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IPBA JOURNAL

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The purpose of this article is to provide an overview of the legal regime applicable to infrastructure projects financing in Argentina from corporate, foreign exchange and tax perspectives. A brief description of the foreign investment regime in force in Argentina is also provided

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The President's Message

Dear Colleagues,

Tempus fugit! Four months have elapsed since the Annual Conference in Manila, and I have attended two conferences as a representative of the IPBA. Let me give you a write-up of these conferences, as well as those being organized or supported by the IPBA this year. I will also be informing you below of the forthcoming Mid-Year Council Meeting and, of course, our 20th Annual Conference in Singapore next year.

Qatar Law Forum

I was in Doha on May 29-31, for the Qatar Law Forum, held under the patronage of the Emir of the State of Qatar. The Law Forum's programme, developed with the assistance of Harvard Law School, revolved around the theme "Global Commitment to the Rule of Law." It encompassed a diverse range of topics, with core subjects such as justice and globalization. The opening session focused on global governance, while another session addressed the rule of law in the face of global financial challenges. I had the opportunity to participate in a dialogue among leaders of bar and law associations, on the topic "The Legal Profession Today: Local and International Practice."

POLA Conference

I attended next the Presidents of Law Associations (POLA) Conference in Seoul on July 3-4. Hosted by the Korean Bar Association, the conference adopted the theme "Global Economic Crisis and the Rule of Law." I was a panelist in the session "Bridging the Gap: Market Autonomy and Regulation." Several IPBA members were also in attendance, including former IPBA President Sang-Kyu Rhi, and Jurisdiction Council Member Young-Moo Shin, as well Kevin Kim and Mee Hyon Lee, who both acted as session moderators.

Mid-Year Council Meeting; Regional Conferences in Hong Kong

The IPBA Mid-Year Council Meeting is scheduled on October 30 to November 2 in Hong Kong at Park Lane Hotel. Following this meeting is a regional seminar on the topic "Asia – The Eye of the Financial Storm." You are all invited to attend this seminar, which will have a distinguished panel of experts discussing a myriad of legal issues relevant to practitioners and clients alike, in the context of the current global economic downturn.

IPBA Seminar in Amsterdam

Jan Kooi, IPBA Regional Coordinator for Europe, is in the thick of organizing an IPBA seminar in Amsterdam on October 2. This seminar will deal *inter alia* with take-overs by Asian companies of European targets. You are also encouraged to attend this seminar, which will be held at Deloitte Conference Centre in Orly Plaza, Amsterdam.

IPBA as Supporting Organization

The IPBA will be a supporting organization in the IP Business Forum 2009 being organized by LexisNexis Hong Kong. This will be held on November 6-7 in New Delhi. The IPBA will also support Asia Business Forum's conference in Jakarta on November 23-24 on "Negotiating and Drafting Commercial Contracts Indonesia."

Also worth attending is the "ADR in Asia Conference 2009" in Four Seasons Hotel, Hong Kong, on September 15. The Hong Kong International Arbitration Centre has organized this event, together with IPBA and the Hong Kong Corporate Counsel Association.

IPBA Singapore Conference

Needless to say, please do not forget the forthcoming 20th IPBA Annual Conference in Singapore on May 2-5 next year. Let us all support the Singapore Host Committee, led by President-Elect Suet Fern Lee, by registering for this conference the theme of which is "Climate Change and Legal Practice." A keynote speaker in this conference will be former US Vice President Al Gore. Kindly visit the website www.ipba2010.org for more information on the conference.

Thank you for your cooperation!

Rafael A. Morales
President

The Secretary-General's Message

Dear IPBA Members,

In times of widespread economic turmoil, our focus inevitably narrows to the near-term objectives of retrenchment and survival. The global financial crisis has significantly diminished the volume of international trade, commerce and investment within the Asia-Pacific region which not very long ago had been hailed as auguring the "Pacific Century". The world's major economies – especially the United States and Japan – have been in severe economic distress, with grave consequences for the exporting countries especially in this region of the world. Even China and India, whose economies continue to show resilience, have not been immune from adverse impacts of decreased export demand.

Nonetheless, a longer view into the future strongly suggests the continuation of transformational changes within this region. These forces contain in themselves major challenges but also exciting opportunities that have important implications for the growing roles of law and of lawyers. Underlying much of these challenges and opportunities are the intensifying trends toward the rule of law as it is being expressed and institutionalized within the countries of this region. These transformational forces include the following:

First, the process of globalization continues in its economic dimensions to broaden the integration of the Asian and the Pacific economies as well as this region and the rest of the world. Initially, the positive impacts of globalization were cited as evidence that economic integration benefits all countries by accelerating economic development and thereby significantly reducing poverty. More recently, however, globalization's "dark side" has been recognized, pointing out the need for social safety nets, corporate social responsibility and more responsible and inclusive economic development. The rule of law is now seen more than ever as critical in helping to shape how globalization is transforming societies.

Second, signs of the global economic recovery appear to be emerging although the process of recovery will probably be a prolonged one, and its rate and intensity will vary in each economy and economic region. Continuing reforms affecting the international financial system will also have substantial national and regional impacts.

Third, in December 2009 the world's attention will center on Copenhagen and what will be the successor to the Kyoto Protocol, which expires in 2012. The Asia Pacific region will likely be a major geographic focal point in these discussions, complementing negotiations on possible future commitments expected of the developed countries listed in Annex I of the UN Framework Convention on Climate Change.

Fourth, issues of international trade, including the future after the Doha round, remain unresolved and had been pushed aside – in part due to the onset of the global financial crisis. The proliferation of bilateral free trade agreements, and the strengthening of regional economic trade groupings and agreements continue and may very well intensify as the global economic recovery picks up momentum.

Other forces, trends and emerging issues should also be mentioned. These encompass the spreading use of the Internet and e-commerce; the allocation of rights to and use of increasingly scarce natural resources such as clean and potable water; the establishment of effective legal regimes for environmental protection and the prevention of environmental pollution and degradation; and similar issues that previously were not deemed to be of direct interest to business lawyers. This is changing, however. The boundaries between business, economic activity, and environmental and social concerns are becoming less distinct; the interrelationships among these dimensions are becoming more apparent; and the indirect impacts and consequences of business and economic transactions and activities are becoming better known. These have broadened the perspectives of business law and business lawyers and also reflects the broadened range of business and business firms and organizations.

These transformational changes and their future direction are directly relevant to the IPBA, for they comprise the rich and constantly changing environment within which we and our business clients operate, plan and invest. This is also the context within which the IPBA continuously seeks to identify the cutting edge issues that affect our interests and concerns as legal professionals as well as persons living in, and otherwise interested in, this Asia-Pacific region. The IPBA's Strategic Plan expressly builds on this recognition.

At its Annual Conference on April 29 – May 2, 2009 in Manila, the IPBA explored diverse issues affecting legal practice and how to deal with diversity and change. IPBA's next Annual Conference, scheduled for May 2-5, 2010 in Singapore will discuss issues under the theme "Climate Change and Legal Practice". This will be the first conference of lawyers in Asia to deal with this vital issue. The science of climate change continues to be debated, but a widespread consensus has emerged that human activities have within recent history significantly contributed to the emission of certain greenhouse gases resulting in negative impacts on the climate. Policy implications and political decisions on the climate are already being made on national and international levels. For the IPBA, an understanding of the implications of climate change, and policy actions taken in response to climate change, for business and the practice of business law is of paramount importance. These implications are still being identified and acted upon, and the results of the Copenhagen meeting (whatever they my be) in December 2009 will have profound effect on our future in general and our future practice of law.

The IPBA is able to pursue these cutting edge issues, and explore their impacts on our members' present and future law practices because of the commitment of IPBA's members to the future of the Asia-Pacific region, their participation in and contributions to the practice of law in this region, and their ultimate promotion of the rule of law as a fundamental pillar of economically dynamic and growing societies. We continue to draw this strength from our membership and in this way, continue to build IPBA.

We look forward to the future, especially in these difficult present times, and welcome your continuing and expanded involvement with the IPBA. We welcome your suggestions and ideas for how the IPBA can be even more effective.

With all best wishes,

Gerald A. Sumida
Secretary General

Publications Committee Guidelines for Publication of Articles in the IPBA Journal

The IPBA Publications Committee is soliciting quality articles for the Legal Update section of the December 2009 and March 2010 issues of the IPBA Journal. If you are interested in contributing an article, please contact **Mr Kap-You (Kevin) Kim**, Publications Committee Chair, at kyk@bkl.co.kr or **Mr Hideki Kojima**, Publications Committee Vice-Chair, at kojima@kojimalaw.jp and/or submit articles by email to Mr Kim or Mr Kojima at the foregoing addresses.

Proposed themes for upcoming editions:

- Shipping and Insurance (December 2009)
  Deadline for submissions: November 26, 2009
- Antitrust/Competition Law (March 2010)
  Deadline for submissions: February 25, 2010

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 publicize the expertise, specialization, or network offices of the writer or the firm at which the writer is based;
4. The article is concise (2,500 to 3,000 words) and, in any event, does not exceed 3,000 words; and
5. The article is written by an IPBA member.

IPBA Event Calendar

Event	Location	Date
Annual Meeting and Conference		
20th Annual Meeting and Conference	Singapore	May 2-5, 2010
21st Annual Meeting and Conference	Kyoto, Japan	April 21-24, 2011
Regional and Local Events		
Asia---the eye of the financial storm?	Hong Kong	02-Nov-09
Your (EU) Company is Taken Over by an Asian Group	Amsterdam, the Netherlands	02-Oct-09
Effective Utilization of International Arbitration in Asia	Osaka, Japan	01-Oct-09
International Arbitrations and Japanese Corporations in Singaporean Perspective	Tokyo, Japan	02-Oct-09
Supporting Events		
HKIAC-ADR in Asia Conference 2009	Hong Kong	15-Sep-09
LexisNexis Cross Border M&A Summit	Mumbai, India	September 17-18, 2009
LexisNexis IP Business Forum	New Delhi, India	November 6-7, 2009
ABF 2nd Negotiating and Drafting Commercial Contracts Indonesia	Jakarta, Indonesia	November 23-24, 2009
IFLR Asia M&A Forum	Hong Kong	March 3-4, 2010

Details can be found at www.ipba.org, or contact the IPBA Secretariat at ipba@tga.co.jp.

Alliance Participation as a Preferred Delivery Method for Major Infrastructure Projects

Alliance contracting has been used in Australia in major infrastructure and government projects to minimise disputes and to create trust in the construction industry. This paper provides a brief overview of the Alliance position and the issues to be considered before embarking on an Alliance project.

Robin Lonergan
Macrossans Lawyers, Australia

Introduction

In the current economic climate, parties are particularly looking at new structures to propel infrastructure projects. Investors are more risk averse; the banks have less cash to lend, yet governments are looking to encourage construction.

The Australian Federal Government's package for commercial property and the use of Future Fund is to be used for providing funding for existing commercial property where foreign bank funding has been withdrawn rather than for assisting new construction projects.[1] Westpac and ANZ asked the government to avoid creating the impression that the commercial property fund was aimed at new construction. Westpac noted that the loans to projects under development would only be on "an exceptional basis" and even then, without any intention "to take on construction risk". Under this scheme, the government will inject $2 billion and the four big banks $500 million each to create the commercial property facility with capacity to lend up to $30 billion if necessary, to be financed by the issue of government bonds.[2]

As Australia is a Federal System, the state governments can borrow independently from the Federal Government. Prior to the economic downturn, the state governments had the same credit rating as the Federal Government, but as state revenue has fallen, (due to reduced property activity and lower state taxes and royalties on the sale of minerals) the credit rating of some states have fallen. Some states, in particular New South Wales, have indicated that they would reduce spending on infrastructure projects in an effort to maintain the current credit rating and therefore protect the current low interest rates charged on government lending. The Federal Government considers that the states should spend on infrastructure as a stimulus for the economy and has provided a voluntary guarantee over state government borrowing.[3]

The players (including landowners, contractors, consultants and financiers) are looking for structures which will allow them to continue to develop construction buildings and infrastructure projects.

Risk Adverse

In the past, the construction industry has been seen as lacking in trust between the participants and accordingly, with each party defending itself against the others.[4] According to a study conducted in Northwest United Kingdom on how people work in the construction industry, poor relationships between the principal, contractor and sub-contractors lead to problems that affect time, cost and quality as well as damage long term relationships between the parties. Participants in the study were asked about issues such as trust and

why it is important. Some of the issues reported were:

1. Honest Communications – the parties should be open and willing to share important information with the rest of the team and be honest in giving information that reflects the real situation.
2. Reliance – the parties should be able to rely on the information that is given and to trust that promises will be kept – that when people say they will do something, they will do it. In construction, there may be many specialist trades and not everyone will have the expertise to understand *everything* that is being done and therefore will have to rely on the other person's experience and expertise.
3. Reputation – trust tends to be given to people rather than companies or organisations; individuals rather than organizations will be relied upon. Despite this, organizations can build reputations structured on whether people feel comfortable working with them on projects.

The benefit of trust is that the construction industry is uncertain and if the information is clear and accurate then other people can rely on it. When parties are reliable, there is more likely to be repeat business. That trust can increase profit both on an individual project and in the long term. Generally, it is easier to build the personal relationships on smaller projects but by changing the culture within organizations, trust can be built on larger projects. Joint ventures and alliance contracting are two methodologies which have developed to bring "trust" into projects.

The culture of blame has lead to inefficiencies as each party seeks to "cover its back" and to shift risk. The risk is shifted to the party which is in the weakest negotiating position within the contracts. It is often shifted to a party that has the least control over minimizing the risk and the least ability to prevent the occurring of events.

A number of structures have been developed to minimize the confrontational nature of the relationships between the parties in the projects to improve the trust between the parties and to establish a more collaborative approach.

Despite the various attempts at creating a new construction paradigm, the basic outcome sought is:

- a reasonable profit for each participant including the owner, contractor, subcontractor and consultant;
- completion of the project in a timely manner;
- meeting the social responsibility of the participants; and
- minimizing long term costs for the operation of the building/infrastructure project.

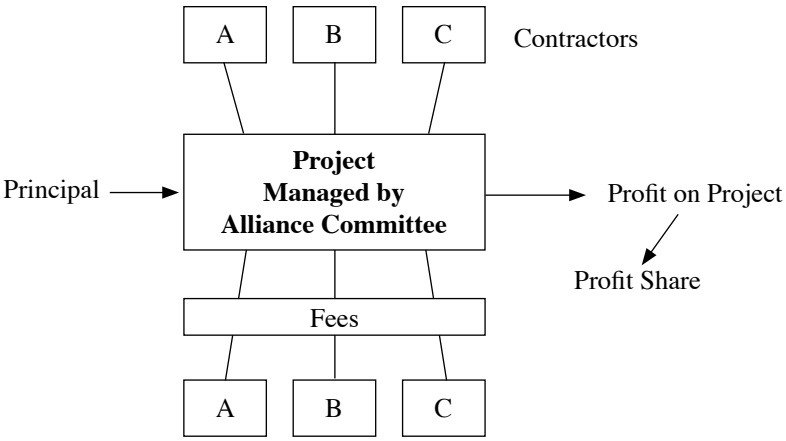
The weight of these goals depends on the nature of the project and the nature of the participation of the parties.

Where the parties anticipate that the project will be on-sold quickly with short term profit for the developer, long term maintenance costs may be considered to be less important. With an infrastructure project such as a road, the government or the concessionaire will consider that the maintenance costs are as important as the original construction cost and that a designer may utilize techniques or materials which have a higher initial cost but will substantially reduce long term maintenance.

Some participants may have strong commitments to social responsibility – for example, ethical investment funds, churches and governments. Such principals may be willing to accept a greater cost for a project by having regard to the long term cost to society for issues such as being conscious of the source of materials, reducing long term energy costs, use of renewable or recyclable materials, refusal to use rainforest timbers *etc*. Many public companies have a social responsibility charter and reports relevant to that charter will be presented at the annual general meeting with as much importance as reports on financial performance.

Alliance Contract Structure

Diagram 1 – Alliance Contract



The aim is to ensure that the participants share in the outcome – share the pain and the gain.

The unincorporated joint venture has been used for many years particularly in mining projects as a means of participating jointly without creating a new legal entity and without sharing liability. Traditionally, it was developed as a tax effective means of carrying out the project. As it was developed in answer to tax matters, it can still be seen by the tax office as having an element of tax

minimization and therefore, may have greater scrutiny than other structures.

Alliance Contract

What is an Alliance Contract

An Alliance Contract or relationship contract has developed as other forms of contracts such as engineering, procurement, construction (EPC) contracts have lost popularity. The traditional EPC contract transferred risk from the developer to the contractor; the contractor would accept this risk (and often pass it on to sub-contractors) in exchange for a profit which is sufficiently large to fund that risk. The traditional contract worked where the market was buoyant enough that the contractor could include this profit margin in the tendered price.

As profit levels reduce in the current economic circumstances and as technology in the construction industry develops to potentially provide cost savings through the use of new technology, other construction models have developed.

The Alliance Contract is an extension of a partnering arrangement. It codifies the relationship between the parties and generally:

1. the parties are bound by the Alliance Contract;
2. the parties including the owner, contractor, designer, subcontractors form part of the Alliance team;
3. costs are 100% reimbursed;
4. the parties agree to share in profit or loss based on defined performance goals;
5. disputes are to be resolved within the Alliance Contract usually by the Alliance Committee;
6. no disputes can be brought outside the Alliance Agreement;
7. decisions of the Alliance Committee are binding and unanimous; and
8. the participants develop and commit to a set of Alliance principles setting out the key goals of the project.

According to the "Project Alliance and Practitioners Guide"[5]:

> Project Alliancing is about providing better value for money and improved project outcomes through a more integrated approach between the public and private sectors in the delivery of infrastructure projects.

The major advantage in the Alliance model is to shift risk so there is no allocation of risk to an individual party but risk is managed collaboratively through the Alliance Committee.

Various government bodies including the Queensland Department of Main Roads and Sydney Water have published statistics comparing Alliance Contracts to traditional contracts which show much better performance under the Alliance Contract. Projects came in at a lower cost, ahead of schedule and exceeding the expectations of the parties.

Alliance Structure

Generally an Alliance Contract will:

- identify the Alliance Committee or board;
- clarify the development of the integrated team; and
- establish the commercial arrangement.

There are many forms of Alliance Contracts. Some will incorporate all the key elements of an Alliance Relationship (a "pure" alliance) and some may not have all the elements (a "hybrid" alliance).

The Alliance Contract will also not affect any obligations to third parties which may have claims against one or more of the Alliance participants. Under some alliance contracts, a claim payable to a third party may become an alliance expense. However, this needs to be spelt out in the contract. Similarly, the Alliance contract cannot exclude liabilities which cannot be excluded at law. For example, in Australia, the Trade Practices Act will apply in respect of a corporation engaging in misleading or deceptive conduct. Similar competition law will be applicable in other jurisdictions.

Alliance Committee

The Alliance Committee comprises representatives of each of the Alliance participants. It has the primary role of administering the Alliance Project. Usually, the parties will be the designer, the contractor, the owner and perhaps commissionaire. Each partner will have one vote and there is no provision for a casting vote. All decisions must be unanimous and there is no deadlock provision.

The structure of the Alliance Committee means that the owner does not have a final say in how the project will proceed and generally has no veto powers.

Reserve Powers

Some hybrid contracts will allocate some reserve power to the owner. For example, particularly where the owner is the government, there may be overriding considerations such as national security which have to be considered. This may arise where the Alliance Contract deals with defence or IT matters which go to the heart of government.

The owner may also reserve a power to change fundamental aspects of the contract such as to prevent a change in the scope of work greater than a certain percentage or to approve a variation to the contract in excess of a certain percentage or amount.

Reserve powers may also relate to long term potential liability for the owner, particularly on issues such as environmental concerns or the long term maintainability of the project where the Alliance is not continuing for the long term.

Photo: Mark Jensen

The problem with reserve powers is that it cuts across the nature of the Alliance relationship. Instead of each of the Alliance partners being equal and having an equal say in the project, the owner has a superior position and a right of *veto* in a number of areas. If the owner exercises that veto power, there may be implications to the cost or profit which will impact on the sharing of the pain and gain.

The nature of the Alliance Committee is intended to take away the hierarchy of traditional contracts.

Integrated Development Team

The Alliance method is intended to minimize the confrontational nature of the traditional construction structure.

There is a change of philosophy and often prior to signing of the Alliance Contract, the parties will be involved in Alliance workshops, facilitated meetings between the various parties employees and there may be ongoing involvement of the Alliance facilitator.

The intention of the structure is to break down the traditional silos on the workplace. One psychological method of doing this is for the alliance to have separate premises and often to work in a special alliance uniform logo *etc* so that the Alliance has a separate identity from the participants.

The lines of hierarchy within each of the participants blurs with the alliance having a separate hierarchy. While the relationship between the parties may become collegiate, other legal relationships will remain in place. For example, the employees of each of the participants remain employees of that party for tax and workplace health and safety purposes. This can create complex contractual relationships where the employee of one organisation is required to take direction from the employee of another organization.

On a long term basis, employees can lose the sense of identity with their employer as they begin to identify with the alliance. While this is the intention of the Alliance Contract, it can cause problems within the employer organisation when the alliance finishes. Does the employee lose his sense of engagement with the employer?

No Disputes/No Blame

Fundamental to the concept of the Alliance Contract is that there is no blame and no disputes between the parties and each party releases the others from all liability. Some Alliance Contracts exclude wilful default from the general exclusion from liability. This of course leaves open what is

intended by "wilful default". Generally, the parties cannot claim against the other for negligence of any degree.

The philosophy is that if there is no blame and no disputes between the parties then the parties have no incentive to hide information.

As there is no blame and no disputes, the parties do not need to be concerned about issues such as extensions of time, liquidated damages or variations. These matters will be discussed in an open manner in the Alliance Committee where decisions can be made in the best interest of the project.

Because there is no blame, the design can be more innovative, and the parties can incorporate new technology. If the project is delayed, the parties can discuss methods to make up the time in the Alliance Committee. As there is no blame, none of the parties need to maintain a critical path and no one owns the time float and workers can be used where they are most effective.

Profit

While the philosophical basis of the Alliance Contract creates a trusting environment, there needs to be an economic imperative to ensure that the parties abide by the arrangement even without blame or dispute.

Most Alliance Contracts provide for the contractor and the designer being reimbursed for their costs and then incentives for bringing the project in on, or before time and on, or under budget.

In negotiating the "cost" for the contractor and designer, the Alliance Contract needs to identify the nature of costs. For example, does it include an allowance for off-site overheads such as office expenses; can it include profit from sub-contractors which are related parties. How do the parties negotiate with sub-contractors.

While an Alliance Contract is intended to be a risk sharing agreement, by ensuring that the contractor and designer are reimbursed their costs, the contract can become a "cost plus" contract where the risk is shifted to the owner. The contractor and designer know that at the minimum they will be reimbursed their costs – they will not be out of pocket.

From a financing point of view, the owner needs to ensure that its financiers are satisfied with this arrangement.

Due Diligence

Prior to entering into an Alliance Contract or any type of relationship contract it is important that each participant undertakes complete due diligence on the other to understand the business culture of the other participants to check if they have a business culture which is conducive to the Alliance system, whether the people who will be engaged on the project day to day have the personality to participate in an Alliance situation and whether there is a genuine commitment by all participants to the Alliance concept.

The use of an Alliance Contract or other relationship contracting does not diminish the need to carry out extensive engineering/technical due diligence. It is often more important in negotiating an Alliance Contract to consider the interfaces between various subcontractors, a realistic cost plan and a realistic time schedule.

The Alliance Contract only applies between the Alliance partners. It is likely that sub-contractors will be engaged by the contractor or the Alliance under traditional contracts which would be entered into with the consent of the Alliance Committee.

As part of the due diligence, the participants need to consider insurance carefully. As there is no blame, a traditional professional indemnity insurance of the designer will not be effective. The designer will have no loss for its error and therefore cannot claim under the policy. The owner may suffer loss because of the cost to redo work as the owner would not have an interest under the professional indemnity insurance. Often the Alliance participants would take out separate cover for their various interests under the Alliance Contract.

Obligation of Good Faith

The relationship under an Alliance Contract creates a new set of relationships and legal obligations between the participants. In a traditional construction contract, the parties have an obligation not to commit fraud or misrepresentation, but there is no positive obligation of good faith. There is no restriction on one party taking advantage of its bargaining position or superior knowledge when dealing with the other. There is generally no obligation of general disclosure of information known about the project.

In an Alliance Contract, the relationship is much closer.

In a joint venture, the participants may have fiduciary obligations in some aspects of the venture. For example, if a participant discovered information about the venture, such as that the coal seam extended further than the current mining lease, the participant may have a fiduciary obligation to advise the other joint venturers and if the participant took out a mining lease over the extended area in its own name, it is likely that it would be holding that mining lease on trust for the joint venture. The information relating to the extension of the mining lease is so intimately related to the mine that that information should be

made known to the joint venture as a whole.

Other aspects of the relationship do not carry fiduciary duty. For example joint venturers would not be required to act in good faith in considering the impact on the other venturers in exercising a contractual right such as an assignment or consent to assignment of the contract.

The leading case dealing with this obligation of good faith is *Thiess Contractors Pty Ltd v Placer (Granny Smith) Pty Ltd*.[6] The facts of that case were that Placer was the operator for a joint venture of a number of mines in Western Australia. It had engaged Thiess to carry out the mining operations. Initially the contract was on the basis of a schedule of rates contract but because of the expense which had been incurred, Placer had proposed a partnering contract under which Thiess would be paid its costs plus an agreed percentage profit. The contract had a provision which allowed Placer to terminate the contract for its convenience without penalty other than payment of the demobilization of costs. Following various discussions with Thiess, Placer decided to terminate the existing contract and to put the work to tender. Thiess tendered at a significantly lower rate.

Thiess brought an action against Placer claiming damages for loss of profits it would have earned had the contracts not been terminated. It was a claim for breach of fiduciary duty and misleading and deceptive conduct. Placer defended on the basis that it had an unqualified right to terminate the contracts and, during discovery, Placer became aware of material facts and claimed that Thiess had made material and fraudulent misrepresentations which induced Placer to enter into the contracts. Placer argued that Thiess had acted in bad faith.

The judge in the first instance, Mr Justice Templeton, reviewed the evidence in detail (the decision is almost 250 pages).

He held that Placer had an unfettered right to terminate. This was one of the aspects of the partnering agreement which did not attract any fiduciary obligation.

Most of the decision however was considering the surrounding circumstances to the parties entering into the partnering agreement. This is relevant in determining the percentage profit which was paid to Thiess. The analysis of the relationships which arose from this negotiation is directly relevant to the payments under an Alliance Contract where the contractor and designer are usually entitled to be paid their "cost" but the profit is risk.

During negotiations between Thiess and Placer, it was proposed that the rates would be derived from an open book system from Haul Profiles, Cycle Times, ownership costs and operating costs plus a profit margin. The base rates were the rates in dollars per bank cubic metre ("BCM"). The rates were to be used by Placer to determine whether it was better to use Thiess to operate the mine or for Placer to operate the mine itself, which it had done previously.

In addition to profit, Thiess would be entitled to claim overheads which would include head office charges. It was agreed that no profit would apply to those charges.

During the negotiations, there was discussion about repairs and accidental damage. Thiess advised Placer that Thiess had an internal plant department which maintained service of and repaired plant and equipment and then hired it to various operating departments. The objective was for the plant department to break even. The evidence given by a representative for Placer was that he had been told by Thiess that Placer would be charged the plant department rates – that is, the internal hire rate by Thiess without profit. During disclosure, Placer discovered that Thiess had charged more than its internal plant rates. Thiess provided Placer with various costs for its internal plant rates. The impression given to Placer was that a five per cent profit was being charged. In fact the profit was 10.87 per cent. Placer was not told that the plant rates in the submission were not the internal plant rates which they appeared to be and which had been indicated to them.

The trial judge held that:

> I accept entirely that Messrs Jukes, Trio and Parsons (senior staff at Thiess) derived no personal gain from the misrepresentations. I think that their conduct was motivated by loyalty to Thiess and the desire to ensure that it retained an important contract.
>
> They were in an invidious position. The 1989 contract had been very profitable for Thiess and it was anxious to retain Placer as a client. But Placer would accept only a 5% profit margin which was far below the level required by Thiess's business plan.
>
> ... I am satisfied that Thiess's conduct was deceitful.[7]

In his conclusion the trial judge found that the Granny Smith contract imposed on Thiess the obligation of formulating in good faith, equipment operating costs based on historical data. This was in the nature of the fiduciary obligation. Thiess was in breach of the contract because it inflated the equipment operating costs based on historical data for the purpose of deriving additional profit. Placer was entitled to damages for breach of contract in

the sum of $4,253,000.00. While the decision was overturned at the first instance, the High Court reinstated that order.

The *Placer (Granny Smith)* case is important on a number of issues:

1. It confirms that the parties to a partnering agreement can have fiduciary obligations in some respects but other contractual rights (such as the right to terminate for convenience) do not have to be exercised having regard to the effect on the other party.
2. There are fiduciary obligations, obligations of good faith, arising from the relationship.

It highlights the importance of full disclosure but also the discussion by the trial judge of the evidence, particularly of the senior management from Thiess which indicates the pressure on the parties (particularly in the current economic climate) to justify the entry into the contract, and the need to produce the required profit.

Representations

In the negotiation of an alliance agreement there are significant negotiations about the method by which the project will proceed and the intentions of the parties. Under a traditional design and construct or EPC contract, the contract itself will set out the standard of skill, cost, variation procedures *etc*. The contract stands alone.

With an Alliance Contract the pre-contractual negotiations will become more important. As was seen in the *Placer (Granny Smith)* case, the negotiations about the partnering agreement were vital to the interpretation of the final contract. Representations made about the methodology used to calculate cost could be relied upon in interpreting the intention of the final contract even though Placer had not specifically asked for a breakdown of the costs in that final contract.

Cost is only one aspect of a relationship contract. Representations can be made about other aspects which are less tangible which may affect the outcome of the project. These may include the commitment of a party to the joint venture.

Representations may become binding on a party either under s 52 of the Trade Practices Act – false and misleading conduct or as a collateral contract. A representation made in the course of negotiations may become binding as either a term of the agreement or as a collateral contract.[8] For a collateral contract to arise, the statement must be promissory rather than merely representational and this will depend on the intention of the parties. The courts will consider whether the parties intended the statements to constitute a term of the contract or whether they were a statement of the opinion of one party, which were to be relied upon by the other.

Where the statement is made during the negotiations or during a partnering workshop (if the joint venture proceeds under a partnering arrangement) the intentions of the parties will determine whether they are intended to form part of the contract or create a collateral contract. For example, when the final document sets out all of the commercial terms of the arrangement and states that the agreement constitutes the "entire agreement", it is less likely that the statements made prior to entering into the contract form a collateral contract. It is likely that a court would consider that if the parties considered the statement to be integral to the agreement then those statements would form part of the joint venture agreement. This will clearly be the case where the statement relates to the participation of the alliance party. It may be less clear where the statement relates to the partnering relationship.

For example, during negotiations of the alliance, the parties will acknowledge that the development will be undertaken within an alliance regime and that each party would seek to avoid conflict and to work in the best interest of the development. Often the parties may then negotiate and sign the alliance agreement which would not allow the usual rights of disputes, claim *etc*. but the parties may have rights under legislation such as the Building and Construction Industry Payments Act. If one party then sought to enforce those rights to the detriment of the other, the other party may claim that the negotiations regarding the alliance arrangement are a collateral contract to the black letter Contract.

It is likely that the courts would look at the intention of the parties both at the time of the negotiations regarding the alliance arrangement and at the time of signing the Contract. The alliance arrangement may be considered to be a collateral contract where the parties intended that the alliance arrangement and the obligations to negotiate in the best interest of the development would be enforceable despite the black letter Contract. Usually the alliance agreement is not inconsistent with the Contract and would be considered to be promissory rather than representational.

The position would be different where the negotiations about the partnering/alliance relationship are general, particularly where there is no partnering agreement or where it is just a general intention to work for the benefit of the development without any formal agreement setting up a process for dealing with the partnering relationship.

Summary

The use of the joint venture or an Alliance Contract provides advantages for the construction of larger

projects including significant buildings and infrastructure. This structure ensures that the participants share in the pain and the gain, that the participants have a vested interest in close dialogue, avoiding blame and looking for results and maximizing the return on the project.

While this structure does not create a partnership, there are obligations of good faith between the participants. Each participant must ensure that it does not obtain an advantage from the other participants and is open in all dealings with them.

Issues can also arise about representations made during negotiations, meetings prior to the Alliance Agreement being signed which may have induced one of the participants to enter into the Agreement.

The existence of the obligations of good faith and the representations made may give rise to action outside the contract which would not be barred by the "no blame, no dispute" provisions.

From the owners point of view, a development using an Alliance Contract can transfer power to the contractor and designer more than under a standard contract.

The great advantage however is that the parties are all working together. There are no disputes between the Alliance participants regarding the Alliance project and in practice, Alliance Contracting has been successful.

Notes:

1 Australian Newspaper 27.01.2009.
2 Media Release: *Treasurer of the Commonwealth of Australia* 24.01.09.
3 Media Release: *Treasurer of the Commonwealth of Australia* 23.05.2009.
4 Trust in Construction – Achieving Cultural Change (Centre for Construction Innovation in the North West (UK) 01.2002.
5 State of Victoria Treasury 2006.
6 [2000] WA SCA 102 (2003) 77 ALJR 776 (on Appeal).
7 Page 83.
8 *Hospital Products Limited v United States Surgical Corp* (1984) 156 CLR 41.

Introduction to the Legal Schemes for Korean Infrastructure Private Investment Projects

Korea's initial attempts to expand its infrastructure through PPI (Private Participation in Infrastructure) yielded little success. In response, the Korean government altered the PPI system and implemented the Private Participation in Infrastructure Act with revised legal schemes for PPI projects in 1998. As the Act has now been in force for a decade, it is time to survey the current legal schemes for PPI projects in Korea and to consider briefly their future prospects.

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For decades, although the Korean government has exerted its best efforts to expand infrastructure as the primary means of strengthening economic efficiency, Korea has suffered from a lack of infrastructure that has severely inhibited the economy's rapid growth. Faced with fiscal constraints and overwhelming infrastructure demands, the Korean government was prompted to seek more creative and innovative methods of promoting infrastructure development to alleviate the financial burdens on the government. In 1994, the Korean government passed the "Promotion of Private Capital into Infrastructure Investment Act," which authorizes the financing, construction, operation and maintenance of infrastructure through the private investment system. More specifically, this law launched a new methodology to provide infrastructure with private investment and established the PPI (Private Participation in Infrastructure) system, which allows private companies to finance, build, operate and maintain necessary facilities.

Notwithstanding the foregoing efforts, the initial PPI system was a limited success mainly due to insufficient government support, complicated implementation procedures and noncompliance with global standards. To make matters worse, the Asian financial crisis in 1997 affected the economic and financial environment of Korea. Sponsors cancelled projects or postponed new investment and financial investors were reluctant to invest in PPI projects. Consequently, the government had no choice but to alter the PPI system and regulations drastically, in order to attract more private investments. The Act on Private Participation in Infrastructure (hereinafter referred to as the "Act") came into force in December 1998. Under the Act, a variety of government support measures were added and implementation procedures were simplified to meet global standards. In the following discussion, I will briefly address the legal schemes for the PPI projects implemented under the Act.

Allowable Contractual Arrangements for PPI Projects

Private sector proponents can use a number of different schemes to implement infrastructure projects under the PPI arrangement. Set out below are the four alternative contractual arrangements that are explicitly recognized under the Annual Plan for Private Participation in Infrastructure promulgated and revised on an annual basis by the Ministry of Planning and Budget (hereinafter

referred to as the "Annual Plan"). Other schemes may be employed, provided they are approved by the relevant competent authority.

Build-Transfer-Operate (BTO)
The project proponent (or the so-called "concessionaire") undertakes the financing and construction of an infrastructure facility. Upon completion, the concessionaire turns the facility over to the relevant competent authority. In return, the concessionaire acquires the right to operate and manage the facility from the relevant government authority. More specifically, the concessionaire is entitled to operate the facility over a fixed term, during which it is allowed to charge facility users appropriate tariffs, tolls, fees, rentals and charges not exceeding those specified in its contract. Such fees and charges should enable the concessionaire to recover its investment, earn a return on its investment, and cover operation and maintenance expenses of the project. The right to operate and manage is transferred to the relevant competent authority at the end of a fixed term which is defined in its contract.

Build-Transfer-Lease (BTL)
The concessionaire is authorized to finance and construct an infrastructure facility. The facility is transferred to the relevant competent authority upon completion of the facility. In return, the concessionaire acquires the right to operate and manage the facility from the relevant government authority. The concessionaire leases the facility from the relevant authority for a fixed period. The right to operate and manage the facility is automatically transferred to the relevant authority at the conclusion of the lease period.

Build-Operate-Transfer (BOT)
The concessionaire carries out the financing, construction, operation and maintenance of an infrastructure facility. The concessionaire operates the facility over a fixed term, during which it is allowed to charge facility users appropriate tariffs, tolls, fees, rentals and charges not exceeding those specified in its contract. The facility is transferred to the relevant authority at the end of a fixed term which is defined in its contract.

Build-Own-Operate (BOO)
The concessionaire is authorized to finance, construct, own, operate and maintain an infrastructure facility. In return, it collects tariffs, tolls, fees, rentals or other charges from facility users. As with BTO and BOT, the concessionaire that owns the facility assets may assign its operation and maintenance to a facility operator. The facility remains the property of the concessionaires and is not transferred to the government.

Overview of the Implementation Process for a PPI Project

The procedure for PPI project implementation consists of three major stages:
1. Project formulation;
2. Concessionaire selection; and
3. Project implementation.

Project Formulation
During the project formulation stage, a project is identified, screened (defined as a priority project), evaluated (analyzed for feasibility), packaged, and authorized. The relevant competent authority undertakes such initial development of the project unless it is a project that is based on an unsolicited proposal from the private sector.

Concessionaire Selection
The second phase of PPI project execution is concessionaire selection; the existing legal framework for PPI project recognised two selection modes: solicited and unsolicited projects. Prior to the designation of the concessionaire, a preferred bidder will be selected – the procedures for the selection of the preferred bidder will differ based on whether the project is a solicited or unsolicited project. Regardless of whether the project is solicited or unsolicited, a form of public bidding will apply to each such project.

In general, solicited projects, which have been identified by the relevant competent authority, are subject to public bidding. The government will designate the solicited project and will publicly announce the basic plans for the relevant project. Thereafter, any interested bidder will form its respective consortium and submit the project plan to the relevant governmental authority. Upon review and evaluation of such project plan, the governmental authority will designate the preferred bidder for the solicited project.

In case of unsolicited projects, any person who wishes to implement a project which has not been solicited by the government may make a proposal to implement a PPI project. The relevant authority may elect to publicly announce such proposal if it deems that such proposal is feasible, marketable, and will be beneficial to the public. Upon such public announcement, any third party may make a revised proposal to the relevant authority and the relevant authority will review and evaluate all proposals (including the initial unsolicited proposal and any revised proposals) before it designates a preferred bidder for the project. With regard to the designation of the preferred bidder, preferential treatment (the maximum award being 10 per cent

of the total assessment) may be given to the initial proposer at the time of review and evaluation of all proposals.

Upon designation of the preferred bidder and further negotiations between the relevant authority and the preferred bidder, the parties will enter into the implementation agreement (or a so-called "concession agreement"). The concession agreement will typically address issues relating to the implementation scheme of the relevant project, total project costs, matters regarding the construction and operation of the relevant project, termination, termination payment and other important facets of the project that has to be contracted in order to successfully carry out the project.

Project Implementation
The third phase is project implementation. This stage includes all coordination required after concessionaire selection: the monitoring of construction, operation, and compliance.

Institutional Framework for Infrastructure Finance

There are no specific provisions under the Act that addresses the methods, amounts or other financing terms with respect to the financing to be procured by the concessionaire in respect of infrastructure projects. However, the Korean government provides certain guidelines in relation to such type of financing and the concession agreement that will be entered into by the relevant governmental authority and the concessionaire will typically cover issues relating to the financing, to a limited extent.


Photo: Dan Driedger

Equity
With respect to the equity to be injected by the concessionaire, the Annual Plan requires that:

1. during the construction period, the concessionaire must invest an amount equal to no less than 25 per cent of the total project cost; and
2. during the operation period, the investment amount of no less than 10 per cent of the total project cost must be maintained by the concessionaire. In addition, typically, the concession agreement will not permit a change in the shareholding of the concessionaire without the prior written consent of the relevant governmental authority.

Debt Financing
Debt financing to be procured by the concessionaire, which is not specifically regulated by the Act or the Annual Plan may be procured by way of:

1. borrowing loans; or
2. issuing infrastructure bonds.

Even though it may appear that there are no legal restrictions on the financing to be procured by the concessionaire, the financing terms will be commercially limited to the cash flow to be achieved by the relevant project due in large part to the fact that the future cash flow for the relevant project will be estimated prior to the commencement of the relevant project. More specifically, the relevant concession agreement will basically fix the amount of future revenue, which also takes into account a rate of return to be agreed by the parties, that may be collected by the concessionaire during the term of the project).

Creation of Security

Financial investors or lenders, given their perspectives, will undoubtedly be concerned about the type of security that will be obtained in order to guarantee the returns on their investment. So, security packages which are usually adopted in Korea for the PPI projects discussed hereunder are quite extensive. We briefly discuss some of the more important securities that are typically utilized under PPI projects below.

Equity
Under Korean law, there is no security *per se* under the laws which the investee company (or the concessionaire) may provide to the investor in order to guarantee the return on its investment. However, in case of financial investors, other methods are

adopted to alleviate this shortcoming such as:

1. the guarantee of return of its investment by other investors such as the construction investor, or
2. the adoption of preferred shares pursuant to which a priority right over the residual assets of the concessionaire will be granted to the financial investor.

Debt Financing

Various types of securities are utilized in case of debt financing. The following are some of the more typical type of securities utilized in Korean PPI projects:

1. **Pledge over the project accounts –** As the procurement of funds for PPI projects typically occurs through the utilization of project finance, the lender will act as a "manager" of sorts over the project accounts in order to control the cash flow of the concessionaire. Moreover, upon default of the concessionaire, the lender will have priority over other creditors in respect of the project accounts through its pledge over the project accounts;
2. **Pledge over the shares of the concessionaire –** Typically, the lender will obtain a pledge over the shares of the concessionaire held by the shareholder(s). Through the establishment of such pledge, the lender will have the right to directly acquire such pledged shares or to sell such pledged shares to a third party upon default by the concessionaire in order to recoup its loans to the concessionaire;
3. **Assignment of the rights of the concessionaire under the relevant project documents –** The lender will usually obtain an assignment of the rights and status of the concessionaire under the project documents to which the concessionaire becomes a party (such as the concession agreement, construction contract, supervisory contract, operation and maintenance agreement, *etc*.). Upon default by the concessionaire, the lender will be entitled to directly exercise the rights of the concessionaire under such project documents in order to recoup its loans to the concessionaire. In order to perfect this type of security, a fixed-date notice (and consent, in certain instances) will be required;
4. **Pledge over the insurances –** The concessionaire will typically be required to subscribe for numerous insurances during the term of the project (construction period: contractors' all risks insurance (CAR), advance loss of profits (ALOP) insurance, employer's liability insurance, business surety insurance, etc.; operation period: completed construction insurance, employer's liability insurance, commercial general liability insurance, package insurance for heavy equipment, *etc*.). Through establishing a pledge over these types of insurances, the lender will be entitled to directly exercise the rights of the concessionaire to claim insurance proceeds against the relevant insurer(s) in order to recoup its loans to the concessionaire. In order to perfect this type of security, a fixed-date notice (and consent, in certain instances) will be required;
5. **Mortgage over the concession (or operation and management) right –** Upon completion of the construction of the relevant facilities for the project, the concessionaire will obtain the right to use the relevant facilities and collect user fees or the so-called "concession right" from the relevant governmental authority. Such concession right is a unique and independent "right" that is recognized under the Act and thus is subject to a mortgage. As such, upon default by the concessionaire, the lender will be entitled to dispose of the concession right to a third party in order to recoup its loans to the concessionaire. Notwithstanding the foregoing mortgage over the concession right, however, in practice the lender will not be able to dispose of the concession right through its mortgage without a re-designation of a new concessionaire by the relevant competent authority; and
6. **Credit enhancement through the Infrastructure Credit Guarantee Fund ("ICGF") –** The concessionaire may apply for credit enhancement to ICGF, which is in effect a fund established by the Korean Government for the purpose of providing assistance to PPI projects. This credit enhancement is frequently utilized in numerous PPI projects in Korea and has the effect of providing much assurance to the lenders.

Another point that should be noted with respect to the security rights that have been briefly described above is that the enforcement of such types of security rights will not require a judgment from the court. As such, upon default by the concessionaire, the lender will be entitled to enforce its security rights over the relevant assets of the concessionaire/project in order to recoup its loans to the concessionaire.

Sponsor Support

With respect to the PPI projects discussed hereunder, construction investor(s) will mainly be in charge of the project during the construction period and consequently will bear many of the risks that are inherent during the construction period. More specifically, other investors/lenders to the

project will typically pass the risks during the construction period to the construction investor through the utilization of various methods including cash deficiency support, which will be described in the following paragraph.

The most frequently utilized method and most representative method utilized to obtain the support of the construction investor during the construction period is the cash deficiency support. A cash deficiency support will obligate the construction investor to either make further equity injections into the concessionaire or provide subordinated loans to the concessionaire upon the occurrence of certain events. The obligations of the construction investor to provide cash deficiency support under Korean PPI projects will typically arise upon occurrence of the following events:

1. The amounts which have been injected into the project up until the completion of the construction of the relevant facilities exceed the total project cost which has been fixed by the concessionaire and the relevant governmental authority, and the relevant governmental authority does not agree to increase the total project cost in order to reflect such excess amount (in which case the concessionaire will not be able to recoup its full investment into the project through the collection of user fees);
2. The financial ratios (*e.g.*, debt equity ratio, *etc.*) of the concessionaire fall below the required ratios agreed under the relevant loan agreement; and
3. An event of *force majeure* occurs and the insurances which have been subscribed by the concessionaire do not cover the costs incurred as a result of such *force majeure*.

Supportive Measures for PPI Projects

In Korea, many supportive measures apply to the PPI project or the concessionaire. The following will provide a brief overview of some of the more important supportive measures that are provided:

Reduction and Exemption of Taxes and Other Charges

1. Special Taxation (lower tax rate than the ordinary case) on the interest revenue from Infrastructure Bond for implementing PPI projects issued by the concessionaire.
2. A zero per cent tax rate is applied on value-added tax for infrastructure facilities or construction services of such facilities when certain requirements are satisfied.
3. Reduction and exemption on taxes, including corporate tax, income tax, acquisition tax, registration tax, and property tax, are applied to foreign investors who invest USD 10 million to newly establish private investment facilities in the Foreign Investment Zone.
4. Reduction and exemption on taxes, including corporate tax, income tax, acquisition tax, registration tax, property tax, and many other kinds of charges are applied to the PPI Project and/or to the concessionaire when certain requirements are satisfied.

Financial Support and Loan Assistance by the Government

The central or local government may grant a subsidy or long-term loan to the concessionaire within the scope of the budget and the matters regarding the specific criteria, procedures and timing for the granting of a government subsidy shall be determined in the individual concession agreement.

Support for Land Acquisition by the Concessionaire, etc.

1. Granting of land expropriation rights to the concessionaire.
2. Granting of use rights to national or public property.

Concluding Observations

The preceding discussion has briefly touched upon the basics of the legal schemes adopted for PPI projects in Korea. Although the future will undoubtedly bring further progress for PPI projects, in practice and in law, the current regulations provide ample government support and for the most part meet global standards. As a result of the progress that has been achieved to date, we have seen numerous foreign lenders participate in Korean PPI projects due, in large part, to the fact that the Act does not provide any specific limitations on the ability of foreign lenders to participate in Korean PPI projects.

Any foreign lender or investor wishing to participate in PPI projects in Korea should bear in mind that the project plans and the proposals that are initially submitted to the relevant government authority will largely be finalized at the outset of a particular project. Accordingly, it may be advisable for any foreign lender and/or investor wishing to participate in PPI projects to participate as a member of a consortium at the initial stage of the particular project before the designation of the concessionaire is finalized.

In addition, it appears that the Korean government has recently taken a stance in favor of further promotion and encouragement of PPI projects in Korea in order to revitalize and re-invigorate the Korean economy in light of the recent world-wide economic crisis. As such, the government may be expected to continue adopting investor-friendly policies and to offer even more governmental support with respect to PPI Projects.

Financing of Infrastructure Projects in Argentina

Omar Beretta

Luis Battaglia

The purpose of this article is to provide an overview of the legal regime applicable to infrastructure projects financing in Argentina from corporate, foreign exchange and tax perspectives. A brief description of the foreign investment regime in force in Argentina is also provided.

Omar Beretta
Beretta Godoy, Argentina

Luis Battaglia
Beretta Godoy, Argentina

The Argentine Foreign Investment Regime

The legal framework for foreign investments intended for the promotion of economic activities in Argentina or the extension or development of those already existing[1] is applicable to individuals and legal entities domiciled outside Argentina, as well as to legal entities domiciled in Argentina in which foreign individuals or legal entities own (directly or indirectly) more than 49% of the capital stock or possess the required voting rights.

According to the regime, the concept of "foreign investment" encompasses any capital contribution applied to economic activities performed in Argentina or any acquisition by foreign investors of an interest in the capital stock of an existing Argentine entity.

Foreign investments can be made through the contribution of any of the following: capital in foreign currency, capital assets, utilities or capital in Argentine currency belonging to foreign investors that could be legally transferred abroad, capitalisation of external credits in foreign currency, intangible assets or as otherwise provided by special or promotional regimes.

The main feature of the Argentine foreign investment regime is that foreign investors receive the same treatment as Argentine investors, allowing them to use the same business structures. Moreover, foreign investors can transfer abroad the liquid utilities arising from their investment and repatriate them (upon compliance with certain requirements). Also, local entities whose equity is held by foreign investors can use the Argentine internal credit under the same conditions applicable to entities whose capital stock is held by Argentine investors.

Lastly, the Argentine foreign investment regime provides that transactions between foreign capital local companies and their foreign parent companies

shall be considered arms-length transactions if the terms and conditions of such transactions are adjusted to usual market practices between independent parties.

The Argentine Foreign Exchange Regime

Foreign exchange controls were reinstated in Argentina in December 2001. In January 2002, the Emergency Law[2] delegated to the Federal Executive Branch the power to create foreign exchange restrictions, which in turn was delegated to the Argentine Central Bank.[3]

The transfer of funds outside Argentina is restricted. Exporters are obligated to bring the proceeds of their exports into Argentina and convert them into local currency (*pesos* or ARS).

Starting in June 2005, any funds transferred into Argentina in connection with external financial loans or portfolio investments are subject to a one-year, non-interest bearing, mandatory deposit of 30% of the total amount of transferred funds.[4]

External financing obtained by Argentine residents is not subject to the 30% mandatory deposit if:

1. the funds are used for the purchase of fixed assets, inventory or intangible assets; and
2. the average maturity date of the indebtedness is at least two years.[5]

Foreign direct investment is not subject to the above-mentioned 30% mandatory deposit, provided that certain formal requirements are met. The Argentine Central Bank defines a direct investment as an investment reflecting a lasting interest of a resident entity in a given economy on another entity resident in another economy.[6] Thus, any participation in the form of a 10% or higher equity interest in an Argentine company or acquisition of real estate located in Argentina by a foreign investor would, in principle, indicate a foreign direct investment.

Financing Alternatives

Equity

Corporate and Foreign Exchange Aspects

This alternative involves transferring funds from a foreign entity to its Argentine branch or related company (*e.g.*, subsidiary) and recording the transferred funds as the latter's capital. It is worth noting that even Argentine branches of foreign companies and their parent companies are deemed a single entity for corporate purposes, but separate entities for tax, accounting and foreign exchange purposes.

If the foreign company maintains funds in foreign bank accounts and uses them to make payments related to the Argentine project, such funds would not be reached by Argentine foreign exchange regulations.

As mentioned in the previous section, a foreign direct investment is not subject to the mandatory 30% deposit provided that it complies with certain requirements, as described below.

Capital Allocations to Argentine Branches

To make a capital allocation to its Argentine branch, the foreign company should issue a corporate resolution that must be registered with the Argentine Public Registry of Commerce.

In this scenario, if the foreign company transfers the funds to an Argentine bank account of its Argentine branch, the bank first releases 70% of the transferred funds. Upon producing evidence of the filing with the Public Registry of Commerce, the Argentine branch will be able to withdraw the remaining 30% of the funds.

It is worth noting that within 250 days after the filing of the resolution with the Public Registry of Commerce, the Argentine branch must give evidence that such resolution was registered by the Public Registry of Commerce. Otherwise, the Argentine branch must return 30% of the transferred funds to the bank, which will be withheld for one calendar year as a mandatory deposit.

It should also be noted that, if the foreign company transfers funds to its Argentine Branch just for the purpose of including such funds in its net worth (*i.e.*, outside the registered capital account), certain Public Registries of Commerce (for instance, the one in the City of Buenos Aires) are not able to register such capital contributions. Thus, the Argentine branch would not be able

Photo: Matthew Kunz

to provide evidence to the recipient bank of the registration of those funds with the Public Registry of Commerce and, hence, the mandatory deposit requirement would still apply.

Capital Contributions to Argentine Subsidiaries

Argentine subsidiaries not willing to observe the 30% mandatory deposit requirement applicable to capital contributions transferred by its foreign shareholders must provide evidence to the receiving bank of the filing with the Public Registry of Commerce of the shareholders' resolution deciding upon the capitalization of the capital contributions.

In case of receiving irrevocable capital contributions on account of a future issuance of shares, the mandatory deposit will remain withheld until shareholders hold a meeting to decide on its capitalisation. In case shareholders do not resolve the destination of the irrevocable capital contributions on account of a future issuance of shares within six months as from the date of acceptance of said irrevocable capital contributions by the directors of the Argentine subsidiary, they shall be transferred from the net worth and recorded as debt.

Tax Aspects

The allocation of capital to Argentine companies has no direct tax consequences, except for the tax on bank debits and credits (0.6% on each credit or debit).

The reimbursement of capital to foreign companies has no tax implications either. Nevertheless, if retained earnings are distributed jointly with the capital reimbursement, income tax withholding could apply on said distribution if certain circumstances are met.

Non-Argentine companies are subject to Personal Assets Tax at a 0.5% rate on their equity holdings in Argentine companies. Based on an irrefutable legal presumption, interest held by a foreign company on an Argentine entity is deemed as owned by individual foreign residents. This tax is paid by the local company as a substitute tax payer and is applicable on the proportional equity value (net worth) of the shares/interest owned by the shareholder/investor at the end of each fiscal year.

Moreover, the Minimum Presumed Income Tax applies at a 1% rate on assets that are located in Argentina or abroad at the end of each fiscal year, and owned by Argentine companies and branches of foreign entities to the extent the value of the taxable assets exceeds ARS 200,000. Income tax is creditable against this tax and the excess of the minimum presumed income tax, if any, can be carried forward 10 years to be offset against income tax.

Loans

Foreign Exchange Aspects

This alternative consists of a foreign company (affiliated or not) granting a loan to the Argentine branch.

If the loan is granted by an Argentine resident, it is not subject to any foreign exchange restrictions. If the lender is a foreign resident, these restrictions would apply in principle, unless the funds are used for investment in non-financial assets and the average maturity date of the indebtedness is at least two years.

Tax Aspects

According to Argentine tax regulations, the income tax withholding rate applicable to the payment of interest arising from loans granted by financial entities situated in a non-low tax jurisdiction that has adopted the Basle Banking Committee regulations is 15.05%. Otherwise, the applicable income tax withholding rate is 35%.

These rates can be reduced by the application of any of the Tax Conventions for the Avoidance of Double Taxation executed by Argentina, which set forth that the income tax withholding rate cannot exceed certain rates (in general, 12%, 12.5%, 15% or 20%). Moreover, some Conventions provide that, if the interest paid by the Argentine entity arises from a loan granted at "preferential rates" by a bank located in the other country, no income tax withholding applies, provided that the payment term is three to five years (depending on each Convention).

It is worth noting that if the loan is granted to an Argentine company by a foreign related party, interest arising from said loan must be set forth according to transfer pricing rules.

From a Value Added Tax ("VAT") standpoint, interest arising from loans granted by a foreign company to an Argentine entity is subject to a 21% VAT rate. However, if such loans are granted by a bank located in a country that has adopted the Basle Banking Committee regulations, interest is taxed at a 10.5% rate. Finally, if the lender is a bank located in a non-tax jurisdiction, the applicable VAT rate is 21%.

Finally, in the case of financing obtained from an Argentine financial institution, no income tax withholding applies on the interest payments, which are, however, subject to VAT at a 10.5% rate.

Bonds

Corporate and Foreign Exchange Aspects

Argentine corporations and branches of foreign stock companies registered in Argentina can issue a certain kind of corporate bond called "*Obligaciones Negociables*" ("ONs").[7]

ONs can be structured in different ways: among other features, they can be convertible into stock and/or collateralised with floating guarantees or with guarantees over specific assets, or by personal guarantees issued by third parties, such as commercial banks. The amounts payable can be determined in ARS, US dollars or any other currency. Also, ONs can be registered for trading in securities markets, traded over the counter or through private placements.

ONs can only be issued by an Argentine corporation ("*sociedad anónima*") or the branch of a foreign stock company registered to conduct business in Argentina on a regular basis.[8] The issuer can appoint a bank or an underwriter to act as the trustee of the ONs' holders and represent them in the defense of their rights and interests.

If the ONs are denominated in USD and not exclusively payable in ARS in Argentina, they must be subscribed in USD and the funds raised through their placement must be brought back to Argentina and converted into ARS. These funds are exempt from the mandatory deposit requirement, provided that the ONs are placed through public offering and listed in a stock exchange. It is worth mentioning that an authorisation from the Federal Securities Commission is required to place debt and participation certificates through public offer.

Tax Aspects

According to the applicable regulations, interest payments on the ONs and the proceeds from their purchase, exchange, conversion and disposition are exempt from income tax if certain conditions are met (placement through public offering and certain destinations of the proceeds of the offering). This exemption does not apply to holders that are Argentine entities, Argentine branches of foreign entities, sole proprietorships or individuals carrying out certain commercial activities in Argentina.

The issuance, subscription, placement, conveyance, amortisation, interest and cancellation of ONs are exempt from VAT.

Financial Trust with Public Offering

Corporate and Foreign Exchange Aspects

The most relevant features of a financial trust under Argentine law are the following:

1. A person or entity (settlor) conveys the title to certain property (known as "underlying assets") to another person or entity (trustee);
2. The trustee issues debt certificates and participation certificates, collateralised with the underlying assets. Such certificates may be placed privately or through a public offering. The settlor receives the proceeds of the placement;
3. The trustee is vested with the legal ownership of the underlying assets, which can only be used or disposed as established in the trust agreement; and
4. Generally, the underlying assets serve as collateral or source of repayment of the debt certificates. Any assets remaining in the trust after the repayment of the debt certificate will be distributed to the holders of participation certificates.

This alternative allows Argentine companies to obtain financing through the creation of a financial trust in which the trustee can be a commercial or investment bank.

If the debt or the participation certificates are denominated in USD and not exclusively payable in ARS in Argentina, they must be subscribed in USD and the funds raised through their placement must be brought back to Argentina and converted into ARS.

If the placement of the trust's debt and participation certificates is made in Argentina, the funds entered into the country to purchase such certificates are exempt from the mandatory deposit requirement, provided that the funds transferred to purchase the underlying assets are also exempt from such requirement.

Tax Aspects

Financial trusts are subject to income tax. However, if certain conditions are met, the dividends paid to the holders of the participation certificates are deductible. Under such scenario, the financial trust

can generate no taxable income, since interest paid is also deductible for income tax purposes.

If the holder of the debt and participation certificates is not an Argentine entity, the Argentine branch of a foreign entity, a sole proprietorship or an individual carrying out certain commercial activities in Argentina, interest and dividend payments are not subject to income tax. The proceeds from the purchase, exchange, conversion and disposition of those certificates are also exempt from income tax.

The debt certificates' interest payments and transfers and the participation certificates' dividend payments and transfers are not subject to VAT.

Tax Benefits for Infrastructure

A temporary regime for the tax treatment of investments in new capital goods for industrial purposes and in infrastructure works (excluding civil works) is currently in force.[9]

This regime is applicable to investment projects in industrial activities or infrastructure works that are to be carried out before September 30 2010, and whose holders are individuals or legal entities organised in Argentina (or authorised to operate within the country) that develop productive activities or that are registered for such purpose.

The tax benefits provided by this regime include the following:

1. VAT early reimbursement: the VAT paid for the acquisition, manufacture, production or definite import of capital goods or for the performance of an infrastructure work of the respective project, can be offset against other taxes or reimbursed, after a minimum of three tax periods from the date on which the investment was made.
2. Accelerated depreciation for income tax purposes: the beneficiaries may opt to apply the general regime set forth in the income tax law or the special regime provided in this law, with specified depreciation terms depending on the period in which the investment was made.

The beneficiaries are not entitled to receive both benefits in relation to the same project, unless the investment project is exclusive for export purposes and/or comprises a clean production or a sustainable industrial reconversion plan.

According to the regime, infrastructure works comprise all works in which the main objective promotes the performance of productive activities or performance is declared to be a critical infrastructure work by the Federal Planning Ministry, provided that it involves electricity generation, transport and/or distribution, hydrocarbon production, transport and/or distribution, mining exploration and/or exploitation, water works, road works and railway, port or navigation works.

By means of the 2009 National Budget Law, imports of new goods which are not manufactured in Argentina, and which will be part of infrastructure works, are exempt from import duties, the statistical fee and the specific Customs' fee. The purpose of such infrastructure works must be one of the following activities:

1. Generation, transportation and distribution of electric power;
2. Prospecting, exploration, production and exploitation of oil and gas;
3. Building of new oil refineries or extension of existing ones; or
4. Transportation, storage and/or distribution of hydrocarbons.

This exemption is applicable provided that the infrastructure works are declared to be a critical project by the Argentine Energy Office and the goods to be imported are deemed to be an essential component of such works.

Other regimes grant additional benefits at the provincial level (mainly regarding turnover tax and stamp tax), as well as other federal regulations do for certain specific activities (mining, wind power generation, biofuels, *etc*).

Notes:

1 Law No. 21,382 (as restated by Executive Order No. 1853/1993) and complementary regulations. The original version of this law provided the need of prior government approval for certain economic activities.
2 Law No. 25,561.
3 Executive Order No. 71/2002.
4 Executive Order No. 616/2005.
5 Resolution of the Federal Ministry of Economy and Production No. 365/2005 and Argentine Central Bank's Communications "A" No. 4377, "C" 42271 and 42884.
6 Argentine Central Bank's Communication "A" No. 4237.
7 Law No. 23,576.
8 According to Section 118 of the Argentine Companies' Law No. 19,550.
9 Law No. 26,360 and Executive Order No. 726/2009.

IPBA SCHOLARSHIPS

The Inter-Pacific Bar Association is pleased to announce that the IPBA Scholarship Programme to enable practising lawyers to attend the IPBA's Twentieth Annual Meeting and Conference, to be held in Singapore from 2-5 May, 2010 (www.ipba2010.org) is now open for nominations.

What is the Inter-Pacific Bar Association?

The Inter-Pacific Bar Association ("IPBA") 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 organizing conference held in Tokyo, which was attended by more than 500 lawyers from throughout Asia and the Pacific.

Since then, it has grown to become the pre-eminent organization in respect of law and business within Asia with a membership of over 1,400 lawyers from 65 jurisdictions around the world. Lawyers in most law firms in the Asia-Pacific region and internationally that have a cross-border practice are members of the IPBA.

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" from international business and commercial lawyers. In addition to plenary sessions of interest to all lawyers, programs are presented by the IPBA's twenty-one specialist committees. The IPBA Annual Meeting and Conference provides an opportunity for lawyers to meet their international colleagues with Asian practices and to share latest developments in cross-border practice and professional development in Asia. Previous annual conferences have been held in Tokyo (twice), Sydney (twice), Taipei, Singapore, San Francisco, Manila, Kuala Lumpur, Auckland, Bangkok, Vancouver, Hong Kong, New Delhi, Seoul, Bali, Beijing, and Los Angeles. Next year, the Conference will be held in Singapore from 2-5 May, 2010.

What is the IPBA Scholarships Programme:

The IPBA Scholarship Programme was originally initiated 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 otherwise not be able to attend and who would through their participation both contribute to, and benefit from the IPBA Annual Conference and to endorse the IPBA's interest in the development of law and practice in Asia.

Who is Eligible to Be an IPBA Scholar?

1. Lawyers from Developing Countries

To be eligible, the applicants must:

a. be an indigenous lawyer 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 be involved in a cross-border practice or wish to become engaged in a 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 practice;
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 countries;
d. currently be involved in a cross-border practice or desire to become engaged in a cross-border practice; and
e. have published an article in a reputable journal on some topic related to the work of one of our committees or provided some other objective evidence of committed involvement in the profession.

Preference will be given to those 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 attendance at the IPBA Annual Conference.

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

How Does One Apply to Be an IPBA Scholar?

To apply for an IPBA Scholarship, please fill out an application form which can be picked up from either the IPBA Secretariat in Tokyo or downloaded from the IPBA website (www.ipba.org).

Completed forms are to be forwarded no later than **31 October 2009** to the IPBA Secretariat at:

Roppongi Hills North Tower 7F
6-2-31 Roppongi, Minato-ku
Tokyo 106-0032, Japan

Telephone: +81-3-5786-6796
Facsimile: +81-3-5786-6778
E-mail: ipba@tga.co.jp

What Happens Once a Candidate is Selected?

The following procedures will apply after selection:

1. The Secretary-General 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 opening of the IPBA Annual Conference. Unsuccessful candidates will also be notified.
2. Airfares and accommodation will be arranged by the Singapore Conference Host Committee and/or the IPBA Secretariat after consultation with the successful applicants.
3. A liaison person will introduce each Scholar to the IPBA and generally help the Scholar to obtain the most benefit from the IPBA Annual Conference.

Acknowledgment :

The IPBA wishes to acknowledge with thanks, the Singapore Ministry of Law as sponsor of the Scholarship Programme for the IPBA 20th Annual Meeting and Conference to be held in Singapore (www.ipba2010.org).

An Invitation to Join the Inter-Pacific Bar Association

The Inter-Pacific Bar Association (IPBA) is an international association of business and commercial lawyers who reside or have an interest in the Asian and Pacific region. The IPBA has its roots in the region, having been established in April 1991 at an organizing conference in Tokyo attended by more than 500 lawyers from throughout Asia and the Pacific. Since then, it has grown to over 1,400 members from 65 jurisdictions, and it is now the pre-eminent organization 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 organizations 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 4-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, San Francisco, Manila, Kuala Lumpur, Auckland, Bangkok, Vancouver, Hong Kong, New Delhi, Seoul, Bali and Beijing, attracting as many as 700 lawyers plus accompanying guests.

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

The IPBA also publishes a membership directory and a quarterly *IPBA Journal*.

Membership

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

- Standard Membership — US$195 / ¥23,000
- Three-Year Term Membership — US$535 / ¥63,000
- 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 January 1 and ending on December 31. Those who join the Association before August 31 will be registered as a member for the current year. Those who join the Association after September 1 will be registered as a member for the rest of the current year and for the following year.

Qualified lawyers who attend the IPBA Annual Meeting and Conference and pay the non-member conference fee will be automatically registered as a member for the current year ending on December 31.

Membership renewals will be accepted until July 31.

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.

Further, in order to encourage young lawyers to join the IPBA, a Young Lawyers Membership category (age under 30 years old) with special membership dues has been established.

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

Corporate Associate

Any corporation may become a Corporate Associate of the IPBA by submitting an application form accompanied by payment of the annual subscription of (¥50,000/US$500) for the current year.

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

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

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

- Annual Dues for Corporate Associates — 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

[ ] Lawyers with low income levels in developing countries.....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:

[ ] Aviation Law
[ ] Banking, Finance and Securities
[ ] Competition Law
[ ] Corporate Counsel
[ ] Cross-Border Investment
[ ] Dispute Resolution and Arbitration
[ ] Employment and Immigration Law
[ ] Energy and Natural Resources
[ ] Environmental Law
[ ] Insolvency
[ ] Insurance
[ ] Intellectual Property
[ ] International Construction Projects
[ ] International Trade
[ ] Legal Development and Training
[ ] Legal Practice
[ ] Maritime Law
[ ] Scholarship
[ ] Tax Law
[ ] Technology and Communications
[ ] Women Business Lawyers

Method of Payment (please read each note carefully and choose one of the following methods):

[ ] US$ Check/Bank Draft/Money Order
– limited to checks payable at US banks in the US only (others will be returned to sender)

[ ] Japanese yen ¥ Check/Bank Draft
– 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 [ ] MASTER CARD [ ] 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