Pacific Markets, Taiwan was ranked number five among Asian countries in the category of 'Environmental Protection Awareness of Asian Enterprises', where most of those enterprises are in technology industries.⁴

WTO and Taiwan

Taiwan's Accession in 2002

According to Article 33 of the GATT, on 1 January 1990, Taiwan applied for accession to the Secretary General of the GATT under the name 'Separate Territory of Taiwan, Penghu, Kinmen and Matsu', which represents Taiwan's autonomous status in terms of international trade. It was not until 1 January 2002, that Taiwan acceded to the WTO as the 144th member of the WTO.⁵

WTO Agreements Related to Clean Technology

Under the Agreement on Subsidies and Countervailing Measures (SCM), the types of members' subsidies are categorised as prohibited subsidy, actionable subsidy and non-actionable subsidy. According to Article 8.2(c) of the SCM, subsidies that promote upgrading existing facilities to comply with new environmental requirements imposed by law and/or regulations, which result in greater constraints and financial burden on firms, are non-actionable subsidies, as long as it is limited to 20% of the cost of the upgrading.⁶

Recent Taiwan Policies⁷

The recent policies and laws of Taiwan in relation to promoting clean technology/products focus

on encouraging both the use/utilisation and the development of clean technology/products.

Encouraging the Use of Clean Technology/Products

The Sustainable Energy Policy Guidelines
The guidelines were passed by Taiwan's Executive Yuan in June 2008 and it states that carbon-free renewable energy will be affirmatively and actively developed. The purpose of the guidelines is to develop the potential for and exploitation of renewable energy with a goal that renewable energy will constitute at least 8% of the total electric generating system in 2025. Another goal of the guidelines is to increase the exploitation of low-carbon natural gas so that it constitutes at least 25% of the total electric generating system in 2025.

The Economic Stimulus Plan in relation to Clean Technology

In September 2008, the Executive Yuan passed the Economic Stimulus Plan, which includes: providing subsidies to companies for purchasing energy saving lamps, solar photovoltaic systems, and air conditioners, refrigerators, washing machines and other products with energy saving marks; promoting LED lamps with energy efficiency; purchasing electric motor vehicles and low-pollution vehicles; and enhancing companies' procurement of equipment or technology for energy conservation and clean energy. The purpose of such subsidies is to stimulate domestic investment in clean technology.

Encouraging the Development of Clean Technology/Products

The List of Targeting Technology Projects
In 2008, the Ministry of Economic Affairs, Taiwan (the MOEA) listed technology developments of LED light source, fuel cells and wind power on the List of Targeting Technology Projects. In order to incentivise domestic companies to apply for the development of clean energy in the technology industry, in terms of technology development, the cap for subsidies has been increased from 30% to 50% and the NT\$30 million cap on subsidies received within a three year period has been relieved. Thus, with a subsidy cap being lifted and without the three year time limit, companies are highly encouraged to apply for funds for the development of clean technology listed in the List of Targeting Technology Projects.

The Flagship Plan of New Energy Industry

The Flagship Plan of New Energy Industry was established and promoted by the MOEA since

February 2009. In consideration of the factors including market potential, energy contribution, efficiency of industry development and foresight for cutting-edge technology, the MOEA has chosen solar photovoltaic, LED lighting, etc, as the major industrial development. In addition, the MOEA has also promoted other energy industries with potential developments, ie, wind power, refrigeration and air conditioning, bioenergy, information and communication technologies for energy, light electric vehicles, hydrogen and fuel cells. This plan will be expected to create new energy industries with an annual output value of more than NT\$1 trillion before 2015.

The Implementation of Policies into Law

Encouraging the Use of Clean Technology/Products Renewable Energy Development Act (REDA)

Although the REDA was approved by the Executive Yuan in January 2002, the REDA was not passed until June 2009 by the Legislative Yuan and came into effect on July 2009 by an announcement by the President. 'Renewable energy' in the REDA is defined as solar energy, biomass energy, geothermal energy, ocean energy, wind power, non-hydraulic turbine power, energy generated by direct exploitation or disposition of



general household waste and general industrial waste, or other sustainable and renewable energy recognised by the central competent authority.

In addition, the REDA aims at promoting the use of renewable energy, boosting energy diversification and reducing greenhouse gases. The new law authorises the government to enhance incentives for the development of renewable energy using a variety of ways including: an acquisition mechanism; incentives for demonstration projects; and deregulation. The goal is to increase Taiwan's renewable energy generation capacity by 6.5 million kilowatts to 10 million kilowatts within 20 years.⁸

The renewable energy acquisition mechanism involves the government's provision of a reasonable profit for those who install renewable energy generating equipment, with a requirement that the operator of the electricity grid provide parallel connections for such generators and for the wholesale of electricity from them. The purchase price, and its method of calculation, will be determined and announced by a committee organised by the MOEA and related ministries and commissions, scholars, experts and other pertinent groups. The price will be reviewed and adjusted annually.



Photo: Uwe Halstenbach

As for the incentives for demonstration projects, the government will, for a certain period, provide a subsidy for the procurement of renewable energy generating equipment that has good potential and employs technology in the initial stages of development. Subsidies for the use of solar thermal energy and biofuel will be provided from the Petroleum Fund and the Agricultural Development Fund.

In the area of deregulation, renewable energy generating facilities that reach a certain capacity are allowed to apply electricity industry regulations regarding acquisition of land-use rights, usage procedures and disposition. In addition, land needed for renewable energy generating plants may be acquired under the qualification of a public utility as provided in the Urban Planning Law, the Forestry Act, and the Fisheries Act. Tariff reductions or exemptions may also be applied to equipment imported for the construction and operation of renewable energy facilities, and procedures for the acquisition of necessary licences will be simplified.

Encouraging the Development of Clean Technology/Products

Regulations for Loans for Promoting Industrial Research and Development (RLPIRD)⁹

The RLPIRD released by the National Development Fund of the Executive Yuan provides companies in the industries of resource exploitation, pollution prevention and energy management service with preferential loans for seven years. The cap on such loans for each project is the lower of NT\$65 million or 80% of the total budget for such project.

Preferential Loans for the Procurement of Energy Conservation Equipment (PLPECE): Second Instalment¹⁰

The National Development Fund of the Executive Yuan additionally provides for the second instalment of loans for the PLPECE. For a company's investment project that consists of energy conservation equipment, the Fund provides preferential loans which are up to 80% of the project costs.

Air Pollution Control Act (APCA)¹¹

According to the APCA, the competent authorities of different levels may impose a tax on sources of air pollution. Further, the air pollution control fees must be provided exclusively for air pollution control uses, to name a few, concerning incentives for promoting the use of clean energy and related research and development.

Apart from the policies mentioned above, there are, among others, such as the Bill to Reduce the

Greenhouse Gas Emission, the Energy Tax Bill and other relevant environmental bills, pending the Legislative Yuan's passage that will hopefully encourage the use and development of clean energy technology/products.

Taiwan Patent Act

According to Article 76 of the Taiwan Patent Act, 'in order to make non-profit-seeking use of a patent for enhancement of public welfare, the Patent Authority may, upon an application, grant a right of compulsory licensing to the applicant to put the patented invention into practice; provided that such practising shall be restricted mainly to the purpose of satisfying the requirements of the domestic market.' As

such, for the purpose of enhancing public welfare for non-profit use of a patent which may be related to clean technology for the greater good, compulsory licensing may be granted. However, such an article has never been applied in this respect in Taiwan.

Conclusion

With all the continuous efforts that Taiwan has and will put in, Taiwan's ultimate goals for clean energy are to improve the quality of the environment, to stimulate the industries of clean and renewable energy, to assure the sustainability of Taiwan's development, to be a responsible and accountable citizen of the Earth, and to provide a sustainable environment for generations to come.

Notes:

¹ See www.digitimes.com.

² See www.credit.com.tw.

³ See www.ledinside.com.tw.

⁴ See http://sme.nat.gov.tw/Web/layout/news_detail.jsp?id=577.

⁵ See <http://cwto.trade.gov.tw>.

⁶ See www.wto.org.

⁷ Jin-Kai Wang, 'The Research on the Clean Technology Investment and the Related

Policies' (2009) 9 (April) Economic Research at 155–184.

⁸ See www.ey.gov.tw.

⁹ Jin-Kai Wang, 'The Research on the Clean Technology Investment and the Related Policies' (2009) 9 (April) Economic Research at 169–171.

¹⁰ *Ibid.*

¹¹ *Ibid.*

Emerging Paths for Climate Change Regulation in the United States



Gregory K Lawrence
Partner, McDermott Will & Emery

The US Waxman-Markey energy bill, which includes a cap-and-trade program and greenhouse gas reduction mechanisms, currently languishes in the US Senate. In light of this looming legislation, this article discusses efforts undertaken by federal agencies, as well as state and regional efforts to regulate and control greenhouse gas emissions, and their impact on business.

Introduction

The United States is gradually developing, albeit in separate initiatives, a combination of programs to reduce greenhouse gas (GHG) emissions while expanding reliance on renewable energy and energy efficiency sources. The evolving effort is complex, but will inevitably affect – directly or indirectly – every sector of the economy through regulations at the federal, state and even municipal levels. Nationally, legislation that would implement and expand US GHG reduction and renewable energy efforts continues to be debated in Congress. This debate has become bogged down in partisan politics and other pressing concerns that have been exacerbated by the faltering economy.

The American Clean Energy and Security Act of 2009 (also known as the Waxman-Markey bill), which contains cap-and-trade and GHG reduction mechanisms, now languishes in the US Senate after its narrow House of Representatives approval in June 2009. Taking some of the first moves towards GHG emissions control, however, are key federal agencies. The Environmental Protection Agency (EPA), Securities and Exchange Commission (SEC) and Federal Energy Regulatory Commission (FERC) have each launched regulatory initiatives aimed at GHG reduction.

A majority of individual states also have

implemented some form of GHG reduction or renewable energy programs through either a regional cap-and-trade program for GHG emissions, renewable energy portfolio standards (RPS), or a combination of both. These state and regional efforts contain current requirements that vary between the programs and are, in some instances, being expanded in terms of scope and substance. For example, in 2015 the Western Climate Initiative will expand to cover emissions from the transportation sector and certain fuels not already covered, in addition to emissions from power plants and large industrial sources. State RPS programs, likewise, continue to add eligible renewable technologies and increase portfolio percentage requirements and alternative compliance payments.

Although the international framework continues to be debated following the Copenhagen meeting, the most meaningful US activity is happening simultaneously at the national and state levels. Accordingly, this paper provides an overview of the highly dynamic but uncertain climate change regulation efforts now under way in a separate and intermittent manner by US federal, regional and state authorities.

Federal Legislation

Since its narrow passage by the House of Representatives in June 2009, the Waxman-Markey energy bill, which includes a cap-and-trade program

in addition to other GHG reduction mechanisms, has stalled in the US Senate. Subsequently, two Senate committees passed their own climate change bills that contain differing climate and renewable energy regulation provisions. More recently Senators Kerry (D-MA) and Lieberman (I-CT) released their proposed bill in May 2010 which would set similar GHG reduction goals as the Waxman-Markey bill. After that bill received a lukewarm reception from their Senate colleagues, they edited it and released a scaled back version in July 2010. Meanwhile, Senator Bingaman (D-NM), Chairman of the Senate Energy and Natural Resources Committee, has been crafting his own carbon reduction bill that targets the electricity generation sector.

Despite the recent flurry of activity in the Senate and a renewed effort by President Obama to push for new energy legislation following the oil spill in the Gulf, it is still unclear whether Congress will enact comprehensive energy and climate change legislation in 2010. Instead, members of the House and Senate, eager to fortify their 'green' credentials before the November elections, may try to pass a smaller, simpler and less-controversial bill. In particular, a proposed bill by Senator Bingaman in 2009 could find sufficient support, particularly in Midwestern states looking to attract 'green jobs' through wind and other 'clean' energy projects. At a 2 February 2010 town-hall meeting President Obama specifically acknowledged that some form of renewables/green jobs compromise might be necessary when he said, in response to a question about new jobs relating to renewable energy, '[we] may be able to separate [the cap-and-trade program and renewable energy legislation] out. And it's possible that's where the Senate ends up.' Alternatively, a streamlined cap-and-trade program similar to the model proposed by Senators Cantwell (D-WA) and Collins (R-ME), or even a more modest carbon tax, also could move forward, provided that Congress finds the time to focus on this issue.

Other members of Congress, notably Senators Kerry (D-MA) and Lieberman (I-CT), remain committed to bringing some form of climate and energy legislation to a vote before the 2010 mid-term elections. By abandoning the expansive model for cap-and-trade that was incorporated into the Waxman-Markey bill, in favor of a more modest approach that targets the largest emitters and focuses on incentives for all forms of 'clean' energy, including nuclear, the Senate may ultimately pass some form of energy legislation. However, Senator Graham (R-SC), who had worked with Senators Kerry and Lieberman on their bill and had been one of the few Republicans in favour of GHG reduction legislation, recently

tempered his support for the bill, citing the gulf oil spill and the politics of immigration reform.

Regardless of the outcome in Congress, business still needs to prepare for climate change regulation. As Congress continues to debate, the EPA is moving ahead with its own regulatory program for GHG emissions. Likewise, many states and regional coalitions are rapidly developing new programs to address climate change, either through cap-and-trade programs or other regulatory approaches. Adapting to the new environment presents as many opportunities as challenges, but it also will take time and effort, and that work should begin now.

US Environmental Protection Agency (EPA) Rulemaking

The EPA's role in GHG regulation was set in motion by the 2007 US Supreme Court decision in *Massachusetts v Environmental Protection Agency* 549 US 497 (2007), which determined that under the Clean Air Act, the EPA has the statutory authority to decide whether carbon dioxide and other GHGs from new motor vehicles endanger public health or welfare. On 7 December 2009, the EPA issued its 'endangerment finding' which concluded that the current and projected atmospheric concentrations of the six principle GHGs – carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆) – pose a threat to the public health and welfare. Although the EPA's finding is specifically related to GHG emissions from new motor vehicles, the endangerment finding also indirectly triggered other provisions of the Clean Air Act which require the EPA to regulate many other sources of GHG emissions, including many commercial and industrial facilities that may not currently be subject to regulation.

EPA Reporting Requirement

With regard to stationary GHG sources, the EPA published regulations on 30 October 2009 that require reporting of GHG emissions from all sectors of the economy beginning in 2010. The new regulations apply to fossil fuel suppliers and industrial gas suppliers, as well as to direct GHG emitters, including manufacturers of vehicles and engines, and facilities that emit the CO₂ equivalent of 25,000 metric tons or more per year. The EPA estimated that approximately 10,000 facilities are required to comply with the reporting requirement. While some sources of emissions remain exempt, such as coal mines, the EPA has recently proposed to expand the rule to include previously exempt sources, such as gas and petroleum production facilities. The EPA GHG reporting rule requires

affected facilities to begin collecting GHG emissions data on 1 January 2010 and to begin annual reporting by 31 March 2011.

New Vehicle Emission Standards

On 1 April 2010, the Department of Transportation and the EPA promulgated a final rule that raised fuel economy standards for cars and light-duty trucks to an average emission level of 250 grams of carbon dioxide per mile, or about 35 miles per gallon. Citing the fact that 28% of US GHG emissions come from transportation, the EPA exercised its authority under the Clean Air Act to regulate tailpipe emissions and leaks from refrigerant systems, which contain hydrofluorocarbons. The EPA claimed that the new emission standards would save 1.8 billion barrels of oil over the lifetimes of the vehicles regulated.

Stationary Source Emission Standards

Regulation of GHGs under some sections of the Clean Air Act automatically trigger regulation under other sections. Section 165 of the Act says that 'no major emitting facility ... may be constructed ... unless ... the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this Act ...' Under this provision the EPA's regulation of GHGs for cars automatically results in regulation of GHGs of new major facilities. The EPA had previously interpreted this section to require regulation of facilities that emit as little as 100 tons per year of regulated pollutants. While that threshold may have been appropriate for pollutants that the EPA has historically regulated, it would have resulted in the regulation of millions of new facilities due to their GHG emissions. As a result, the EPA issued a rule on 13 May that sets new threshold levels for regulation that are designed to limit which facilities require permits under the Clean Air Act. Under a phased-in approach, facilities that emit at least 100,000 tons per year of CO₂ equivalent will be required to hold an operating permit. The EPA estimates that about 500 sources, such as landfills and industrial manufacturers, will be required to hold an operating permit for the first time due to their GHG emissions.

President Obama's Budget

Since the release of its 2010 budget, the White House has tempered its rhetoric, along with its political and revenue projections, by backing off from the aggressive agenda to advance economy-wide climate change legislation that it was championing a year ago. Tangible evidence of this change surfaced on 1 February 2010 when President Obama released his proposal for the

2011 federal budget. President Obama's proposal eliminated an estimated US\$646 billion in new revenue over 10 years from a new auction-based federal cap-and-trade program that had been included in the White House's budget plan for 2010. The current budget proposal still makes reference to a federal program to limit GHG emissions through a new market-based mechanism, but now describes the program as 'deficit-neutral' as opposed to a significant source of new government revenue. This subtle change appears to recognise that, if any climate change legislation can be enacted in 2010, the current political climate may require a more limited program than the Obama administration once envisioned.

The 2011 Budget: Fossil Fuel Disincentives

Though deficit-neutral, the proposed 2011 budget is not 'GHG-neutral' as of the writing of this paper. The Internal Revenue Code provides a number of credits and deductions that are targeted towards certain oil, gas and coal activities. President Obama agreed at the latest G-20 Summit in Pittsburgh to phase out subsidies for fossil fuels; thus, the administration has advocated in its budget proposal for the repeal of a number of long-standing tax preferences available for fossil fuels. The following tax preferences available for oil and gas activities are proposed to be repealed beginning in 2011:

- the enhanced oil recovery credit for eligible costs attributable to a qualified enhanced oil recovery project;
- the credit for oil and gas produced from marginal wells;
- the expensing of intangible drilling costs;
- the deduction for costs paid or incurred for any tertiary injectant used as part of a tertiary recovery method;
- the exception to passive loss limitations provided to working interests in oil and natural gas properties;
- the use of percentage depletion with respect to oil and gas wells;
- the ability to claim the domestic manufacturing deduction against income derived from the production of oil and gas; and
- two-year amortisation of independent producers' geological and geophysical expenditures, instead allowing amortisation over the same seven-year period as for integrated oil and gas producers.

In addition, the following tax preferences available for coal activities are also proposed to be repealed beginning in 2011:

- expensing of exploration and development costs;

- percentage depletion for hard mineral fossil fuels;
- capital gains treatment for royalties; and
- the ability to claim the domestic manufacturing deduction against income derived from the production of coal and other hard mineral fossil fuels.

It is important to emphasise that Congress will have the final say on these proposals.

The 2011 Budget: Renewable Energy Incentives

The American Recovery and Reinvestment Act of 2009 (ARRA) provided a 30% tax credit for investments in eligible property used in a qualifying advanced energy project. A qualifying advanced energy project is a project that re-equips, expands or establishes a manufacturing facility for the production of the following:

- property designed to produce energy from renewable resources;
- fuel cells, microturbines or energy storage systems for use with electric or hybrid vehicles;
- electric grids to support the storage and transmission of renewable energy resources;
- property designed to capture and sequester carbon dioxide emissions;
- property designed to refine or blend renewable fuels or to produce energy conservation technologies;
- electric-drive motor vehicles or their components that qualify for tax credits; or
- other advanced energy property designed to reduce GHG emissions.

Existing and Emerging State and Regional GHG Regulation

Yet another element of complexity and potential opportunity in US climate change and renewable energy regulation is the ongoing effort by states to mandate the production of renewable energy through the use of renewable portfolio standards and to create regional cap-and-trade systems for carbon emission reduction credits. An examination of each indicates the extent to which any federal programs must take account of, and be integrated with, these efforts.

State Renewable Portfolio Standards (RPS)

More than half of the states in the United States, as well as the District of Columbia, have introduced mandatory renewable portfolio standards (RPS) as a mechanism to promote new renewable energy development and to support the creation of a market for renewable energy. Other states have initiated voluntary programs to promote renewable energy with incentives for utility participation.

Approximately half of the electricity consumed in the United States is within a jurisdiction that has an active, mandatory renewable energy market.

An RPS is a requirement that a certain percentage of a public utility and retail electricity marketer's energy mix used to supply retail electricity consumers must come from renewable sources such as wind, solar, water, geothermal or biomass, or else face an economic penalty in the form of an alternative compliance payment. The typical RPS includes two elements: a standard specifying the percentage of a utility's electricity that must come from renewable resources (as defined by the state and including alternative compliance payments) and a mechanism for establishing renewable energy credits (RECs) to allow the utility or retail marketer to demonstrate compliance with the RPS. The RECs generally are tradable commodities awarded for each unit of renewable energy produced, have a vintage (eg, one or two years), can be 'banked' or held in reserve for use in future compliance years, and are tracked via an electronic tracking system, such as a regional transmission organisation (RTO) or independent system operators (ISO) generation information system tracking platform.

RECs are exchanged mainly via bilateral contracts, and are tracked and retired via the electronic tracking system. The RECs enable companies to efficiently meet the minimum standard for renewable energy. Some states impose an alternative compliance payment structure that functions as a check against failure to hold sufficient RECs to cover the designated percentage and class of renewable energy generated during



a particular compliance period. In that respect, the RPS is similar to the mechanisms applied in several Member States of the European Union, notably the Renewable Obligation Certificate system in the United Kingdom. Some states in the United States also use the threat of further regulation to encourage compliance with the standard.

Carbon Credit Trading Initiatives

The Regional Greenhouse Gas Initiative (RGGI) was the first mandatory carbon emissions cap-and-trade program in the United States. The RGGI is a multi-state, market-based cap-and-trade program to reduce carbon dioxide emissions from power plants in the north-eastern United States. Participating states are Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont. The RGGI applies only to electric generating units with capacity equal to or greater than 25 megawatts (MW) and that burn more than 50% fossil fuel. The first auction took place on 25 September 2008, with a clearing price of US\$3.07, and the first compliance period began 1 January 2009.

Various western and mid-western states also are in the process of implementing regional GHG emission reduction programs. The Western Climate Initiative (WCI), composed of seven US states and four Canadian provinces (that are not geographically limited to the western United States), has set the goal of reducing regional GHG emissions 15% below 2005 levels by 2020. Participating states and provinces are Arizona,

British Columbia, California, Manitoba, Montana, New Mexico, Ontario, Oregon, Quebec, Utah and Washington (although Arizona has indicated that it will not participate in any emissions cap). The WCI cap-and-trade program is still in the planning phase and is tentatively set to begin 1 January 2012. In addition to participating in the WCI, California has established its own voluntary reporting and trading system, the California Climate Action Reserve (CCAR). Under the CCAR, entities may register GHG emission reduction projects and receive carbon credits which can then be traded.

In the Midwest, six US state governors and one Canadian premier signed to participate in the Midwestern Greenhouse Gas Reduction Accord to establish targets and timeframes for GHG emission reductions and to develop a regional cap-and-trade system. The participating states and province are Illinois, Iowa, Kansas, Manitoba, Michigan, Minnesota and Wisconsin.

If Congress passes GHG emissions regulation including a cap-and-trade type of market regime, then it is possible that such a federal regime would be gradually phased-in, and could have a pre-emptive impact over the state and regional efforts discussed in this section. Indeed, some federal legislative proposals are explicit about either putting regional GHG emissions programs on hold for several years with an uncertain future after that period or directly pre-empting those regional programs.

The Chicago Climate Exchange (CCX) is a voluntary cap-and-trade program consisting of 130 members who have contractually agreed to reduce their GHG emissions. The CCX operates an internet-accessible marketplace that supports both exchange-cleared and bilateral, privately negotiated trades. The CCX has announced that it is forming two new exchanges to develop and trade RGGI products, the New York Climate Exchange and the Northeast Climate Exchange.

Recent Federal Energy Regulatory Commission Initiatives to Foster Renewable Power—FERC Notice of Inquiry

The Federal Energy Regulatory Commission (FERC) regulates wholesale power sales, markets and the nation's power transmission infrastructure. In this role, the FERC has issued several rules and decisions promoting renewable power in terms of transmission grid access and access to energy, capacity and ancillary services markets. The FERC also has been supportive of other 'green' efforts, including the introduction of wholesale demand response, transmission upgrades and electricity storage technology. We will not summarise those initiatives here. However, of recent note, on 21 January 2010, the FERC issued a Notice of Inquiry



(NOI) seeking public comment on whether to reform any of its rules or procedures as the nation's generation portfolio expands to include more variable energy resources such as wind, solar or non-storage hydro generating plants. Such expansion is inevitable with the advance of GHG regulation and state and federal renewable energy portfolio standards.

FERC Chairman Jon Wellinghoff's comments on the NOI pointed out that 18,000 MW of renewable energy generation came online in 2008 and 2009 alone. Chairman Wellinghoff went on to explain that expanded renewable energy output will 'have some operational characteristics which present challenges to system operators. Therefore, it is important that the Commission examine the most efficient ways to effectively integrate these resources into the electric grid, while maintaining reliability and operational stability.'

Although the FERC emphasised that the NOI would not immediately change its regulation of the transmission grid, by singling out possible issues for NOI comments, the FERC indicated the enormous impact that expanded renewable energy output, spurred by GHG regulation, will have on the grid, and its expectation that action by the EPA and the states will have an effect no matter what Congress does.

The Impact of GHG Regulation on Business: The SEC Disclosure Rules

With both federal and state regulatory action under way and federal legislative action looming, the effects of GHG regulation on business are inescapable. For those companies that are publicly held, on 27 January 2010, the SEC released interpretive guidance on its existing disclosure requirements relating to climate change. The standard for determining the materiality of information (including climate-related matters) under the federal securities rules is whether there exists a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision. With respect to contingent or speculative information or events (such as pending legislation), materiality depends at any given time upon a balancing of both the probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity.

The SEC's interpretative guidance highlights the following four areas as examples in which climate change may trigger disclosure requirements in those portions of a company's SEC filings that cover its risk factors, business description, legal proceedings, and management discussion and analysis:

- *Impact of legislation and regulation.* With respect to existing federal, state and local laws that relate to GHG emissions, companies should disclose any material estimated capital expenditures for environmental control facilities as part of an assessment of whether any enacted climate change legislation or regulation is reasonably likely to have a material effect on the registrant's financial condition or results of operation.
- *International accords.* Companies should consider, and disclose when material, the impact on their businesses of treaties or international accords relating to climate change, such as the Kyoto Protocol, the EU Emission Trading System (ETS) and other international activities in connection with climate change remediation.
- *Indirect consequences of regulation or business trends.* Legal, technological, political and scientific developments regarding climate change may create new opportunities or risks for companies, either by creating demand for new products and services or reducing demand for existing ones. Companies should be prepared to assess and disclose the impact of both, whether it involves increased demand for green products and renewable energy output, or decreased demand for goods that produce significant GHGs.
- *Physical impacts of climate change.* Climate change itself can have a material effect on a company's business and operations through impacts on personnel, physical assets, supply chains and distribution chains. This can include the effect of changes in weather patterns (such as rising sea levels and temperature extremes), changes in the availability or cost of natural resources, or increased insurance risk from extreme weather.

The release itself does not create any new disclosure requirements. Instead, it merely reflects the SEC's position that the federal securities laws only require disclosure of information that is 'material' to investors (all investors, that is, not just the socially minded) and that current disclosure requirements already provide a basis for disclosures related to climate change, to the extent the requisite materiality standards are met.

Market Impact: Who Will be The Regulator?

The various initiatives to reduce US GHG emissions already have created new commodity markets for the trading of GHG emissions allowances, offsets and RECs. Yet, along with this market opportunity comes considerable regulatory ambiguity that reflects, among other things, attempts to prevent market abuse and to control so-called 'excessive

speculation' and other forms of risk-taking that allegedly lead to both soaring energy prices and increased volatility in the commodity markets. Recent initiatives by the CFTC, FERC and US Congress illustrate the complexity and potential conflicts that any approach to regulating these developing markets will produce.

CFTC Position

On 9 September 2009, the US Senate Committee on Agriculture, Nutrition and Forestry held a hearing to consider the Waxman-Markey bill. During the hearing, which focused on carbon markets and producer groups, CFTC Chairman Gary Gensler testified that the CFTC is fully capable of regulating trading in the carbon markets. Chairman Gensler noted that five regulatory components should be considered: standard setting and allocation; recordkeeping; overseeing the trade execution system; overseeing clearing of trades; and protecting against fraud, manipulation and other abuses.

Although other agencies such as the EPA are better equipped to regulate allocation and recordkeeping, Gensler asserted that "the CFTC has a great deal of experience regulating the 'trade' part of 'cap-and-trade'." Chairman Gensler cited the CFTC's experience in overseeing trading and clearing of futures contracts based on sulfur dioxide, nitrogen oxide and carbon dioxide allowances. In addition, Chairman Gensler noted that the CFTC recently asked for public comment regarding classifying the Carbon Financial Instrument (CFI) contract traded on the CCX as a significant price discovery contract (SPDC). Should the CFTC classify the CFI contract as an SPDC, the CFTC would gain full oversight authority over the contract. Chairman Gensler said this oversight would give the CFTC additional experience regulating cash emissions contracts and claimed that, should Congress seek to regulate cash markets for emission instruments, the CFTC would be well suited to carry out that function.

In support of allowing the CFTC to oversee carbon trading, Chairman Gensler said that the CFTC has 'thorough processes to ensure that exchanges have procedures in place to protect market participants and ensure fair and orderly trading, that products are designed to minimise potential manipulation and that exchanges comply with the law and regulations.' He also noted that the CFTC has transparency efforts in place to provide information to the general public. Finally, if cap-and-trade legislation is passed, the CFTC would work with other regulators to create a central registry of carbon transactions in order to help identify market manipulation.

The Waxman-Markey Approach

Chairman Gensler's strong pitch for CFTC oversight is significant because the Waxman-Markey bill passed by the House has a complex regulatory structure that involves active roles for the FERC as well as the CFTC. The Waxman-Markey bill amends the Federal Power Act to provide for strict oversight and regulation of the new GHG allowance and offset markets and makes the FERC the agency responsible for promulgating regulations for the establishment, operation and oversight of cash markets. In particular, the FERC is charged with protecting the public from manipulation, fraud and excessive speculation in the carbon markets. The Waxman-Markey bill also requires the FERC to provide measures to limit 'unreasonable fluctuation in the prices of regulated allowances' and to 'ensure market transparency.' Under the bill, the FERC is authorised to set position limits and margin requirements, as necessary, to 'limit or eliminate counterparty risk' and to set standards for trading facilities. The Waxman-Markey bill provides for penalties in response to violations and grants the FERC cease and desist authority.

Under the Waxman-Markey bill, the CFTC has more limited authority to monitor the carbon markets. The US President is required to establish an inter-agency working group in order to make recommendations to the CFTC regarding proposed regulations concerning the '... establishment, operation and oversight of markets for regulated allowance derivatives.' However, regulated allowance derivatives are no longer defined in the Waxman-Markey bill and it is unclear which transactions would fall under the jurisdiction of the FERC and CFTC.

Conclusion

The US Congress in 2010 may or may not make a comprehensive legislative pronouncement regulating GHG emissions and linking various existing programs together. In the interim, the US states and other federal agencies will continue to expand regulatory efforts related to GHG emissions tracking, trading and control. One must be vigilant: keep a careful eye on this shifting and uncertain environment between Congress, federal agencies, and state and regional authorities in terms of GHG emissions control, where one authority will race ahead on one path but then fall behind the others, only to be eclipsed possibly and ultimately by pre-emptive federal action.

Mr Lawrence thanks Jon Flynn, associate, other members of McDermott's GREEN group (see mwe.com/green) and Ari Peskoe, summer associate, for their contributions to this paper.

Environmental Regulation in Argentina



Omar Beretta



Natalia Montes

The 1994 amendment of the Argentine Constitution granted Argentines the right to a healthy and balanced environment and triggered discussions on environmental protection. This has resulted in legislation at both the

national and provincial level. This article briefly discusses the main Argentine laws on environmental matters that have been enacted after the 1994 constitutional reform.

Omar Beretta

Beretta Godoy, Argentina

Natalia Montes

Beretta Godoy, Argentina

After the 1994 Constitutional Reform, the Argentine Constitution granted all Argentine inhabitants the right to a healthy and balanced environment apt for human development, and established that the Federal Government must enact rules containing the minimum environmental protection standards, and provincial Governments must enact the necessary additional regulations.

Therefore, the Federal Government sets the minimum standards for the protection of the

environment, and the provinces and municipalities establish specific standards and regulations.

Environmental regulation then consists of rules issued by all levels of government, national, provincial and municipal authorities.

The power of the provinces to supplement the rules that establish minimum requirements issued by the Federal Government grants them the right to establish stricter standards for the basic requirements, in light of the particular situation of each province. This is related to the constitutional principle established in section 124 of the Argentine Constitution, which sets forth that the provinces have the original domain of natural resources within their territory.

In addition, there are specific environmental rules governing several activities, which are

to be inserted, in turn, into the framework of the Argentine Constitution and the minimum standard rules. This means that all environmental laws compose a system that must be subject to a harmonised and homogeneous interpretation. Rules are supplemental, and none of them exclude the application of the other.

The Environment and Sustainable Development Office is the federal authority in charge of setting the environmental policies and controlling the compliance with the environmental rules.

Relevant Laws

The so-called 'minimum standards rules' are those laws enacted by the Federal Government within the scope of the powers granted by section 41 of the Argentine Constitution. The most important of said rules is the General Environmental Law No 25,675 (GEL).

General Environmental Law

The GEL was enacted on 6 November 2002, and sets forth the minimum standards for a sustainable and adequate management of the environment, the preservation and protection of bio-diversity and the implementation of sustainable growth.

By means of this law, the Federal Government establishes the main objectives of the environmental policy, and the principles to be followed by the provinces for the interpretation and application of all environmental regulations.

The GEL defines a number of relevant concepts, such as the minimum standard rule, environmental damage and environmental liability. Also, this law enumerates certain environmental policy and management instruments, including the environmental impact assessment, public consultation proceedings, and the obligation to purchase environmental insurance.

According to the GEL, a 'minimum standard rule' can be defined as any rule granting a uniform environmental protection for the whole Argentine territory, with the purpose of establishing the necessary conditions for the protection of the environment. It shall provide for the dynamics of ecological systems, maintaining their capacity and, in general, ensuring the preservation of the environment and sustainable development.

The GEL regulates the Environmental Impact Assessment (EIA), which is a procedure to be followed by any individual or company performing works or activities in Argentina which may significantly degrade the environment or its components or adversely affect the quality of life of the community. The EIA shall be approved by the Environment and Sustainable Development Office or by the pertinent provincial environmental

authority before the execution or performance of any activity that may affect the environment.

The GEL also introduces the public consultation or public hearing proceedings in relation to the people living in the community where an industry will be installed. These proceedings are compulsory in order to obtain the necessary authorisation for the commencement of activities or the operation of industries that may adversely affect the environment. The public consultation or public hearing must be held before the EIA is approved by the pertinent environmental authority, even though the opinion of attendees is not binding for the authority that must approve or reject the project.

Environmental damage is defined by the GEL as any relevant alteration which negatively modifies the environment, its resources, the ecosystem balance, or collective goods and values. Collective environmental damage affects the environment itself. There is a distinction between the collective damage and the damage caused through the environment to people or their property, as a consequence of the deteriorated environment. This second type of damage is comprised by the Argentine Civil Code.

The definition of environmental damage given by the GEL refers to the 'relevant' alteration of the environment, because the environment is essentially changing, and all human activities inevitably end by altering it. Therefore, when assessing the damage, the self-generation capacity of the environment must be considered, as well as its capacity to absorb a certain degree of 'contamination' without breaking its preservation balance. This has been named as 'allowable or tolerable damage.'

The GEL provides that, upon occurrence of any damage to the environment, the main obligation of the responsible party will be to restore the environment to its former condition. According to section 41 of the Argentine Constitution, only if remediation is not technically feasible, a competent court shall assess the pertinent compensation.

As regards liability for the damages, the GEL sets forth that it should be attributed under an objective criterion, which means that subjective parameters, such as negligence or fraud, are not analysed for this purpose.

Thus, the exemption from liability will only apply if the party proves that, in spite of having adopted all necessary measures to prevent the damages, these occurred due to a third party's fault not related to the company performing the activity. If the environmental damage is caused by a legal entity, the GEL extends liability to its authorities and professional officers, in accordance with their degree of participation.

Together with environmental liability, civil

liability may also arise provided damages are caused to an individual and/or its property through the damage caused to the environment.

Regarding the environmental insurance, the GEL establishes that every individual or company that carries out activities that may affect the environment must purchase an environmental insurance sufficient enough to guarantee the financing of remediation of any damages the activity may cause. As an alternative, the GEL provides for the creation of an environmental remediation fund for the execution of remedial action.

The GEL sets forth the duty to purchase an environmental insurance allowing for effective compensation as one of the ways to guarantee the availability of funds, even though the insurance may not cover complete remediation.

The environmental insurance is also meant as a prevention tool, since the premium and the insurable amount will depend on the company's attitude towards the environment and its compliance with environmental rules. Before setting up the insurance amount, the insurance company will perform an evaluation of the risks involved in order to assess the premium cost and the potential amounts to be compensated, all of which is necessarily and closely related to the company's risk management policy. The environmental insurance therefore has two functions: it serves as prevention, and as a guaranty upon the occurrence of damage.

Minimum Standards Rules

The others laws, known as minimum standards rules, are the following:

Industrial Waste

Law No 25,612 on 'Integrated Management of Industrial and Service Industry Waste' (IMISW) covers minimum standards related to the management of industrial and service industry waste. The IMISW law unifies, under a single regime, the management of the waste generated by industrial processes, without making any distinction between hazardous waste and waste that does not meet this definition.

The IMISW law determines the minimum environmental protection standards for the integrated management (generation, handling, storage, transport, and treatment or final disposal) of industrial waste and waste originated from service industries, generated in all the territory of Argentina.

'Industrial waste' is defined by the IMISW law as any solid, semi-solid, liquid or gaseous element, substance or object obtained from an industrial

process, by the performance of a service activity, or which is directly or indirectly linked to that activity – including emergencies or accidents – which cannot be used by its holder, producer or generator, who must then dispose of it, or has the legal duty to do so. The following items are excluded from this definition and, therefore, from the application of the IMISW: (i) bio-pathogenic waste; (ii) residential waste; (iii) radioactive waste; and (iv) the waste derived from the normal operations of ships and airplanes.

The management of industrial waste is defined as the aggregate of the activities of generation, handling, storage, transportation, treatment and final disposal of the waste, aimed to reduce or eliminate the risk resulting from the hazardous or toxic nature of waste, as determined by the regulation of the law.

The violation of this law and its supplementary regulations may be subject to different sanctions such as warnings, fines, business closure, suspension of the activities for up to one year and final cancellation of the authorisations and registrations in the appropriate registries. In the case of legal entities, the board members and managers may be held jointly and severally liable.

The IMISW law has not yet been regulated, and in the meantime, Law No 24,051 shall remain in force.



Hazardous Waste

Law No 24,051 and its regulatory Order No 831/1993 (the Hazardous Waste Law, HWL) are the laws applicable to any activity that involves the generation, handling, transport and final disposal of hazardous waste.

The HWL regulates the generation, handling, transport, treatment and disposal of hazardous waste generated in areas subject to the jurisdiction of the federal government or where the waste may adversely affect more than one province, for example, if the waste is to be transported from one province to another.

The HWL defines as 'hazardous' any waste (liquid, solid or gaseous) that directly or indirectly, may (i) cause damage to people or animals or (ii) contaminate soil, water, the atmosphere or the environment in general. In particular, the substances considered in the law and its regulations as hazardous waste include: the substances arising from water of hydrocarbons, waste containing asbestos, ethers, certain organic solvents, or substances containing explosives, flammable liquids or solids, or toxic gases. Like IMISW, HWL covers neither residential waste nor the waste resulting from the normal operation of ships.

Any person or entity generating waste must verify whether it may be qualified as hazardous

under the HWL. The HWL provides for the creation of a Federal Registry where all persons responsible for the generation, transport and disposal of hazardous waste must register. Registrants must pay a fee determined by law and calculated in accordance with a formula based on the danger or amount of hazardous waste generated and other relevant criteria, and receive an environmental permit that must be renewed on an annual basis.

The generators of hazardous waste have the duty to dispose such waste in a treatment or final disposal plant. Disposal means the elimination of the hazardous waste, which involves its discharge into certain containers, after the appropriate treatment. Treatment plants are those in which the physical characteristics, the chemical composition or the biological activity of hazardous waste is modified, so that all negative consequences are prevented. The treatment aims at recovering energy and/or material resources or at obtaining a less hazardous and safer waste for its transportation and final disposal.

The HWL imposes penalties on those individuals or entities that violate the law, which may include fines and even the violator's business closure.

Management and Disposal of PCBs

Law No 25,670, regulated by Executive Order No 853/07, prohibits the entry of PCBs and machines containing PCBs as well as the installation of equipment containing PCBs in the country.

Any violation of the provisions contained in that law will be sanctioned with (i) warnings, (ii) fines ranging from 10 to 100 basic salaries of the lowest category of public employees, (iii) temporary disqualification, and (iv) business closure.

Management of Water Pollution

Law No 25,688 on Management of Water Pollution (MWP) establishes the minimum environmental protection standards for the preservation and use of water.

The MWP defines the use of waters as:

- (a) use and detour of surface waters;
- (b) stagnation or change in the flow or depth of surface waters;
- (c) extraction of solid or dissolved substances from surface waters, provided such actions affect the condition or quality of the waters or their drainage;
- (d) placement or discharge of substances into coast waters, provided such substances have been placed or discharged from the adjacent land or have been transported to the coast for that purpose, or permanent facilities built



Photo: Christopher Steer

- on coast waters;
- (e) placement and discharge of substances into underground waters;
- (f) extraction of underground waters, their elevation and piping over ground as well as their detour;
- (g) stagnation, deepening and detour of underground waters by means of facilities designed for such purposes;
- (h) actions that may cause permanent or significant alterations of the physical, chemical or biological properties of the water; and
- (i) artificial modification of the atmospheric phase of hydrological cycles.

The MWP law sets forth that in order to use the water, it is necessary to have an authorisation granted by a competent federal, provincial or municipal authority. The MWP law grants the Environment and Sustainable Development Office the power to determine maximum water contamination standards in accordance with its uses, and to fix the environmental parameters and standards of water quality.

The MWP law is supplemented by Executive Order No 674/89 (further amended by Resolution No 79179/90 of the Environment and Sustainable Development Office), which regulates the disposal by industries of waste or mud originated in the depuration to sewage or rain pipes or to a course of water, which may directly or indirectly affect or alter (i) water sources located within federal jurisdiction or (ii) water located in a water utility company's facilities (Aguas y Saneamiento Argentino SA), or (iii) people's health. This executive order is enforceable in the City of Buenos Aires and in those jurisdictions of the Province of Buenos Aires where water services are provided by Aguas y Saneamiento Argentino SA.

Executive Order No 674/89 defines and

regulates: water contamination, discharge, concentration, permissible limit, special rights for the control of contamination, temporarily tolerable limits, weighted contamination level, non-tolerated discharge, quality values, establishment, industrial facilities, and special facilities.

Criminal Liability

Section 200 of the Argentine Criminal Code provides that poisoning or dangerously altering water, food or medicine to be used for public consumption, and selling products that are dangerous to health without the necessary warnings may be subject to fines and imprisonment of 10 to 25 years if the life of a person is at stake.

Towards Uniform Environmental Policies

The statutes described above are the main Argentine laws on environmental matters enacted at the federal level after the 1994 constitutional amendment, which introduced the debate over environmental matters in Argentina.

In addition, at the local level, the provinces have the power to issue general environmental rules to be applied within their territories, as well as specific regulations governing several environmental-related activities. Almost all Argentine provinces have enacted laws, executive orders or resolutions aimed at protecting the environment and, in particular, regulating the use of water sources, air pollution, the handling of hazardous waste, among other relevant environmental matters.

However, the enactment of the above-mentioned laws does not mean that all of them are fully applicable. Enforcement authorities vary from province to province; therefore, the degree of control is not the same in all provincial territories.

In this sense, Argentina must work towards the coordination of uniform environmental policies and management practices between the federal and the provincial governments.

Generation of Carbon Credits in India



Carbon Credits have become increasingly popular globally and India and China are the most preferred destinations for investment in clean development mechanism projects today. This article describes the process of approval of such projects and the issuance of Carbon Credits with specific reference to India.

Akil Hirani

Managing Partner, Kashish Bhatia, Associate
Majmudar & Co

Introduction

The concept of Certified Emission Reduction Certificates (CER or 'Carbon Credits') was officially recognised in the Kyoto Protocol (the Protocol) to the United Nations Framework Convention on Climate Change (UNFCCC). The Protocol prescribes binding green house gas (GHG) emission reduction targets for developed nations (Annex Countries), whereas there are no targets prescribed for the other parties to the Protocol (Non-Annex Countries). The Protocol provides for the following three reduction mechanisms that the Annex Countries can adopt to meet their emission targets: (a) emissions trading;¹ (b) clean development mechanism (CDM);² and (c) joint implementation.³

CDM is a reduction mechanism that involves cooperation and collaboration between Annex Countries and Non-Annex Countries to reduce the overall global GHG emissions. CDM allows Annex Countries to meet their GHG emission

reduction targets by helping reduce GHG emissions in Non-Annex Countries. Parties participating in an approved CDM project are entitled to receive CERs or Carbon Credits for reduction of every tonne of carbon-dioxide emission, and the Carbon Credits generated from such CDM projects can then be traded to meet GHG emission reduction targets.

Mechanism for Generation of Carbon Credits

As CDM and generation of Carbon Credits allows Annex Countries from all over the world to meet their emission targets and considering that the trading of Carbon Credits is envisaged on a global scale, the Protocol provides for a broad uniform mechanism for the approval of CDM projects and for the issuance of Carbon Credits.

CDM projects involve international as well as local scrutiny and registration. As per the terms of the Protocol, CDM as a reduction mechanism is to be implemented under the guidance of the Conference of Parties (COP) and under the supervision of the CDM Executive Board.⁴ In accordance with the foregoing, the COP has issued a framework for the modalities and the procedure for approval of CDM projects.⁵

The procedure prescribed by the COP for the approval of a CDM project involves the following agencies:

- (i) a designated national authority;
- (ii) a designated operational entity (DOE); and
- (iii) the CDM Executive Board.

The CDM Executive Board approves and registers CDM projects and is the nodal body that issues CERs upon successful reduction of GHG emissions by a CDM project. However, before the CDM Executive Board can register a CDM project it must be validated. The term 'validation' refers to a process where an entity verifies the advantages of a proposed project and accredits it. Once a project is validated, it is then considered by the CDM Executive Board for registration.⁶

DOEs are certain entities that are selected by the COP to perform the functions of validation and certification of CDM proposals and projects. The Protocol in clear terms provides that emission reductions resulting from each CDM project shall be certified by a DOE on the basis of:⁷

- (i) real, measurable, and long-term benefits related to the mitigation of climate change; and
- (ii) reductions in emissions that are additional to any that would occur in the absence of the certified project activity.

Thus, a CDM project must ensure real, measurable, and verifiable emission reductions that are over and above the normal reduction of GHG emissions.

Before a CDM project can be validated by a DOE, it must be approved by authorities in the territory of implementation of the project or the host country.⁸ The foregoing function of scrutinising and approving CDM projects at a local level is performed by designated national authorities, and the approval granted by the designated national authorities is termed as host country approval (HCA).

Thus the overall process for approval of a CDM project is as follows:

- (i) designing of a project by participating entities;
- (ii) approval of the design by the designated national authority;
- (iii) validation of the design by a DOE; and
- (iv) registration of the design by the CDM Executive Board.

Once the project is registered, it is continuously

monitored and the actual performance of the project is verified before CERs are issued.

Regulatory Authorities for CDM in India

Validation and registration of proposed CDM projects can only be taken forward after the project participants obtain an HCA. The issuance of an HCA is the only process which is country specific in the entire validation and registration process. In India the authority designated to issue HCAs is the National Clean Development Mechanism Authority (NCDMA).

The NCDMA was established in 2003 by the Indian Government⁹ and its composition includes nine government appointed members.¹⁰ The primary function of the NCDMA is to evaluate and approve proposed CDM projects and to also disseminate information relating to CDM.

The Member-Secretary of the NCDMA is responsible for the day-to-day activities of the NCDMA, including, *inter alia*, constituting committees or sub-groups to coordinate and examine CDM proposals or to obtain detailed examination of the project proposals.¹¹

Additionally, the NCDMA also has the powers to invite professional opinions/input from industry experts, to consider any environmental issues



pertaining to CDM as may be referred to it by the Central Government, and to recommend guidelines to the Central Government for consideration of CDM projects and principles to be followed for according an HCA.

The NCDMA follows the guidelines approved by the COP and the CDM Executive Board while according an HCA.

Process and Criteria for Obtaining an HCA in India

Eligibility Criteria

Projects are eligible for an HCA if the project activity fulfils the following eligibility criteria:

- (i) the project should lead to real, measurable, and long term GHG mitigation;
- (ii) the procurement of CERs should not be from Official Development Assistance (ODA). The term ODA refers to a category of funds given by developed countries to the other nations with the main objective of promoting the economic development and welfare of developing countries.¹² The rationale behind restrictions on issuance of CERs to ODA funded projects is that the COP did not intend to divert development

aid to the CDM but rather intended to create separate and additional financial obligations for Annex Countries;¹³

- (iii) the project must assist the host country in achieving sustainable development; and
- (iv) the project must lead to an improved quality of life for the local residents, and lead to social, environmental, technological and economic well-being in the host country.

The project design must clearly define baselines or reference points which will be used to measure the effects of the project on GHG emissions. The project can use CDM Executive Board approved technologies or new technologies to reduce GHG emissions. However, if the project involves a new/unapproved technology, the DOE is bound to refer such technology to the CDM Executive Board for approval before validating the project.

Process for Obtaining an HCA in India

The NCDMA has prescribed the following steps for issuance of an HCA:¹⁴

- (i) the project participants must prepare and submit a project concept note (PCN) and a project design document (PDD);
- (ii) the foregoing documents should be forwarded through a covering letter signed by the project sponsors;
- (iii) once the copies of the PCN and PDD have been received, the NCDMA will examine the documents and may call for additional material or seek answers to certain preliminary queries;
- (iv) thereafter, the applicants must make a brief project presentation before the NCDMA;
- (v) the project presentation may be followed by further clarifications/concerns raised by the NCDMA, and these clarifications/concerns must be addressed by the applicants within a time period of six months; and
- (vi) the last step is the final consideration of the project by the NCDMA members and, if satisfied, the NCDMA approves the grant of the HCA.

The Project Concept Note and Project Design Document

The PCN and the PDD form the basic set of documentation that is needed to obtain an HCA. Any person desiring to obtain an HCA must submit the foregoing documents to the NCDMA in the prescribed form along with, *inter alia*, the following information:¹⁵

- (i) description and technical details of the



Photo: oonal

- proposed project;
- (ii) costing, financing and estimated returns from the project including relevant timelines;
- (iii) the projected GHG emission reduction from the project;
- (iv) details of technology transfer and notes on social, economic and environmental well-being intended to be created from the project;
- (v) details and status of government and sectoral approvals; and
- (vi) details of discussions with stakeholders.

In India a participant applying for an HCA may, *inter alia*, also require the following government clearances:

- (i) Pollution Control Board clearance;
- (ii) environmental clearance;
- (iii) fisheries clearance;
- (iv) flood control clearance;
- (v) building clearance;
- (vi) fire, explosives and safety clearance;
- (vii) Airport Authority clearance;
- (viii) Boiler Inspection Report; or
- (ix) other sector specific regulatory approvals.

The PDD is the core of the project proposal, and the form and content of a PDD depends on the nature of the project. The PDD, the HCA and validation report by the DOE form the documentation required for a valid registration. The PDD required to be submitted to the NCDMA should be based on the format and requirements prescribed by the CDM Executive Board guidance.

The NCDMA prescribes a period of 60 days for the completion of the HCA issuance process.¹⁶ However, there are no specific statutory timelines prescribed for according approval to proposed projects.

Generation of Carbon Credits

The generation of Carbon Credits requires successful implementation of the project registered with the CDM Executive Board. Carbon Credits are generated only after continuous monitoring, verification and certification.

Monitoring involves collection and archiving of data related to the project that is necessary to establish the net reduction in GHG emissions. Every PDD must include a monitoring plan, and implementation of the registered monitoring plan is a prerequisite for certification of GHG emission reduction. The project participants are required to submit the monitoring reports to the DOE.¹⁷

Verification and certification are the final steps

before the issuance of Carbon Credits. The process of verification involves periodic independent review of the reduction in GHG emissions as a result of the project. The DOE is responsible for the preparation of the verification reports and must ultimately certify that the project, during the period of implementation, achieved the verified amount of GHG reductions.¹⁸

After successful completion of these processes the DOE submits a certification and verification report, which also constitutes a request to the CDM Executive Board for issuance of CERs. If, within 15 days of submission of a request, there is no objection to the issuance of CERs, then the issuance is considered final.¹⁹

CDM in India: Practical Experience

India and China lead the world in the number of approved projects as well as in the number of CERs generated. The data available from the UNFCCC suggests that close to 23% of the registered projects are in India and nearly 19% of the CERs issued by the CDM Executive Board have been for projects based in India. The sectors where there is a scope of development for CDM projects in India include, renewable and non-renewable energy generation, energy distribution, manufacturing industries, chemical industries, construction industry, mining, metal production, afforestation, agriculture, etc. However, the majority of the CDM projects approved in India relate to renewable energy sources such as biomass and wind energy generation.

India has approved over 1500 CDM projects²⁰ of which more than 500 have already been registered with the CDM Executive Board,²¹ and India has generated over 79 million Carbon Credits.²² The first project to be issued CERs in India was implemented in the years 2003 and 2005 and the issuance was completed on 21 October 2005.²³ Thereafter, numerous Indian projects have been issued CERs, the latest being a 7.5 MW Grid-Connected Biomass Power Project by Ravi Kiran Power Projects Private Limited, which was issued over 12,000 CERs in June 2010.²⁴

Although India has had a good track record for CDM projects, China has left India far behind in the number of approved projects as well as CERs generated. One significant difference between CDM projects in India and China is that China has more number of large scale projects, whereas a majority of the projects in India are small scale projects.²⁵ The reasons cited for India's slow progress are generally the red tape involved in obtaining regulatory approvals and the lack of clear policy guidelines.

Although the NCDMA prescribes a 60 days'

timeline for approval of projects, practically it may take up to four to six months to obtain an HCA in India. Unlike China, where an expert group evaluates proposals within a fixed timeframe of 30 days, India has not specified any expert examination requirement. Further, the NCDMA is completely composed of government officials and bureaucrats, which almost invariably leads to a delayed approval process.

Another factor that is responsible for the slow rate of approvals in India is the lack of a well drafted statutory framework for the approval of proposed projects. The NCDMA was constituted by a government order and does not have any statutory operational mechanisms. In the absence of concrete statutory regulation, the operation of a body such as the NCDMA tends to be tardy.

Further, as a majority of the projects in India are in the renewable energy sector, establishment of such projects almost always requires government approvals and clearances. Obtaining government approvals and clearances in India

can be a difficult and time consuming process. Furthermore, obtaining environmental clearances, land clearances and stakeholder approvals in India is a time consuming process.

Notwithstanding the difficulty in obtaining approvals in India, the country has a good investment climate and has sufficient government policies in place to promote the establishment of eco-friendly projects. Further, one distinguishing feature between India and the other nations is the fact that a large number of projects in India are indigenous and not in collaboration with the Annex Countries. Increasing environmental consciousness and governmental recognition of revenue generation capabilities from Carbon Credits make India a preferred destination for investment in CDM projects. Also, considering that India's energy need is growing with every passing day, there is enough potential for commercialisation of non-renewable energy sources in India and consequently the scope of increased CDM activity.

Notes:

¹ The Kyoto Protocol Article 17.

² The Kyoto Protocol Article 12.

³ The Kyoto Protocol Article 6.

⁴ The Kyoto Protocol Article 12(4).

⁵ The COP – Modalities and procedures for Clean Development Mechanism Decision 3/CMP.1.

⁶ *Ibid.*

⁷ The Kyoto Protocol Article 12(5).

⁸ The COP – Modalities and procedures for Clean Development Mechanism Decision 3/CMP.1.

⁹ Ministry of Forests and Environment – Order SO 515(E).

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² OECD Glossary of Statistical Terms:
see <http://stats.oecd.org>.

¹³ Decision 17/CP.7 of the COP.

¹⁴ See <http://cdmindia.nic.in>.

¹⁵ See <http://cdmindia.nic.in>.

¹⁶ See <http://cdmindia.nic.in>.

¹⁷ The COP – Guidance relating to the Clean Development Mechanism Decision 4/CMP.1.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ See <http://enviroscope.iges.or.jp>.

²¹ See <http://cdm.unfccc.int>.

²² See <http://cdm.unfccc.int>.

²³ See <http://cdm.unfccc.int>.

²⁴ See <http://cdm.unfccc.int>.

²⁵ See <http://cdm.unfccc.int>.



IPBA SCHOLARSHIPS

The Inter-Pacific Bar Association (IPBA) is pleased to announce that it is accepting applications for the IPBA Scholarship Programme, to enable practicing lawyers to attend the IPBA's Twenty-first Annual Meeting and Conference, to be held in Kyoto/Osaka Japan from April 21–24, 2011 (www.ipba2011.org).

What is the Inter-Pacific Bar Association?

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

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

The highlight of the year for the IPBA is its annual multi-topic four-day conference. The conference has become the 'must attend event' for international lawyers practicing in the Asia-Pacific region. In addition to plenary sessions of interest to all lawyers, programs are presented by the IPBA's 21 specialist committees. The IPBA Annual Meeting and Conference provides an opportunity for lawyers to meet their colleagues from around the world and to share the latest developments in cross-border practice and professional development in the Asia-Pacific region. Previous annual conferences have been held in Tokyo, Sydney, Taipei, Singapore, San Francisco, Manila, Kuala Lumpur, Auckland, Bangkok, Vancouver, Hong Kong, New Delhi, Seoul, Bali, Beijing, and Los Angeles. Our most recent annual conference in Singapore attracted over 1000 delegates.

What is the IPBA Scholarship Programme?

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

Who is eligible to be an IPBA Scholar?

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

[1] Lawyers from Developing Countries

To be eligible, the applicants must:

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

[2] Young Lawyers

To be eligible, the applicants must:

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

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

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

How to apply to become an IPBA Scholar?

To apply for an IPBA Scholarship, please obtain an application form and return it to the IPBA Secretariat in Tokyo no later than **31 October 2010**. Application forms are available either through the IPBA website (www.ipba.org) or by contacting the IPBA Secretariat in Tokyo.

Please forward applications to:

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

What happens once a candidate is selected?

The following procedure will apply after selection:

1. IPBA will notify each successful applicant that he or she has been awarded an IPBA Scholarship. The notification will be provided at least two months prior to the start of the IPBA Annual Conference. Unsuccessful candidates will also be notified.
2. Airfare will be agreed upon, reimbursed or paid for by, and accommodation will be arranged and paid for by the Kyoto/Osaka Host Committee and/or the IPBA Secretariat after consultation with the successful applicants.
3. A liaison appointed by the IPBA will introduce each Scholar to the IPBA and help the Scholar obtain the utmost benefit from the IPBA Annual Conference.



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.

- | | |
|--|-------------------|
| • 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