

June 2015 No 78

IPBA JOURNAL

www.ipba.org

# IPBA Journal

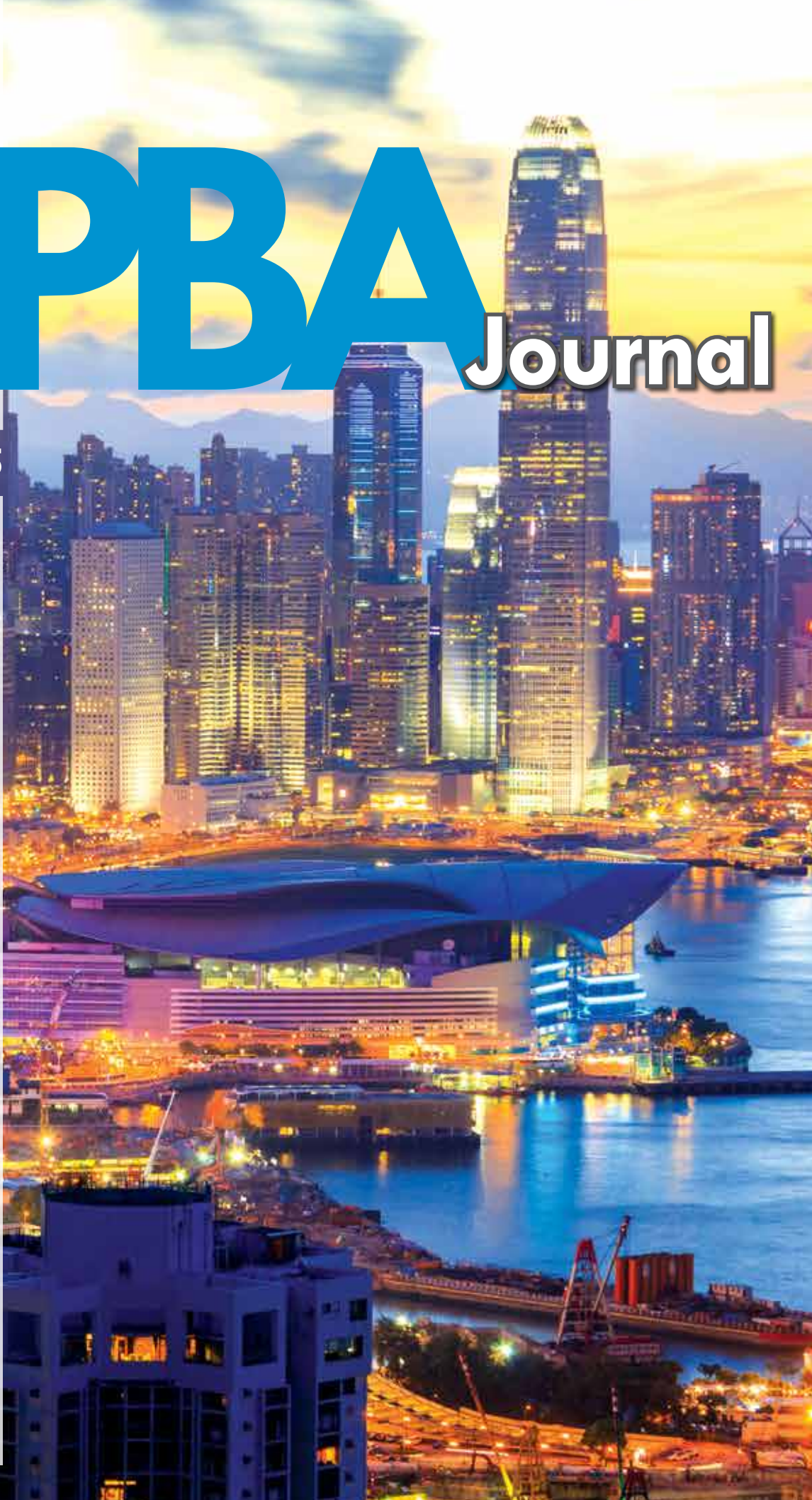
June 2015

No **78**

NEWS & LEGAL UPDATE



INTER-PACIFIC BAR ASSOCIATION





**IPBA2016**

**Kuala Lumpur**

# INTER-PACIFIC BAR ASSOCIATION (IPBA) **26<sup>th</sup> ANNUAL MEETING & CONFERENCE** Kuala Lumpur Convention Centre

13<sup>th</sup> – 16<sup>th</sup> APRIL 2016

**REGISTER NOW –**

Super Early Bird expires 15<sup>th</sup> October 2015

## *Diverse Challenges, Global Solutions*

- > The theme centres on the international flavour and global nature of business transactions, which has been the catalyst for the increasing prevalence of international norms and laws and the opening up of jurisdictions with respect to trade, business and the practice of law.
- > There are fresh and unique challenges for businesses, investors and lawyers because of the ever growing number of economic blocks, international trade routes and partnerships.
- > The Conference will explore the way in which deals are structured and issues anticipated and resolved in the light of different systems, cultures and laws in the Asia-Pacific region and beyond.

**For more information, please visit  
[www.ipba2016.com](http://www.ipba2016.com)**



# IPBA Journal

The Official Publication of the Inter-Pacific Bar Association

**Publisher** Paul Davis

**Editor** Bruce Andrews

**Editorial** Kiri Cowie

**Design** Portia Le

## Advertising Sales

Jennifer Luk

E: [jennifer@ninehillsmidia.com](mailto:jennifer@ninehillsmidia.com)

T: +852 3796 3060

**ninehillsmidia**

### Ninehillsmidia Limited

Level 12, Infinitus Plaza,  
199 Des Voeux Road,  
Sheung Wan, Hong Kong  
Tel: +852 3796 3060  
Fax: +852 3020 7442

Email: [enquiries@ninehillsmidia.com](mailto:enquiries@ninehillsmidia.com)

Internet: [www.ninehillsmidia.com](http://www.ninehillsmidia.com)

ISSN 1469-6495

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

Cover Image: TwilightShow

## Contents

June 2015 No 78

### IPBA News

**4** The President's Message

**6** The Secretary-General's Message

**8** IPBA Upcoming Events

### IPBA 25th Annual Meeting and Conference in Hong Kong

**10** Photo Highlights from the Conference

**12** Session Moderators' Highlights from the Conference

**25** Handling Whistleblowers in Asia:  
A Corporate Clarion Call  
*by Sebastian Ko, Hong Kong*

### Legal Update

**31** The New Portuguese Arbitration Law  
*by Manuel P Barrocas, Portugal*

**36** IPBA Arbitration Wisdom  
*by Eckart Brödermann, Germany*

### New Members

**47** IPBA New Members  
March – May 2015

**49** Discover Some of Our New Officers and  
Council Members

### Tribute

**51** A Tribute to Lee Kuan Yew, 1923-2015  
*by Yap Wai Ming and Lok Vi Ming, Singapore*

# IPBA Leadership (2015-2016 Term)

## ● Officers

### President

Huen Wong  
Fried, Frank, Harris, Shriver & Jacobson LLP, *Hong Kong*

### President-Elect

Dhinesh Bhaskaran  
Shearn Delamore & Co, *Kuala Lumpur*

### Vice President

Denis McNamara  
Lowndes, *Auckland*

### Secretary-General

Miyuki Ishiguro  
Nagashima Ohno & Tsunematsu, *Tokyo*

### Deputy Secretary-General

Caroline Berube  
HJM Asia Law & Co LLC, *Guangzhou*

### Programme Coordinator

Sumeet Kachwaha  
Kachwaha & Partners, *New Delhi*

### Deputy Programme Coordinator

Jose Cochingyan III  
Cochingyan & Peralta Law Offices, *Manila*

### Committee Coordinator

Sylvette Tankiang  
Villaraza & Angangco, *Manila*

### Deputy Committee Coordinator

Masafumi Kodama  
Kitahama Partners, *Osaka*

### Membership Committee Chair

Yong-Jae Chang  
Lee & Ko, *Seoul*

### Membership Committee Vice-Chair

Anne Durez  
Total SA, *Paris La Defense Cedex*

### Publications Committee Chair

Maxine Chiang  
Chiang & Lee, Attorneys-at-Law, *Taipei*

### Publications Committee Vice-Chair

Leonard Yeoh  
Tay & Partners, *Kuala Lumpur*

## ● Jurisdictional Council Members

**Australia:** Bruce Lloyd  
Clayton Utz, *Sydney*

**Canada:** Robert Quon  
Fasken, Martineau DuMoulin LLP, *Vancouver*

**China:** Audrey Chen  
Jun He Law Offices, *Beijing*

**France:** Patrick Vovan  
Vovan & Associés, *Paris*

**Germany:** Gerhard Wegen  
Gleiss Lutz, *Stuttgart*

**Hong Kong:** Annie Tsoi  
Deacons, *Hong Kong*

**India:** Dhruv Wahi  
Kochhar & Co, *New Delhi*

**Indonesia:** David Abraham  
Abraham Law Firm, *Jakarta*

**Japan:** Ryosuke Ito  
TMI Associates, *Tokyo*

**Korea:** Chang-Rok Woo  
Yulchon, *Seoul*

**Malaysia:** Mohan Kanagasabai  
Mohanadass Partnership, *Kuala Lumpur*

**New Zealand:** Neil Russ  
Buddle Findlay, *Auckland*

**Pakistan:** Badaruddin Vellani  
Vellani & Vellani, *Karachi*

**Philippines:** Perry Pe  
Romulo, Mabanta, Buenaventura, Sayoc & De Los Angeles,  
*Manila*

**Singapore:** Francis Xavier  
Rajah & Tann LLP, *Singapore*

**Switzerland:** Bernhard Meyer  
MME Partners, *Zurich*

**Thailand:** Niwes Phancharoenworakul  
Chandler & Thong-ek Law Offices Limited, *Bangkok*

**UK:** Jonathan Warne  
Nabarro LLP, *London*

**USA:** Keith Phillips  
Watt, Tieder, Hoffer & Fitzgerald, LLP, *McLean, VA*

## ● At-Large Council Members

**China:** Yunchuan Jing  
Beijing Gaotong Law Firm, *Beijing*

**Hawaii & South Pacific Islands:** Mark Shklov  
Mark T Shklov, AAL, LLLC, *Honolulu, HI*

**India:** Suchitra Chitale  
Chitale & Chitale Partners, *New Delhi*

**Latin America:** Shin Jae Kim  
Tozzini, Freire Advogados, *São Paulo*

**Osaka:** Hiroe Toyoshima  
Nakamoto Partners, *Osaka*

**Webmaster:** Christopher To  
Construction Industry Council, *Hong Kong*

### Competition Law

H. Stephen Harris, Jr.  
Winston & Strawn, LLP, *Washington, D.C.*

Mr. Shawn C. D. Neylan  
Stikeman Elliott LLP, *Toronto, ON*

### Corporate Counsel

Kapil Kirpalani  
HarbourVest Partners (Asia) Limited, *Hong Kong*

### Cross-Border Investment

Michael Burian  
Gleiss Lutz, *Stuttgart*

Eriko Hayashi  
Oh-Ebashi LPC & Partners, *Tokyo*

### Dispute Resolution and Arbitration

Mohan Pillay  
Pinsent Masons MPillay LLP, *Singapore*

Juliet Blanch

Weil, Gotshal & Manges, *London*

### Employment and Immigration Law

Sandra McCandless  
Dentons US LLP, *San Francisco*

### Energy and Natural Resources

Jeffrey Holt  
*Montrouge*

### Environmental Law

Shweta Bharti  
Hammurabi & Solomon, Advocates & Corp. Law Advisors,  
*New Delhi*

### Insolvency

Shinichiro Abe  
Baker & McKenzie (Gaikokuho Joint Enterprise), *Tokyo*

Lynn Harrison, 3rd

Curtis Mallet-Prevost Colt & Mosle LLP, *New York, NY*

### Insurance

Chuan Thye Chan  
Rajah & Tann Singapore LLP, *Singapore*

### Intellectual Property

Riccardo Cajola  
Cajola & Associati, *Milan*

### International Construction Projects

Kirindeep Singh  
Rodyk & Davidson LLP, *Singapore*

### International Trade

Paolo Vergano  
FratiniVergano – European Lawyers, *Brussels*

### Legal Development & Training

Varya Simpson  
Law Offices of Varya Simpson, *Berkeley, CA*

### Legal Practice

Hee-Chul Kang  
Yulchon, *Seoul*

Mark Stinson

Fasken Martineau DuMoulin LLP, *Toronto*

### Maritime Law

Sitpah Selvaratnam  
Messrs Tommy Thomas, *Kuala Lumpur*

### Scholarship

Amit Acco  
Kan-Tor and Acco (Israel), *Ramat Gan*

Tatsu Nakayama

Miyake & Yamazaki, *Tokyo*

### Tax Law

Enrico Valdez  
Tan Venturanza Valdez, *Manila*

### Technology, Media & Telecommunications

Michael Cartier  
Walder Wyss Ltd., *Zurich*

### Women Business Lawyers

Melva Valdez  
JG Law (Jimenez Gonzales Bello Valdez Caluya & Fernandez), *Manila*

### Anti-corruption & Rule of Law (Ad Hoc)

Young-Moo Shin  
Shin & Park, *Seoul*

Gerold W. Libby

Zubler Lawler & Del Duca LLP, *Los Angeles, CA*

## ● Regional Coordinators

**Asia-Pacific:** Michael Butler  
Finlaysons, *Adelaide*

**Europe:** Jean-Claude Beaujour  
Smith D'Oria, *Paris*

**North America:** Wilson Chu  
McDermott Will & Emery, *Dallas, TX*

**Sri Lanka and Bangladesh:** Nimal Weeraratne  
Varners, *Colombo*

**Middle East:** Richard Briggs  
Hafef & Partners, *Dubai*

## ● Committee Chairs

### APEC

Shiro Kuniya  
Oh-Ebashi LPC & Partners, *Osaka*

### Aviation Law

Atul Sharma  
Link Legal, *New Delhi*

### Banking, Finance and Securities

Jan Peeters  
Stibbe, *Brussels*

## ● Committee Vice-Chairs

### Aviation Law

Piyush Gupta, Kochhar & Co, *Gurgaon, Haryana*  
Gerald Murphy, Crowell & Moring LLP, *Washington, D.C.*  
Helen Tung, Tung Legal Consultancy (TLC), *London*  
Kok Seng Chong, Raja, Darryl & Loh, *Kuala Lumpur*

### Banking, Finance & Securities

Conrad Chan, Kwok Yih & Chan, *Hong Kong*  
Patrick J. O'Brien, Becker, Glynn, Muffly, *New York, NY*  
Natasha Qing Xie, Jun He Law Offices, *Shanghai*  
Tat Chung Wong, Wong, Beh & Toh, *Kuala Lumpur*

### Competition Law

Janet Hui, Jun He Law Offices, *Beijing*  
Hyun Ah Kim, Shin & Kim, *Seoul*  
Kala Anandarajah, Rajah & Tann LLP, *Singapore*

### Corporate Counsel

Shardul Shroff, Amarchand & Mangaldas & Suresh A. Shroff & Co, *New Delhi*  
Jose Ma. Emmanuel (Kiril) Caral, Shell Philippines Exploration B.V., *Muntinlupa*  
Cheng Sim Chan, Pacific & Orient Insurance Co. Bhd., *Kuala Lumpur*  
Steven Howard, Sony Mobile Communications International AB, *Singapore*  
Ashok Sharma, MMTCL Ltd., *New Delhi*  
Yong Kai Wong, CITIC Capital Holdings Limited, *Hong Kong*

### Cross-Border Investment

Frederic Ruppert, Balthazar associés, *Paris*  
Fernando Hurtado de Mendoza, Rodrigo, Elias & Medrano Abogados, *Lima*  
Evelyn Ang, Rodyk & Davidson LLP, *Singapore*  
Luciano Ojea Quintana, Marval O'Farrell & Mairal, *Buenos Aires*  
Florian Joerg, Bratschi Wiederkehr & Buob, *Zurich*  
Trinh Nguyen, Trinh Nguyen & Partners, *Ho Chi Minh City*  
Myles Seto, Deacons, *Hong Kong*  
Michael George DeSombre, Sullivan & Cromwell, *Hong Kong*  
Takeshi "Matt" Komatsu, Mori Hamada & Matsumoto, *Singapore*

### Dispute Resolution & Arbitration

Eckart Brödermann, Brödermann Jahn RA gmbH, *Hamburg*  
Joachim Delaney, Baker & McKenzie, *Sydney, NSW*  
Cliff Sosnow, Fasken Martineau DuMoulin LLP, *Ottawa, ON*  
Yoshimasa Furuta, Anderson Mori & Tomotsune, *Tokyo*  
Hiroyuki Tezuka, Nishimura & Asahi, *Tokyo*  
Stacey Wang, Holland & Knight LLP, *Los Angeles, CA*  
Axel Reeg, Reeg Rechtsanwälte, *Mannheim*  
Mark Lin, Hogan Lovells, *Hong Kong*  
Chiann Bao, Hong Kong International Arbitration Centre, *Hong Kong*  
Vikram Nankani, *Mumbai*  
Shanti Mogan, Shearn & Delamore, *Kuala Lumpur*  
Sundra Rajoo Nadarajah, KL Centre for Regional Arbitration, *Kuala Lumpur*

## ● Past Presidents

William A. Scott (Immediate Past President 2014-2015)  
Stikeman Elliott LLP, *Toronto*  
Young-Moo Shin (2013-2014)  
Shin & Park, *Seoul*  
Lalit Bhasin (2012-2013)  
Bhasin & Co., *Advocates, New Delhi*  
Shiro Kuniya (2011-2012)  
Oh-Ebashi LPC & Partners, *Osaka*  
Suet-Fern Lee (2010-2011)  
Stamford Law Corporation, *Singapore*  
Rafael A. Morales (2009-2010)  
SyCip Salazar Hernandez & Gatmaitan, *Makati City*  
Gerold W. Libby (2008-2009)  
Zuber Lawler & Del Duca LLP, *Los Angeles, CA*  
Zongze Gao (2007-2008)  
King & Wood Law Firm, *Beijing*  
James McH. FitzSimons (2006-2007)  
Truman Hoyle Lawyers, *Sydney*  
Felix O. Soebagjo (2005-2006)  
Soebagjo, Jatim, Djarot, *Jakarta*  
Sang-Kyu Rhi (2004-2005)  
Rhi & Partners, *Seoul*

### Employment and Immigration Law

Roland Falder, Emplawyers, *Munich*  
Poorvi Chothani, LawQuest, *Mumbai*  
Aki Tanaka, Kitahama Partners, *Osaka*  
Frederique David, TLD Legal, *Paris*  
Siva Kanagsabai, Skrine, *Kuala Lumpur*  
Linda Liang, King & Wood Mallesons, *Beijing*  
Caroline Knox, Veirano Advogados, *Rio de Janeiro*

### Energy and Natural Resources

Raoul Anganco, Villaraza & Anganco, *Taguig City*  
Peter Chow, Squire Sanders, *Hong Kong*  
Ho Chien Mien, Allen & Gledhill, *Singapore*  
Gonzalo Grez, Carola Diez Perez-Cotapos, *Santiago*

### Environmental Law

Alberto Cardemil, Carey Y Cia, *Santiago*  
Doil Son, Yulchon, *Seoul*  
Douglas Codiga, Schlack Ito LLLC, *Honolulu, HI*  
Suely Mori, Dow Corning Toray Co., Ltd., *Tokyo*  
P. Scott Burton, Hunton & Williams, *Los Angeles*

### Insolvency

Gregory Vijayendran Ganesamoorthy, Rajah & Tann Singapore LLP, *Singapore*  
Burkard Goepfert, Baker & McKenzie, *Munich*  
Ajinderpal Singh, Rodyk & Davidson, *Singapore*  
John Birch, Cassels Brock and Blackwell LLP, *Toronto, ON*

### Insurance

Denis Brock, O'Melveny & Myers, *Hong Kong*  
Ben Nicholson, DAC Beachcroft LLP, *Singapore*  
Tunku Farik, Azim Tunku Farik @ Wong, *Kuala Lumpur*  
Tomoki Debari, Anderson Mori, *Tokyo*

### Intellectual Property

Kazuto Yamamoto, Daiichi Law Office, P.C., *Osaka*  
Jaime Cheng, Lee, Tsai & Partners Attorneys-at-Law, *Taipei*  
Bokyung Lim, Shin & Kim, *Seoul*  
Frederic Serra, Froiep, *Geneva*  
Michael Soo, Shook Lin & Bok, *Kuala Lumpur*

### International Construction Projects

Nusrat Hassan, D. H. Law Associates, Advocates & Solicitors, *Mumbai*  
Naoki Iguchi, Nagashima Ohno & Tsunematsu, *Tokyo*  
Naresh Mahtani, Eldan Law LLP, *Singapore*  
Matthew Christensen, Bae, Kim & Lee LLC, *Seattle, WA*  
Christopher Wright, Watt, Tieder, Hoffer & Fitzgerald, *Seattle, WA*

### International Trade

Jesse Goldman, Bennett Jones LLP, *Toronto, ON*  
Samuel Zhang, Sam Zhang & Co., *Hong Kong*  
Joseph Hong, Lee & Ko, *Seoul*  
Edmund Walter Sim, Appleton Luff Pte Ltd, *Singapore*  
Corey Norton, Trade Pacific Law, *Washington, DC*  
Atul Dua, Seth Dua & Associates, *New Delhi*  
Lawrence Kogan, The Kogan Law Group, P.C., *New York, NY*  
Carla Amaral de Andrada Junqueira Canero, Barreto Ferreira e Brancher KBKG, *Sao Paolo*  
Annette Hughes, Corrs Chambers Westgarth, *Sydney*

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

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

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

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

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

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

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

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

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

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

Ming-Sheng Lin (deceased) (1993-1994)

### Legal Development & Training

Ada Ko, Garvey Schubert Barer, *Seattle, WA*  
Sebastian Ko, Debevoise & Plimpton LLP, *Central*  
Anirudh Krishnan, AK Law Chambers, *Chennai*  
Maidzura Mohammed, Raja, Darryl & Loh, *Kuala Lumpur*  
Tin Thiri Aung, The Law Chambers, *Yangon*

### Legal Practice

Charandeep Kaur, Trilegal, *New Delhi*  
Hiroki Inoue, Nagashima Ohno & Tsunematsu, *Tokyo*  
Emerico De Guzman, ACCRALAW, *Manila*  
Syed Naqiz Shahabuddin, Naqiz & Partners, *Kuala Lumpur*  
Abraham Vergis, Providence Law Asia LLC, *Singapore*

### Maritime Law

Kyong Hwa (Michael) Kim, Stephenson Harwood LLP, *Seoul*  
Song Dihuang, Wang Jing & Co., *Beijing & Shenzhen*  
Yosuke Tanaka, Higashimachi, LPC, *Tokyo*  
Amitava Majumdar, Bose & Mitra & Co, *Mumbai*

### Scholarship

Charles Chau, Morrison & Foerster, *Hong Kong*  
Kwon Hoe Kim, Yoon & Yang LLC, *Seoul*  
Hilda Alejandra Rodriguez Rico, Barrera Siqueiros Torres Landa, S. C., *Mexico City*  
Victor Tsao, McMillan LLP, *Vancouver, BC*

### Tax Law

Jay Shim, Lee & Ko, *Seoul*  
David Blair, Crowell & Moring LLP, *Washington D.C.*  
Aseem Chawla, MPC Legal, *Mumbai*  
Bill S. Maclagan, Q.C., Blake, Cassels & Graydon LLP, *Vancouver*  
Jessica Pengelly, Finlaysons, *Adelaide*  
S Saravana Kumar, Lee Hishamuddin Allen & Gledhill, *Kuala Lumpur*

### Technology & Communications

Barunesh Chandra, August Legal, *New Delhi*  
Maryke Silalahi, Manna Consultine & Manna Ip. Practice, *Jakarta*  
Vivek Kathpalia, Nisith Desai Associates, *Mumbai*  
Do Hyung Kim, Yoon & Yang LLC, *Seoul*

### Women Business Lawyers

Olivia Kung, Oldham, Li & Nie, *Hong Kong*  
Fiona Loughrey, Simmons & Simmons, *Hong Kong*  
Yolanda M. Eleazar, Castillo Laman Tan Pantaleon & San Jose, *Manila*

### APEC

Shigehiko Ishimoto, Mori Hamada & Matsumoto, *Tokyo*

### Senior Advisors

Gerald Sumida, Carlsmith Ball LLP, *Honolulu, HI*  
Nobuo Miyake, Miyake & Yamazaki, *Tokyo*  
Lee Suet-Fern, Morgan Lewis Stamford LLC, *Singapore*

### Anti-corruption & Rule of Law (Ad Hoc)

Jeffrey Holt, *Montrouge*  
Simone Nadelhofer, LALIVE, *Zurich*  
Roger Best, Clifford Chance LLP, *London*

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

Kunio Hamada (1991-1992)  
Hibiya Park Law Offices, *Tokyo*

## ● Past Secretaries-General

Yap Wai Ming (2013-2015)  
Morgan Lewis Stamford LLC, *Singapore*

Alan S. Fujimoto (2011-2013)  
Goodsill Anderson Quinn & Stifel, *Honolulu, HI*

Gerald A. Sumida (2009-2011)  
Carlsmith Ball LLP, *Honolulu, HI*

Arthur Loke (2007-2009)  
Virtus Law LLP, *Singapore*

Koichiro Nakamoto (2005-2007)  
Anderson Mori & Tomotsune, *Tokyo*

Philip N. Pillai (2001-2005)  
Shook Lin & Bok, *Singapore*

Harumichi Uchida (1999-2001)  
Mori Hamada & Matsumoto, *Tokyo*

Takashi Ejiri (1995-1999)  
Nishimura & Asahi, *Tokyo*

Nobuo Miyake (1991-1995)  
Miyake & Yamazaki, *Tokyo*



## The President's Message

**Huen Wong**  
President



Dear Colleagues,

The 25th IPBA Annual Conference ('Conference') was concluded on 9 May 2015 in Hong Kong. It was an unforgettable experience for me and I hope that the participants of the Conference likewise had a memorable stay in Hong Kong.

I would like to extend my heartfelt thanks to everyone involved in making this Conference a success. We had over 1,100 participants coming from 56 jurisdictions around the world.

On the special occasion of the 25th anniversary of the IPBA, it was an opportune time to reflect on our *Vision for the Future*, which was also the theme of the Conference.

As I shared at the Opening Ceremony of the Conference, Asia is on the cusp of an historic transformation. If it continues to follow its recent trajectory, it is predicted that this region could account for over half of the global GDP by 2050 and it will enjoy widespread affluence, with its per capita income rising six-fold to reach the global average. This potentially promising future has been dubbed the 'Asian Century'.

There are many signs that Asia will continue to rise and prosper. The region includes some of the world's most competitive and sophisticated economies, as well as large emerging ones which are fast becoming important global players. However, this does not mean that the path ahead will be easy or will only require doing the same. Indeed, success will require a different pattern of growth and resolution of a broad array of difficult issues over a long period.

My *Vision for the Future* is one in which the IPBA membership comes together with others throughout the region to tackle these different issues. It is my hope that

through our united front we can assist Asian economies to unleash their full potential and move confidently into the Asian Century, towards prosperity.

### **Challenges**

In this age, we face many challenges.

### **Governance Deficits**

Asia is home to some of the richest, fastest-growing economies, as well as some of the planet's poorest people. Battling corruption is essential for our hopes of shared prosperity and entrepreneurship to be fulfilled.

Currently, governance deficits exist in many Asian economies with rising corruption and deficits in the rule of law and in accountability. There is a pressing need for leaders across the region to create effective anti-corruption policies, legislation and strategies, achieve strong and effective anti-corruption institutions, enhance mutual collaboration to fight corruption and bring about meaningful engagement with civil society and the business sector throughout Asia.

Our Anti-Corruption and Rule of Law Committee assists the IPBA and its members with: learning about past and current national and international efforts to deter corruption; organises continuing legal education seminars and similar programmes where topical anti-corruption issues can be addressed and debated; and engages with other organisations to help promote ethical business practices and the rule of law.

### **Financial Transformation**

Regional financial markets are transforming, and as Asia's share of global output rises, so too should its share of the world's financial assets, banks, and equity and bond markets.

Leaders in this region must work together to formulate an approach to finance that strikes the right balance between market self-regulation and government control, while remaining open to institutional innovation and inclusive finance, and being mindful of the lessons learned from the Asian Financial Crisis of 1997 and the fallout from the Great Recession of 2007–2009.

Our Banking, Finance and Securities Committee is one of the core committees of the IPBA. It has organised successful and interesting committee programmes at IPBA conferences; for example, in 2009 in Manila we had a very thought-provoking discussion at the session entitled 'Our Lessons and Fallout from the Global Credit Crisis' and in 2010 in Singapore we had very interesting discussions on 'Restructuring of Distressed Corporations – Opportunities for Cross-Border Investment' and 'Regulation of Banks and Protection of Depositors – New Challenges'.

### **Sustainable Development**

A recently-issued UNEP paper found that stocks of 'natural capital' (including non-renewable resources, forests, agricultural land and fisheries) are in decline across the region, and have dwindled by between one-third and a half in most countries of the region over the past five years.

The UNEP found that reversing this trend to realise sustainable development depends on finance flowing towards efficient, clean and inclusive economic activity and away from those activities that make the situation worse.

Our Environmental Law Committee creates a perfect forum for constructive debates on issues relevant to the practice of environmental law, its enforcement and the evolution of the concept of sustainable development. The Asia-Pacific region will be pivotal in any such dialogue since it has the potential to be either a significant positive or negative contributor to issues like climate change, water and air pollution. The legal profession should primarily be responsible for developing the 'Environmental Jurisprudence', which is one of the core areas in effective environmental management in any country. Environmental Jurisprudence calls for building a capacity of environmental judges and lawyers, a process that is beginning to take shape in the Asia-Pacific Rim. I am sure the IPBA can be instrumental in the process.

### **Innovation, Technology and Entrepreneurship Deficits**

Many economies throughout the region do not have eco-systems that are conducive to innovation. For Asian

economies to maintain their current growth momentum, the full potential of technology, innovation and, more critically, entrepreneurship must be harnessed.

Encompassing patents, trademarks, copyright, trade secrets and industrial designs, intellectual property is a rapidly-expanding area of law in the context of a technologically advancing world economy. With the large number of innovative companies doing business in the Asia-Pacific region, a thorough understanding of intellectual property law is indispensable to many lawyers in the region.

Our Intellectual Property Committee and our Technology, Media and Telecommunications Committee assist practitioners to facilitate professional sharing in these fast-changing practice areas.

### **Greater Regional Cooperation**

Integration and regional cooperation have been central to Asia's rapid economic growth and must remain so to ensure economies across the region maintain their momentum.

In 2010, our ad hoc APEC Committee was officially created to establish a formal relationship between APEC and the IPBA. Through this committee we draw upon the expertise of IPBA members to cooperate with APEC in promoting sustainable economic growth and prosperity in the Asia-Pacific region. We also collaborate with APEC to host seminars, workshops, and other events and projects, and work closely with APEC's Business Advisory Council to stay abreast of opportunities arising in various business sectors across the region. We have also established a database of lawyers to better facilitate access to professional legal services across the region.

The above is but a glimpse of the many challenges awaiting us and of the works of some of our illustrious IPBA committees.

I am honoured to be entrusted with the presidency of this prestigious organisation and also humbled by the task before me, but I pledge to do my very best to champion the worthy causes of the IPBA during my tenure as President.

**Huen Wong**  
President



# The Secretary-General's Message

**Miyuki Ishiguro**  
Secretary-General



Dear IPBA Members,

## **Hong Kong Conference**

The Hong Kong Host Committee and Organising Committee led by our current President, Huen Wong, achieved a very successful Annual Meeting and Conference in Hong Kong from 6 to 9 May 2015, gathering over 1,100 participants from around the world. The Conference theme was 'Vision for the Future', which aimed to facilitate reflection on past experiences and an exchange of insights to prepare for future challenges. In line with the concept of the theme, the Conference opened with a suggestive keynote speech by the Honourable Chief Justice Geoffrey Ma, followed by two plenary sessions addressing issues arising from the rapid changes in various legal markets. There were 51 concurrent committee sessions, most of them very well attended. We had many excellent and well-prepared presentations, which spurred active discussions. In addition, the social programme provided great fun to all participants. It included: the Welcome Reception at the Jockey Club at the Happy Valley Racecourse, which offered an exclusive race in honour of the IPBA; a Cultural Night at the Clearwater Bay Golf & Country Club, one of the best clubs in the region; and the Gala Dinner, which commemorated the IPBA's silver anniversary with mesmerising performances. Upon a suggestion made by our Chief Entertainment Officer, Tatsu Nakayama from Japan, at the last conference in Vancouver, a gathering for young lawyers and lawyers who are 'young at heart' became the highlight of our social events in Hong Kong and gathered more than 200 participants who fully enjoyed drinking, chatting and dancing until the small hours with friends from around the world.

## **Incorporation of the IPBA**

My term as the Secretary-General started from the conclusion of the Annual Meeting and Conference in Hong Kong as successor to the very capable and diligent Yap Wai Ming, who did a great job during his term as the Secretary-General. At the Annual General Meeting on 9 May, the incorporation of the IPBA in Singapore was finally approved by the members. This issue has been discussed over and over on many occasions, including Council Meetings in Seoul, Zurich, Vancouver and Rio de Janeiro. Discussions also involved some of our Japanese founding members. Currently, we are in the process of the incorporation in Singapore as a Company Limited by Guarantee. I expect that the procedures will be completed by the time this IPBA Journal 2015 June issue has reached you. Please note that the incorporation itself will not change any activities or the functioning of the IPBA at all, nor will the incorporation create any restriction on or limitation to the IPBA members, and our Secretariat, which fully supports our operation and activities at all times, will continue to be located in Japan and render the same efficiency and quality of services as before. Incorporation is expected to bring us many benefits and merits that we could not receive as an unincorporated entity. Of course, we may change some administrative matters due to the change of location from Japan to Singapore; however, I will do my best to minimise any resulting inconvenience as much as possible with the help of our Secretariat, Rhonda Lundin and Yukiko Okazaki.

## **Membership Increase Initiatives**

As Yap Wai Ming reported to you in the previous *IPBA*



Journal, the IPBA council members shared and discussed at the Vancouver meeting in 2014 two key strategic policies (membership engagement, and governance and leadership) and several key strategies to increase membership of the IPBA which were recommended by the Strategic Long Term Planning Committee led by our past Secretary-General, Alan S Fujimoto. Based upon such discussion, the Jurisdictional Council Members ('JCM') are requested to achieve two key performance indexes ('KPI'): the first is to host a reception in their jurisdiction or organise an activity to promote the next annual conference; the second is to organise, either on its own or in collaboration with other JCMs, a domestic or regional conference that will benefit the members.

In this connection, for the promotion of the 2015 Hong Kong Conference, many jurisdictions with IPBA jurisdictional representation, including Korea, Japan (Tokyo, Osaka and Okinawa), Canada, Singapore, Kuala Lumpur, the Philippines, Switzerland, France, China and India – and some without a JCM, including Taipei, Myanmar, Italy, the Netherlands, Brazil and Macau – held their respective reception with their jurisdictional IPBA members. In addition, many other JCMs promoted the 2015 Hong Kong Conference by giving individual notice to their constituents. These efforts contributed to the success of the 2015 Hong Kong Conference. For the promotion of the next Annual Conference in 2016 in Kuala Lumpur, our President-Elect Dhinesh Bhaskaran might visit your city in early 2016. I hope that the first KPI will be achieved to promote the next annual conference.

Speaking of regional conferences or gatherings, Chang-Rok Woo, the JCM for Korea, reported that they held an IPBA promotional golf event in Korea in April 2015 to promote the IPBA and provide networking opportunities among current IPBA members and potential members. He also reported that the IPBA Korea Chapter plans to hold their first IPBA regional conference in Seoul on 16 and 17 September 2015, covering interesting topics for China, Japan and Korea. This will be an epoch-making event organised by our members in Korea and I hope that the regional conference will gather many existing and potential members not only from Korea but also from neighbouring regions.

For the financially-sound operation of the IPBA, it is essential to increase the number of IPBA members so that our operational expenses can be equal to or less than the amount collected via membership dues. In order to increase and maintain current members, we ask for the cooperation and support of all members in conjunction with your local JCM, At-Large Council Member or Regional Coordinator, and even on your own initiative.

### **Mid-Year Council Meeting in Dubai**

The upcoming Mid-Year Council Meeting is scheduled to start on 23 October 2015 in Dubai, with a regional conference entitled 'Arbitration at the Crossroads: Middle East, Africa, and Asia' on 26 October. We encourage members to attend the conference, which is open to the public. The Mid-Year Council Meeting is being coordinated by Richard Briggs, our Regional Coordinator for the Middle East, and the arbitration conference will be held with the help of our Dispute Resolution and Arbitration Committee.

### **Save the dates for 2016 Kuala Lumpur and 2017 Auckland**

The 26th Annual Meeting and Conference will be held in Kuala Lumpur, Malaysia from 13 to 16 April 2016. Please make sure to save the dates and go to the following web site to see more information and to register: <http://www.ipba2016.com/>

The 27th Annual Meeting and Conference will be held in Auckland, New Zealand from 5 to 9 April 2017, as approved at the General Meeting held in Hong Kong. Please also make sure to save these dates.

I look forward to seeing all of you again in Kuala Lumpur or at our regional conferences or events.

**Miyuki Ishiguro**  
Secretary-General

## IPBA Upcoming Events

Event	Location	Date
<b>IPBA Annual General Meeting and Conference</b>		
26th Annual General Meeting and Conference	Kuala Lumpur, Malaysia	April 13-16, 2016
27th Annual General Meeting and Conference	Auckland, New Zealand (proposed)	April 5-9, 2017
<b>IPBA Mid-Year Council Meeting</b>		
2015 Mid-Year Council Meeting (Council Members only)	Dubai, UAE	October 23-25, 2015
<b>IPBA Local and Regional Events</b>		
IPBA-CIC Construction Conference 2015: "Impact of Changing Statutory Regimes on the Construction Industry"	Hong Kong	June 12, 2015
IPBA Asia-Pac Arbitration Day (Hosted jointly with the Kuala Lumpur Regional Centre for Arbitration)	Kuala Lumpur	September 14, 2015
IPBA 1st East Asia Regional Forum: "Continued Challenges & Opportunities of Pan Asia"	Seoul, Korea	September 16-17, 2015
IPBA Mid-Year Regional Conference: "Arbitration at the Crossroads: Middle East, Africa and Asia"	Dubai, UAE	October 26, 2015
<b>IPBA-supported Events</b>		
Kluwer Law International's "International Arbitration Summit"	Qatar	June 10, 2015
Singapore Academy of Law's "Technology Law Conference 2015: The Future of Money and Data"	Singapore	June 29-30, 2015
Kluwer Law International's "International Arbitration Summit"	China	July 8, 2015
Kluwer Law International's "Global Competition Forum"	China	July 9, 2015
CI Arb Singapore Branch's "The Age of Innovation: Addressing the Perils and Promises of Arbitration"	Singapore	September 3-4, 2015
BABSEA CLE's "Asia Pro Bono Conference & Legal Ethics Forum"	Mandalay, Myanmar	September 3-6, 2015
Kluwer Law International's "Turkey & ME: 2nd Annual Arbitration Summit"	Turkey	September 9, 2015
IFLR's "IFLR India M&A Forum 2015"	Mumbai	September 10, 2015
Kluwer Law International's "5th Annual Global Competition Forum"	Hong Kong	September 23, 2015
Asialaw's "Asia-Pacific Dispute Resolution Summit 2015"	Hong Kong	September 24, 2015
Kluwer Law International's "2nd Annual International Arbitration Summit"	Japan	October 20, 2015
Kluwer Law International's "4th Annual International Arbitration Summit"	Korea	November 12, 2015
Kluwer Law International's "3rd Annual International Arbitration Summit"	Indonesia/ SE Asia	December 10, 2015

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

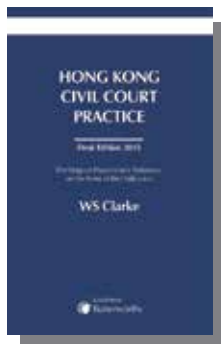


Handy, Current, Reliable

Providing you with accuracy on Hong Kong High Court practice and procedure for 15 years

**All practitioners need a court practice book that is handy and accurate – the *Hong Kong Civil Court Practice Desk Edition – 2015* has arrived.**

At LexisNexis® we are committed to providing you with the most up-to-date content, so you have faster access to relevant, accurate information on court practice and procedure. Practice confidently and with the most up-to-date information on practice and procedure in the High Court. Our extensive commentary focuses on recent Hong Kong cases, providing propositions of law backed up by cited authorities.



Author: WS Clarke  
ISBN: 9789888300655  
Price: HK\$2,000  
- the same great price as 2014 -  
Format: Hardcover book

#### About the book

*Hong Kong Civil Court Practice Desk Edition 2015* is your reliable source for the most up-to-date information on practice and procedure in the Court of First Instance and the Court of Appeal. It is a practitioner's essential reference work containing the Rules of the High Court with extensive commentary by a team of experts.

The 2015 edition contains the amendments to the rules which came into force along with the new companies legislation in 2014, and other amendments up to December 2014, including the new Order 38 rule 9A. The latest decisions of the Hong Kong courts are reflected in the updated and revised commentary.

The 2015 Desk Edition also incorporates, where appropriate, relevant guidance from our sister publication in UK, *The Civil Court Practice*, produced by an expert team led by Lord Neuberger of Abbotsbury, President of the Supreme Court of the United Kingdom, and Non-Permanent Judge of the Hong Kong Court of Final Appeal.

#### About the author

WS Clarke

William Clarke is a Hong Kong solicitor, also qualified in Canada and the UK. He was a legal academic at the Faculty of Law at the University of Hong Kong from 1980 to 1995, and is now Honorary Lecturer in the Department of Professional Legal Education. He is the Editor and Main Contributor of *Hong Kong Civil Court Practice*, and is the General Editor of *Hong Kong Cases*.



# IPBA 25th Annual Meeting and Conference Hong Kong



IPBA President-Elect Huen Wong addresses the guests at the Host Committee Dinner, held at The Government House.



IPBA leaders had a productive meeting with the First Vice President of AIJA, Ms. Orsolya Gorgenyi (middle).



Attendees line up to get their registration badges and stylish delegate bags.



IPBA's first President, Mr. Kunio Hamada, speaks with delegates during one of the coffee breaks.



The Hong Kong Convention & Exhibition Centre served as the venue for the Conference.



Children from The Music for Our Youth Foundation performed for the crowd at the Gala Dinner.



Even during lunch, delegates were busy networking and meeting with colleagues from their Committees to go over their sessions and plan for the future.



The Plenary Session, held in two parts, drew a large audience due to the excellence of its speakers and topic.



A Silent Auction was held with items donated by selected IPBA members. The HK\$122,450 raised will be presented to the Music for Our Young Foundation.



The most well-known secret: Japan Night. This unofficial extracurricular event is getting more and more popular each year.



Membership Committee Chair Yong-Jae Chang welcomes the delegates to the Conference at the New Members' and IPBA Scholars' Reception.



The AGM was well attended and included an open forum during which several delegates offering their opinions and suggestions to help improve the association.



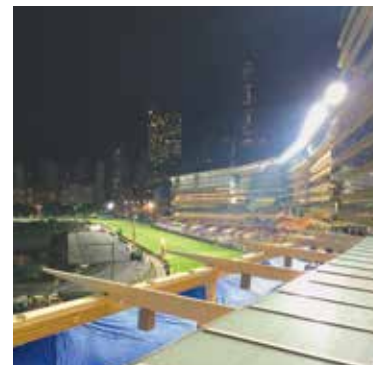
The Officers reported on activities of the Association at the Annual General Meeting (AGM) on 9 May.



Registration for next year's Conference in Kuala Lumpur gets off to a great start, with more than 130 signups.



Cultural Night showcased music and dancing, fireworks, dragons, artisans, and lots of food and drink.



The Welcome Reception was held at the Happy Valley Racecourse, where a special race in honour of the IPBA was held.

# Session Moderators' Highlights from the Conference



## **E-Commerce & Crypto-Currency**

**Michael Camilleri** (*Chuo Sogo Law Office, Japan*)

The 'E-Commerce and Crypto-Currency' panel featured three speakers: JJ Disini (Philippines), Ko Hanamizu (Japan) and Michael Camilleri (Australia). Using Bitcoin as a starting point, the panel began with a discussion of the concepts underlying crypto-currencies and introduced the concept of the 'blockchain', the global ledger that is central to most crypto-currencies as a mechanism to keep track of transactions. The discussion then turned to the ways in which various governments have approached regulation, with a division between those who are attempting to regulate the operation of certain crypto-currencies and those who are adopting more of a wait-and-see approach. Finally, the panel considered the ways in which crypto-currency technologies, such as the blockchain, could be used in the future for applications ranging from secure voting systems to self-executing contracts. During the Q&A session, the audience asked questions on the deflationary aspects of Bitcoin, whether a currency outside government control was possible, the practical issues for law firms wishing to accept crypto-currencies like Bitcoin and how blockchain-powered registration systems could simplify property registration and transfer.

## **Promoting and/or Undermining Labour Rights through International Trade?**

**Jeffrey Snyder** (*Crowell and Moring, United States*)

The IPBA International Trade Committee, with the Committees on Competition Law and Employment and Immigration Law, co-sponsored a novel panel on international trade and labour. Entitled 'Promoting and/or Undermining Labour Rights through International Trade?', the panel was both inter- and intra-disciplinary. It included one of Asia's leading hedge fund managers (Sid Velakacharla of Indus Capital), a prominent labour-management negotiator with extensive collective bargaining experience in the American Midwest (Khensa Bangert of 888 Leading Consulting), a renowned employment lawyer from San Francisco (Sandra McCandless), a renowned antitrust lawyer from Washington, DC (Steve Harris), and two well-regarded academics and Associate Deans (Professors Gonzalao Villalto Puig of the Chinese University of Hong Kong and Raj Bhala of the University of Kansas). Moderating was a long-time IPBA leader and well-known trade lawyer from Washington, DC (Jeffrey Snyder). It quickly became clear to the large, standing-room only audience that the question the panel debated is multi-dimensional and defies an easy answer.

First, large and medium-sized companies in Asia tend to pay more attention to, and have better compliance systems for, enforcing labour rights than small, family-run proprietorships, where 'sweatshops' are not uncommon. Second, creative problem solving involving raising technical standards requires active collaboration between unions and management, not waiting for legislative solutions from the government. Third, labour rights provisions now are placed in the text of free trade agreements ('FTAs'), not side documents, and are defined according to International Labour Organization ('ILO') core principles. Fourth, the Canada-EU FTA is an interesting case study of incorporating high-end labour rights into a trade deal. Fifth, employment contracts raise questions of non-compete covenants, the legality of which depends on the jurisdiction governing the contract. Finally, as a recent case involving Apple shows, attention must be paid to restraints on trade and other antitrust concerns when fashioning employment contracts in the global arena, even though applicable law is local (as there is no multilateral competition law).

What was most impressive about the panel was its thoughtful, reasonably-minded, civil discourse on such a 'hot' topic. Often, on this topic, participants angrily shout past each other based on pre-conceived political ideologies; not this panel.

## Out of Court Workouts in APEC Countries

**Shinichiro Abe** (*Baker & McKenzie, Japan*)

The insolvency session entitled, 'Out of Court Workouts in APEC Countries', was held on 7 May 2015 and was very successful. Five panelists from various jurisdictions participated, and I served as moderator. Dr Shinjiro Takagi explained the history of, and recent trends in, out of court workouts in APEC countries and in Japan.

Mr Ajinderpal Haridas talked about the system and recent trends in Singapore, while Mr Debanjan Banerjee covered India. The panelists compared out of court workouts in their various jurisdictions, including Canada (Mr David Ward) and Switzerland (Mr Ueli Huber) and developed more detailed knowledge of their similarities and differences.

Several factors were noted across jurisdictions in a practitioner's choice of court procedure or out of court workout. Out of court workouts are less common in jurisdictions with quicker, more efficient court procedures.

Court procedures are also more common where judges enjoy a general perception of greater reliability. This also relates to flexibility in the decisions made by judges.

Dr Takagi then led a discussion regarding the 'Asian Bankers' Association Informal Workout Guidelines & Model Agreement,' which was amended in 2013.

## Fighting Corruption At All Levels: from Internal Governance to Regional Collaboration

**Shigehiko Ishimoto** (*Mori Hamada & Matsumoto, Japan*)

**Kapil Kirpalani** (*HarbourVest Partners, Hong Kong*)

**Speakers:** Vita Richardson (President & CEO, Association of Corporate Counsel, Washington, DC), Alexander Jampel, Partner (Baker & McKenzie, Tokyo), Corey Norton (Partner, Trade Pacific Law, Washington, DC).

This panel highlighted the impressive legal resources that are available through collaboration between the IPBA's APEC and Corporate Counsel Committees, particularly with respect to efforts in fighting corruption throughout Asia. Ishimoto-san and Mr Kirpalani organised and moderated a panel that prompted a very thoughtful discussion on the resources that in-house counsel are dedicating to anti-corruption efforts, new collaboration between APEC members on anti-corruption enforcement and opportunities private sector attorneys and their clients have to guide governments in preventing bribery within their agencies.

More specifically, Ms Richardson shared valuable insights about her organisation's collection of data from corporate counsel which shows that anti-corruption risks and mitigation efforts remain high on the list of issues keeping corporate counsel awake at night. Mr Jampel highlighted that APEC has been very active in anti-corruption efforts for years and that the APEC Anti-Corruption and Transparency Working Group has made substantial developments in this area recently, such as through a new collaboration among APEC member anti-corruption and law enforcement authorities. Mr Norton continued the theme of contributions APEC can make in the anti-corruption area, particularly with respect to drawing upon private sector experiences to identify government efforts that work, such as technological innovations to deter corruption, and areas where government practices remain vulnerable to corruption.

Ishimoto-san and Mr Kirpalani provided additional views on pressing topics, such as recent enforcements in China and the role of anti-corruption in due diligence. They also provided meaningful reflections on themes in the speakers' comments that led to an engaging and insightful discussion with attendees.

### The Evolution of Specialist Courts

**Clifford Sosnow** (*Fasken Martineau DuMoulin LLP, Canada*)

Specialist courts are not a new creation, yet the early twenty-first century is seeing a rise in the use of such courts and the innovative approaches they are applying to deal with increasingly specialised and sophisticated law and global transactions. Mingfen Tan examined how the Dubai International Finance Centre ('DIFC') Courts has expanded its jurisdiction from serving only the needs of the DIFC to being available to the international community at large as parties may now elect to have their disputes determined by the DIFC Courts even if they have no connection to the DIFC. She also considered the potential implications of the new practice direction issued by the DIFC Courts that, in effect, allows the conversion of a DIFC Court judgment into a DIFC-LCIA arbitration award in the event there is a dispute over enforcement of the DIFC Court judgment. Dr Ching-Yuan Yeh introduced the background to Taiwan's specialist courts; he also explained the current settings and functions of each specialist court and prosecutorial special task force. He compared the specialist courts with arbitration institutions and concluded that arbitration is still a more practical way to resolve disputes in Taiwan. Mohan Pillay looked at the recent setting up of the Singapore International Commercial Court ('SICC'), exploring its role and unusual features such as international judges and rights of audience for international counsel. He also considered the extent to which the SICC will pose a challenge to international commercial arbitration. Vyapak Desai provided an Indian perspective as to how such specialist courts can be an alternative to foreign-seated arbitrations for parties dealing with Indian corporations. Further, he briefly outlined the history and evolution of specialist tribunals and courts during the last two decades and challenges it has faced in India. He also provided a summary of recent proposals to set up commercial courts as a division of various High Courts in India. Our panellists rewarded the audience with a rich, thoughtful and lively discussion.

### Life of a Film – Legal Perspectives from Around the World

**Barunesh Chandra** (*August Legal, India*)

A joint session of the Technology, Media and Telecommunications and the Intellectual Property Committees was conducted on 7 May 2015 during the 25th Annual Meeting and Conference of the IPBA held in Hong Kong from 6 to 9 May 2015.

While Hollywood blockbusters might grab global headlines, India, China and Japan are the top three movie producing nations in the world; each with very sophisticated and dynamic film industries. Moreover, while film making may be seen as a primarily creative venture, making a movie of any significance requires significant attention to certain key legal aspects.

The panellists from India, China, Japan, and the European Union discussed a range of legal issues starting from the pre-production stage of a movie until the release thereof and even thereafter with a particular emphasis on international and cross-border projects. The main issues discussed included acquisition of rights (usually from the author of the book or screenplay, or the subject of the film), financing the production, various compliances during production, distribution arrangements and piracy. The session was interactive and well received and the panellists took turns to address each of the aforesaid issues from their jurisdictional perspective (rather than making stand-alone independent presentations on the topic).

### Analysing China's Global Ambitions (CBIC Series B: The Future of M&A)

**Björn Etgen** (*Beiten Burkhardt, Germany*)

With a high-profile panel of speakers from China, Belgium, Canada, Argentina, Chile, Malaysia, the Philippines and the United States, the session's aim was to analyse China's global ambitions.

Jun Yang, the Managing Partner of Jade & Fountain from Shanghai, laid the groundwork by describing and analysing China's outbound investment policies. He outlined, *inter alia*, the 'Go overseas' strategy as well as the recent 'Belt and Road' initiatives.

Following this, Jan Bogaert, Managing Partner of Stibbe in Hong Kong, illustrated in a lively presentation the



difficulties and the challenges for PRC companies investing in Belgium and Europe.

This was followed by a South American perspective with country reports by Silvia Karina Fiezzoni, Estudio Beccar Varela, highlighting the Argentine view and with Sergio Díez, Cariola Díez-Perez-Cotapos & Cía. Ltda., illustrating the Chilean perspective. The Chinese investments in both countries are relatively small and Chinese investors face substantial challenges; in particular, due to government restrictions and language challenges.

An American perspective followed with presentations by Caroline Berube, HJM Asia Law, from Canada (now in Guangzhou, China) and Richard Vernon Smith, Orrick, Herrington & Sutcliffe LLP, from the United States. Ms Berube emphasised the challenges faced by Chinese investors, such as high costs, operational challenges and aboriginal issues related to possible environmental damage. With regards to the United States, Mr Smith noted the high amount of Chinese investment in the US, exceeding already the amount of US FDI into China. He concluded that clearance by the Committee on Foreign Investment ('CFIUS') continues to be the greatest legal risk for Chinese companies acquiring control of US companies.

Last, but not least, the Asian perspective came into focus with the presentation by Swee-Kee Ng, Shearn Delamore & Co, from Malaysia and Albert Yu Chang, SyCipLaw, from the Philippines. Both gave remarkable presentations, with Mr Chang taking an investment perspective first and showing the challenges for China's investments in the Philippines. Mr Ng explained that, interestingly, China's foreign investment in Malaysia consists primarily of basic metal products investment. Given the high percentage of the Chinese population in Malaysia and the familiarity with the culture, he concluded that Chinese investors do not face major difficulties in investing in Malaysia.

### Arbitration in Emerging Economies

**Chiann Bao** (*HKIAAC, Hong Kong*)

**Hiroyuki Tezuka** (*Nishimura & Asahi, Japan*)

Emerging economies in Asia have become a key engine in the growth of the Asian market. This panel, composed of a diverse range of experts from the region, examined the consequences of such growth in the dispute resolution industry. In doing so, the panel

discussed their respective jurisdictions through five fundamental building blocks of commercial arbitration in an emerging economy, namely: legislation, judiciary, arbitration institution, users and the arbitration community. Legislation as a building block prompted a discussion about the prevalence of the UNCITRAL Model Law in the region, the inconsistent implementation of the New York Convention in the region, and a dialogue about the BIT landscape in the region. The panel then moved to the topic of the judiciary and explored the unpredictable stance some judiciaries have taken and the misunderstanding of their role within the arbitration infrastructure. When discussing the arbitration institutions, panellists posited the important role of institutions in encouraging the trust of the users in the system and ensuring that best practice is met by the players in the industry. The discussion about the role that users play in arbitration in the emerging economies brought to the floor the fundamental needs of the clients: to have access to a speedy and effective dispute resolution mechanism reflective of or familiar to their own culture. The panellists rounded up the session by emphasising the importance of training lawyers and arbitrators to generate more local and regional talent to practice international arbitration.

### Corporates, Court Processes and Anti-Bribery and Corruption Legislation

**Jeffrey Robert Holt** (*France*)

**Juliet Blanch** (*Weil, Gotshal & Manges, United Kingdom*)

**Speakers:** Roger Best (Clifford Chance, United Kingdom), Simone Nadelhofer (Lalive, Switzerland), Neil McInnes (Pinsent Masons MPillay, Singapore), Susan Munro (Steptoe & Johnson, People's Republic of China).

This joint session of the Dispute Resolution and Arbitration and Ad Hoc Anti-Corruption and Rule of Law Committees tackled various issues regarding, inter alia, privilege, money laundering and anti-corruption in a host of jurisdictions.

The panellists each presented specific aspects of the various issues dealt with in the international case study that they commented on and which were relevant to their respective jurisdictions. Panellists were thus able to bring out the similarities and the differences between the major anti-bribery laws, such as the United Kingdom's Bribery Act and the United States' Foreign Corrupt Practices Act.

They also provided insight into best practices to adopt when having a branch office in the United Kingdom or when dealing with the authorities or agents in China. Particular emphasis was also placed on Swiss legislation, which provides for criminal liability of the company. And, of course, much was made of the latest Hong Kong case law regarding corruption alleged to have been made by a Hong Kong company, which was not sanctioned by the courts.

The co-moderators each added their own unique perspectives: that of an in-house counsel who deals with compliance matters on a day-to-day basis for an Italian Group without having the benefit of privilege or its equivalent; and that of a litigator. Lively interaction with the packed room during the question-and-answer period allowed everyone to chime in on different practices in their respective jurisdictions.

Many thanks to all involved, and the two organising committees are looking forward to putting forward another such quality session in the future.

### **Corporate Law Reform – User-Friendliness and Corporate Governance (CBIC Series A: The Future Cross Border Landscape)**

**Jose Cochingyan III** (*Cochingyan & Peralta Law Office, Philippines*)

**Panellists:** Teresita J Herbosa (Chairperson, Securities and Exchange Commission, Philippines), Ada LL Chung JP (Hong Kong Registrar of Companies, Companies Registry, Hong Kong), Takeshi 'Matt' Komatsu (Mori Hamada & Matsumoto, Japan), Trinh Nguyen (TNP, Vietnam), Jianwen Huang (King & Wood Mallesons, China), Chiam Tao Koon (Allen & Gledhill LLP, Singapore), Hyeong Gun Lee (Lee & Ko, Korea), Abadi Abi Tisnadisastra (AKSET Law, Indonesia), Dagmar Dubecká (Kocián Šolc Balaščík, Czech Republic), Sampath Kumar (Trilegal, India)

This session examined the direction of corporate reform within the last 10 years. Eleven jurisdictions were represented in the panel, including two government regulators as panellists. The panel discussion revealed that corporate reform is focused on four areas: (1) doing business; (2) corporate structure; (3) mergers and acquisitions; and (4) corporate governance. The jurisdictions represented shared common

experiences in corporate reform but diverged in their focal points. One common concern was the need to reduce the regulatory burden to facilitate doing business. Hong Kong, for one, has succeeded in reducing its registration requirements; it is now possible to incorporate in Hong Kong in less than an hour. Reducing capitalisation requirements was another common concern. Another common reform is the recognition of 'one-man corporations'. It was also noted that while the Philippines recognises de facto mergers, other jurisdictions maintain that a merger must undergo the regulatory process to be recognised. The panel, as a whole, demonstrated a shared interest in increasing disclosure requirements and protecting shareholder rights. It is also worthy to note that while the appointment of a female director is recommended in all jurisdictions, it is mandatory in India in some instances.

### **Third-Party Funding – 'Coming Out' All Over the World**

**Rebecca Wong** (*Smyth & Co in association with RPC, Hong Kong SAR*) with acknowledgement to **Bryan Tan**, Singapore (*Straits Law Practice LLC*)

There has been heated debate in recent years over the moral hazard presented by third-party funding for civil claims (where legal aid is not available). At the recent IPBA Annual Conference in Hong Kong, delegates from around the world attended a panel session to discuss the permissibility of third-party funding in their respective jurisdictions, ways in which the process can be improved, and some of the practical and ethical challenges faced especially when dealing with cross-border issues.

Third-party funding can come in many forms, such as by way of insurance (uncontroversial), contingency or conditional style fees and legal aid. However, the form that was most controversial and attracted the most debate was commercial third-party funding in litigation and arbitration.

Delegates from Hong Kong, Singapore and India stated that litigation funding is generally prohibited due to laws against champerty and maintenance (i.e., providing financial support to a party in a law suit in return for a share in the proceeds of the suit), with various evolving and important exceptions, while delegates from other

jurisdictions (including the United States, the United Kingdom and Australia) reported that litigation funding is (or is becoming) common as it is either expressly allowed or not regulated. There was anecdotal evidence that in some jurisdictions, third-party commercial funding goes on 'behind the scenes'.

Delegates as a whole were broadly pro-funding for commercial disputes, recognising that its prohibition is outdated and that (subject to suitable regulation) funders should be allowed to 'invest' in claims where there is a market for it. This would serve to provide access to justice or at least capital for parties to have access to justice. Delegates also recognised that trying to 'buck the market' can be dangerous.

Third-party funding, particularly in arbitration, is not without its challenges. For example, potential undisclosed conflicts of interest which may arise as a funder's priority is obtaining a return which may be at the expense of a claimant (for example, a claimant is forced to accept a lower settlement), the power imbalance where parties are funded, the risk of insolvency of the funder, fraudulent claimants who may defraud funders, enforcement issues in jurisdictions where funding is prohibited and whether a tribunal can remain impartial in the knowledge that (for example) the funder has obtained a favourable opinion on the merits from a reputable QC. David Smyth (associated with RPC) said:

'Litigation funding provides access to justice more so than injustice, provided it is done correctly. There can definitely be improvements, one of which is that parties need to be more transparent in terms of the terms on which funding has been granted particularly as to the level of control of the funder involved.'

Third-party funding is gaining traction and is increasingly international, with UK funders funding claims in Australia and vice versa and US plaintiff law firms funding claims in Europe. Its growth over the next decade is inevitable, and it will be interesting to see how international protocols and guidelines are developed to address the challenges presented by funded cases. The closing word at the panel session was that third-party commercial funding should be embraced by, and brought out into the open in, jurisdictions that aspire to be international dispute resolution centres.

## Commissionaire Arrangements and Permanent Establishment Risks

Aseem Chawla (MPC Legal, India)

Mr Aseem Chawla introduced the panel and gave an introduction to the subject of discussion. He highlighted the concept of commissionaire arrangements, agency relationships and the risk of creation of Permanent Establishment ('PE') because of these arrangements. He further highlighted the difference of agency relationships in civil vis-à-vis common law countries and how the commissionaire structure is of as much importance to one country as another.

Mr Chawla requested the panellists to highlight their country-specific peculiar aspects and present their viewpoints on the same.

Mr Gary Tober from the United States discussed the concept of permanent establishment ('PE') and focused primarily on dependent agent PE. He further presented the risks and limitations of PE on an enterprise in a country. He discussed and explained in detail the whole concept of commissionaire arrangements and other commercial arrangements prevalent in the US. He further discussed the judicial viewpoint as highlighted in the case of *Handfield v Commissioner*, 23 TC 633 (1955) and *Taisei Fire and Marine Insurance Co v Commissioner* 104 TC 535 (1995).

Pursuant to the presentation of Mr Tober, Mr Roger Ploeg presented the typical Dutch commissionaire structure and shared the steps to structure distribution activities in the Netherlands. He further discussed and highlighted the relevant policies of the Dutch tax authorities along with the tax treatment of the commissionaire along with the principal. Before concluding his presentation, he highlighted the risk of PE in the Netherlands, along with the general practices followed by enterprises to mitigate that risk.

Mr Jan Kooi presented his viewpoints with respect to Korea. He shared the sensitivity of Koreans with relation to foreign products and the practical difficulty of establishing oneself through a commissionaire arrangement in the Korean market. He further highlighted the Foreign Exchange Control Regulations applicable in the jurisdiction of Korea.

Mr Bill Maclagan suggested the principal of commissionaire arrangements followed in Canada. He discussed the nature of the relationship with an undisclosed principal and whether commissionaire results in the undisclosed principal having a permanent establishment as per Canadian tax treaties. Mr Maclagan further discussed the phrase 'the ordinary course of business' as discussed in the case of *Knights of Columbus v R* 2008 TCC 307. He also discussed the domestic legislation, highlighting the disposition test and situs issues.

Mr Bernard Cobarrubias discussed the reasons why Myanmar is considered the next economic frontier of Asia. He highlighted that the country is in transition and a lot of new laws are emerging and old laws are being amended. Furthermore, he discussed the taxing structure for residents and non-residents in the country. He also highlighted the requirements for foreign enterprises to establish a business in the country according to the regulations of the existing Companies Act. The suggested changes to the aforesaid regulations in the new draft Companies Act were also discussed. He highlighted that there is lack of local PE rules and the same is relevant as per the Treaty Articles. A comparative analysis of the provisions on agents in different treaties in Myanmar was given. Lastly, he discussed that the revenue department is not yet armed in relation to, and is not fully aware of, the international tax issues.

Mr Saravana Kumar was the next presenter. He highlighted the key subject areas with respect to Malaysia. Although Malaysia is not a member of the OECD, most of the DTAs of Malaysia are based on the OECD's model. While discussing the PE rules, he reported that there is no domestic legislation on the same as well as no public ruling or reported court decision. He also discussed that no audit has been undertaken by the Department of International Taxation of the Malaysian Inland Revenue Board. He also reported on the domestic anti-avoidance rules as well as the judicial pronouncement in the case of *Syarikat Ibraco – Peremba Sdn v Ketua Pengarah Hasil Dalam Negeri* (2014), which highlighted that taxpayers are entitled to arrange their own affairs. To conclude, he presented that since there is an increasing demand to collect taxes, the focus of the tax authorities may now shift to international enterprises operating in/with Malaysia.

All the panellists discussed the provisions of general anti-avoidance rules prevalent in their countries and their impact on the commissionaire structures and taxability of foreign enterprises on the basis of the establishment of PE in their respective jurisdictions.

Before concluding, the panellists presented their viewpoints on the Action Plan 7 of the Base Erosion Profit Shifting ('BEPS') and discussed and presented their viewpoints on the suggested changes.

### **Anti-corruption Due Diligence and Solutions in M&A transactions**

#### **(CBIC Series B: The Future of M&A)**

**Gerold W Libby** (*Zuber Lawler & Del Duca LLP, United States*)

**Ulf Ohrling** (*Mannheimer Swartling, Hong Kong/Sweden*)

The Ad Hoc Committee on Anti-corruption and the Rule of Law co-sponsored a programme at the 2015 IPBA Annual Conference, with the Cross-Border Investment Committee, on 'Anti-corruption Due Diligence and Solutions in M&A Transactions'. Lesli Ligorner, a partner in the Simmons & Simmons office in Shanghai, started the programme by discussing what to look for and how to spot possible corrupt practices at the outset of an M&A transaction. She pointed out the potential significance of unusual commissions and/or bonuses paid to consultants or other third parties, and payments to offshore accounts or accounts in alternative names. Alexander Troller, of LALIVE in Switzerland, discussed the disclosure obligations related to corruption issues that may exist for counsel to a buyer or seller, including interesting confidentiality obligations under NDAs or other constraints. Luciano Ojea Quintana, of Marval, O'Farrell & Mairal, of Argentina, discussed best practices in M&A contractual provisions relevant to protecting against liability for past corrupt practices and distributed model contractual provisions. Lesli Ligorner then returned with a presentation on the commercial impact of corrupt practices and how to integrate a target with past corruption issues in a post-closing context. The programme was moderated by Ulf Ohrling, of the Hong Kong office of Mannheimer Swartling Advokatbyrå AB and past chairman of the Cross-Border Investment Committee, and Gerold Libby, of the Los Angeles office of Zuber Lawler & Del Duca and a past IPBA President.

## Ship Finance

**Jeffrey Robert Holt** (*France*)

**Timothy Elsworth** (*ElsworthADR, United Kingdom*)

**Speakers:** Madeline Leong (Watson Farley & Williams in association with Lau, Leong & Co, Hong Kong), Elton Chan (Stephenson Harwood, Hong Kong), Juliana Yap (Rajah & Tann, Singapore), Vicky Kim (Buddle Findlay, New Zealand).

This joint session of the Maritime Law, Banking, Finance & Securities and Energy Natural Resources Committees was a first. The same applies to the topic, since this was the first time that ship financing was dealt with within the IPBA.

Two out of the first three panellists each presented a specific aspect of ship financing. Elton Chan talked about lease back montages, while Vicky Kim spoke of the ever-growing role of export credit agencies in the financing and the guaranteeing of financing for various types of ships. She focused mostly on the work of the Korean export credit agency, although other export credit agencies such as COFACE or SACE do much of the same.

Juliana Yap started off the session by giving an overview of various financial schemes, which are prevalent in Southeast Asia and notably in its hub, Singapore. Madeline Leong, the final speaker of the session, tied together all the different strands presented during the session and was able to weave them into a coherent ensemble. She also added specifics on trends, notably the financing of various offshore vessels such as FPSOs and FLNGs in the oil and gas business and the emergence of Islamic and private equity financing in the realm of ship financing.

The co-moderators each added their own unique perspectives, that of an in-house counsel for a ship owner who rents pipe-laying vessels and that of an arbitrator of shipping disputes. Lively interaction with the packed room during the question-and-answer period brought the session to a much-deserved climax.

Many thanks to all involved and to Jan Peeters, Chairman of the Banking, Finance & Securities Committee, who helped organise such a successful session.

## The Intersection of Trans-Pacific Trade and International Insolvency Regimes

**LP Harrison 3rd** (*Curtis, Mallet-Prevost, Colt & Mosle LLP, New York*)

In one of the final committee sessions of this year's conference, 'The Intersection of Trans-Pacific Trade and International Insolvency Regimes', Lynn Harrison 3rd of Curtis, Mallet-Prevost, Colt & Mosle LLP moderated a panel of distinguished practitioners and colleagues in a discussion on the latest developments in international Pacific trade and the manner in which international trade regulations interact with various insolvency regimes. The speakers included Ian De Witt of Tanner De Witt Solicitors, Andrew Green of Stephenson Harwood LLP, Kenneth Yeo of BDO Limited, and Dan Porter of Curtis.

Mr Porter kicked off the panel providing an update on the pending Trans-Pacific Partnership Agreement currently grabbing headlines in the United States, as well as a discussion on the issues in US trade remedy cases that foreign importers may have to address while doing business in the US. This was followed by Mr Harrison and Mr Green who discussed, respectively, US and European insolvency laws and how each of these intersect with international trade, with a counterinterview provided by Mr De Witt. Throughout the robust discussions involving all speakers and members of the audience, Mr Yeo provided his perspective on these issues based on his experiences as an insolvency specialist in the various jurisdictions that were discussed.

## From Cradle to Grave: New Trends in Shipping Law, From Construction Through to Operation and Casualties.

**Timothy Elsworth** (*ElsworthADR, United Kingdom*)

A panel of leading shipping lawyers demonstrated the traditional and ever-developing role of maritime law in international commerce to a large and appreciative audience. First, following on well from the joint Banking, Energy and Maritime session on ship finance, John Passmore QC gave an erudite and fascinating presentation on shipbuilding and offshore construction disputes, called '2015 Survival Kit'. He looked particularly at illegality, prevention and insolvency, explaining how yards and owners can take advantage of current laws and avoid risks in likely developments. His approach of

counting down from the first urgent call from clients to the ring of the doorbell when they arrived for a consultation was well received.

Next, Yosuke Tanaka spoke in detail about the comprehensive reform of Japanese maritime law presently being drafted. He considered how provisions intended to apply to the carriage of goods within Japan would also apply to international carriage and how their construction affected the meaning of the Japanese Carriage of Goods by Sea Act ('COGSA'). In an excellent presentation, he also explained how changes to the Commercial Code (first enacted in 1899 and not substantially changed since then) also affected fundamental principles relating to maritime liens, collisions and salvage.

Our final speaker was Amitava Majumdar (Raja) who impressed us with the fluency of his presentation on developments in India. Following an overview of the existing maritime law regime, his expansive talk considered divergent views on various issues in India and England from the sanctity of freight to the validity of jurisdiction clauses before reviewing important recent cases covering a wide range of topics, including bunkers, sale of vessels, arrest, laytime, collisions, salvage and wrecks. He concluded with a summary of legislation in the pipeline.

All the presentations demonstrated the truly international nature of shipping and maritime law and why practitioners must be alert to changes around the world.

As is now traditional, the MLC concluded with a boat trip (kindly arranged and provided by Jon Zinke), this time to the outlying island of Po Toi for a splendid seafood lunch and much jollity.

## Border Enforcement Measures for Intellectual Property Rights

**Daniel Lim Ying Sin** (*Joyce A Tan & Partners, Singapore*)

The IP Committee organised a 'beauty parade' in the guise of a seminar dryly entitled 'Border Enforcement Measures for Intellectual Property Rights', involving a company struggling with cross-border counterfeit goods and parallel imports. A legal brief was prepared by co-general counsel Riccardo Cajola (Cajola & Associati, Italy) and circulated to a panel of renowned counsel in

the affected countries. Executives and managers from the company were secreted into the 'seminar' and the panel was grilled under intense questioning by co-general counsel Daniel Lim (Joyce A Tan & Partners, Singapore). A key focus of the examination was cost effectiveness and 'making the GC look good'. As serious and educational as the subject matter was, as the participants learned of the practical and, at times, surprising quirks of each country, laughter and mirth broke out frequently. In the end, the company unanimously resolved by acclaim and applause to appoint the distinguished advisors Michael Soo (Shook Lin & Bok, Malaysia), Kazuto Yamamoto (Daichi Law Office, Japan), Rory Radding (Locke Lord, USA), Bo Kyung Lim (Shin & Kim, Korea) and Pan Lidong (Wang Jing & Co., China). It only remained for the fees to be negotiated.

## How We Can Use Law to Change the Future for Women in Law

**Priti Suri** (*PSA, India*)

**Olivia Kung** (*Oldham, Li & Nie, Hong Kong*)

**Speakers:** Annette Hughes (Corrs Chambers Westgarth, Australia), Frédérique David (Lex2B, France), Juliet Blanch (Weil, Gotshal & Manges LLP, United Kingdom), Caroline Berube (HJM Asia Law & Co LLC, China), Olivia Kung (Oldham, Li & Nie, Hong Kong), Ma Melva E Valdez (JGLaw, Philippines)

This session was based on a hypothetical case study which demonstrated difficulties and issues female lawyers might encounter in juggling between work and family lives.

The panel addressed issues raised in the case scenario by comparing differences in jurisdictions from a legal perspective (e.g., maternity leave and paternity leave). Apart from legislation, it also compared the differences in law firms' internal procedures in respect of the issues raised and provided recommendations as to what firms could do to encourage female lawyers to return to work after giving birth and ways to provide continued support to encourage them to stay irrespective of whether the pressures are attributable to having given birth or having adopted a child, or due to caring for sick parents, or just a desire also to enjoy life outside the office.

The speakers suggested various ways law firms could change the working culture to retain female lawyers,

including offering part-time job opportunities, work from home, flexible working hours, changing the way firms assess lawyers' ability from the number of billable hours worked to a more result-orientated approach based on efficiency and the number of clients brought into the firm. The panel provided practical tips in respect to client management and the importance of priority and emphasised the importance of keeping some perspective, understanding that choices have to be made and accepting that it is not generally possible to have it all perfectly all of the time.

Apart from internal procedures, the panel also emphasised the importance of firms to invest in IT in order to make the working environment much more efficient and to enable lawyers to work outside the office.

As the speakers came from different countries, the panel also discussed and shared their personal experiences as well as compared the differences in cultures and facilities available in their countries in terms of child care, which is an important factor in determining whether one would continue to work.

Although the discussion was mainly focused on female lawyers, the panel considered that changes that could be made by law firms would benefit not only female lawyers who have children but everyone regardless of their gender or marital status.

### State-Owned Enterprises: Unique Features and Unique Challenges (CBIC Series A: The Future Cross-Border Landscape)

**Yong-Jae Chang** (*Lee & Ko, Korea*)  
**Le Net** (*LNT & Partners, Vietnam*)

State-Owned Enterprises ('SOEs') exist in many countries, but it is in 'communist' and 'ex-communist' countries that they have the most significant role. While SOEs account for 30 percent of the economic activity in China, they account for 40 percent in Vietnam, and 70 percent in Russia.

Recognising the importance of their role in the aforementioned countries, the IPBA Cross-Border Investment Committee held its last session on SOEs to

# ASIA PACIFIC LAW REVIEW

Asia Pacific Law Review is a bi-annual legal journal published by the City University of Hong Kong that provides indepth analysis of the key legal issues affecting the Asia Pacific region.



香港城市大學  
City University of Hong Kong  
30th Anniversary  
Professional • Creative  
For The World

For more information or to order a subscription,  
please email [enquiries@ninehillsmedia.com](mailto:enquiries@ninehillsmedia.com)  
or call +852 3796 3060

ninehills  
media

highlight its unique features and challenges. Yong-Jae Chang (Lee & Ko, Korea) was the moderator for the session and the panellists were Robert Kwauk (Blakes, Canada), Henry Shi (Jun He, China), Andre Brunschweiler (Lalive, China), Maxim Alekseyev (Alrud, Russia) and Le Net (LNT & Partners, Vietnam). The session discussed a number of key issues; the challenges to the management of SOEs; ownership status; and the future.

From the outset, it can be observed that there are similarities between China and Vietnam in the structure of SOEs (national/provincial), whereas Russia only possesses national SOEs. On the other hand, while SOEs in China are efficient and becoming the flagship of Chinese investment abroad, SOEs in Russia are now facing sanctions due to the Ukraine crisis, and SOEs in Vietnam are largely inefficient. The differences are largely due to the leadership role of the respective governments in recruiting the best SOE managers and the role of central government in controlling the SOEs. All the speakers agreed that the key point in dealing with SOEs is to identify the key decision maker(s) and understand their insight (prioritising personal, political and business interests).

Overall, the major problem of Chinese SOEs is that their development was left untamed and ran out of control; minimising corruption is the key solution. The problems for Russian SOEs are that they are subject to sanctions and have made poor investments, but the solution is to open up the Russian market. The problem for Vietnamese SOEs is inefficiency, and the solution for these is equitisation (or privatisation).

It remains to be seen whether management reform (China), economic reform (Russia) or ownership reform (Vietnam) will provide the best results.

### **Working in Foreign Jurisdictions: How and Why** *Varya Simpson (Law Offices of Varya Simpson, United States)*

A New Path: Our Legal Development and Training Committee Session in Hong Kong

The IPBA Legal Development and Training Committee embarked in Hong Kong on its renewed mission to present training sessions outside the annual conference on a subject of interest to both IPBA and non-IPBA lawyers in local jurisdictions. Coordinated by Varya Simpson and moderated by Ada Ko, an expert panel of four IPBA lawyers presented the subject of 'Working in Foreign Jurisdictions: How and Why' to a roomful of interested younger Hong Kong lawyers, discussing some of the issues related to the technical requirements and the personal issues connected with moving to and working in a foreign country. Susan Munro, who qualified in the United Kingdom and Hong Kong and is now working in Beijing, Mariko Nakagawa, who qualified in Japan and Australia and is now working in Singapore, Richard Briggs, who is from the United Kingdom and now working in Dubai, and James Jung, who is qualified in New Zealand and Australia, talked with great enthusiasm about the rules of the local bars and their own experiences in making the adjustment to practising law in another jurisdiction. This very successful session was made possible with the help of Sebastian Ko, who





kindly arranged for the use of his law firm, Debevoise & Plimpton, for this presentation. The Committee is now planning for training sessions in Kuala Lumpur around the 2016 Conference and in Yangon, Myanmar. All IPBA members are encouraged to join our committee and attend our sessions!

## Double Session on Big Data I + II

**Kapil Kirpalani** (*HarbourVest Partners, Hong Kong*)

**Michael Cartier** (*Walder Wyss, Switzerland*)

The first session, moderated by Kapil Kirpalani (HarbourVest Partners, Hong Kong), gave an introduction to big data and then focused on the legal aspects of big data.

Richard Hogg (IBM, Washington, DC) kicked off the session with an introduction to big data and gave a detailed explanation of its purpose, i.e., to allow businesses (or governments, NGOs, etc.) to make better decisions and allocate resources more efficiently by running data analysis.

Árpád Geréd (Maybach, Görg, Lenneis & Partner, Vienna) followed up with several big data case scenarios ranging from a networked home that shares data with service providers up to data goggles that give mountain rescue teams live information on their patients.

Rodney D Ryder (Scriboard, New Delhi) addressed legal developments in India and provided insight into data requests by law enforcement authorities in India. Jongsoo (Jay) Yoon (Shin & Kim, Seoul) focused on South Korea; in particular, the new Guidelines for Protection of Big Data Personal Information. Mr Geréd shared the EU perspective.

The second session, moderated by Michael Cartier (Walder Wyss, Zurich), focused on commercial applications and implications of big data.

Jaime Cheng (Lee, Tsai & Partners, Taipei) described several business areas (automobile insurance, health insurance/health care, retail industry) where big data has had an impact, i.e., in the form of new products, advertising for and availability of products and selection of customers.

Mr Kirpalani further brought up the use of big data by a venture company to open up new markets in slum

areas by more closely identifying the consumer needs in such areas and also allowing NGO's to better focus their efforts.

Ms Cheng went on to highlight possible social harms of big data, e.g., due to exclusion of people who are not 'connected', discrimination of customers on the internet (different prices, different products), scoring of creditworthiness using social networks and ending on the topic of predictive policing, where data analysis is used to identify potential hot spots. The ensuing discussion with the audience showed there is a fine line between using data to aid customers and discriminating against customers.

Mr Geréd described the various interactions and relationships between companies when it comes to sharing/selling big data and possible agreements and rules to consider.

Mr Ryder closed the session with an insightful presentation on life-cycle data governance and the need to identify and filter valuable data from a business, IT, legal and risk perspective.

## Technology for the Litigator

**Stacey Wang** (*Holland & Knight, United States*)

**Michael Cartier** (*Walder Wyss, Switzerland*)

Moderated by Stacey Wang (Holland & Knight, Los Angeles), this panel session covered the use of technology in litigation. Sebastian Ko (Debevoise & Plimpton, Hong Kong), a former IPBA scholar, explained the need for robust project management when coordinating document review projects and external technical consultants. Abdulali Jiwaji (Signature Litigation, London), together with Ms Wang, continued in the same vein and covered technology assisted review of documents, e.g., using predictive coding, to rapidly cull relevant documents. Mr Jiwaji rounded off the topic of documents addressing the exchange of documents including the use of dedicated client portals and issues regarding confidentiality and ease of use. Michael Cartier (Walder Wyss, Zurich) moved on to the issue of managing evidence with the use of database software (ExhibitManager) to efficiently identify and cite exhibits in legal submissions, as well as using eBriefs, i.e., PDF submissions with hyperlinks to the exhibits, to make one's case to the judge or arbitrator. Finally, Edmund Kronenburg (Braddell Brothers, Singapore),

addressed the implementation of technology in courts by providing an overview of how technology and electronic filing have been implemented in the Singapore court system since 1997 and the challenges arising along the way.

### Hydropower – The Revival of a Forgotten Source of Energy – Trends and Challenges

Sunil Seth (*Seth Dua & Associates, India*)

Alberto Cardemil (*Carey, Chile*)

The IPBA's Energy & Natural Resources and Environmental Law Committees and the International Bar Association's ('IBA') Water Law Committee joint session entitled 'Hydropower – The Revival of a Forgotten Source of Energy', discussed the trends and challenges in the development and deals on hydropower projects in Asia and Latin America. From the capital exporters side, Jihong Wang (Zhong Lun, Beijing) described the status and perspectives of hydropower industry in China, emphasising the potential of Chinese developers to

become global players, while Ignatius Wang (Squire Patton Boggs, Singapore) provided a very thorough and interesting description of the hot topics for the development of hydropower projects in Southeast Asia. From the perspective of investment recipient countries, Conrad Tolentino (Tan Venturanza Valdez, Manila) and Gonzalo Delaveau (Honorato Delaveau, Santiago) enriched the panel discussions, focusing on the main challenges and pitfalls to obtain approvals and social and community licences to develop hydropower projects in developing countries and the important role that legal professionals could play on such a front. The session was opened by Jeffrey Holt, Chair of the IPBA's Energy & Natural Resources Committee (Saipem Offshore, Norway), and moderated by Sunil Seth from the IBA Water Law Committee (Seth Dua & Associates, New Delhi) and Alberto Cardemil, Vice-Chair of the IPBA Environmental Law Committee (Carey, Santiago). Final remarks were provided by Peter Chow, Vice-Chair of the IPBA's Energy Committee (Squire Patton Boggs, Hong Kong).

## Publications Committee Guidelines for Publication of Articles in the IPBA Journal

Please note that the IPBA Publication Committee has moved away from a theme-based publication. Hence, for the next issues, we are pleased to accept articles on interesting legal topics and new legal developments that are happening in your jurisdiction. Please send your article to both **Maxine Chiang** at maxinechiang@chianglee.com and **Leonard Yeoh** at leonard.yeoh@taypartners.com.my. We would be grateful if you could also send (1) a lead paragraph of approximately 50 or 60 words, giving a brief introduction to, or an overview of the article's main theme, (2) a photo with the following specifications (File Format: JPG or TIFF, Resolution: 300dpi and Dimensions: 4cm(w) x 5cm(h)), and (3) your biography of approximately 30 to 50 words together with your article.

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

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

# Handling Whistleblowers in Asia: A Corporate Clarion Call

Corporate whistleblowing has been critical to the success of many high-profile regulatory enforcement actions, but it creates extreme financial, legal and reputational risks for the businesses involved. This article examines the associated changing regulatory demands and argues that multinationals in Asia must urgently establish internal whistleblowing systems to meet them.

## Introduction

Recent regulatory trends show that multinational corporations in Asia must develop controls or internal schemes to manage whistleblower risks and combat corruption. Whistleblowing incidents are unpredictable and highly risky – exposed corporates could incur devastating losses and reputational damage, while whistleblowers may suffer reprisals. However, regulators in Asia want more corporate insiders to come forward to assist investigations, especially in fighting corruption.<sup>1</sup> Indeed, whistleblowing has led to several high profile anti-corruption enforcement actions in Asia, including those against GlaxoSmithKline and Sanofi.<sup>2</sup> China, India, and other Asian countries are legislating to protect whistleblowers and creating monetary incentives for speaking out, following the footsteps of the Securities and Exchange Commission ('SEC') in the United States.<sup>3</sup> The regulatory developments magnify the risks of whistleblowing and intensify legal and compliance costs. The costs for multinationals, who are not only subject to local laws in places where they operate, but also foreign laws applying across borders, such as the Foreign Corrupt Practices Act ('FCPA'),<sup>4</sup> would compound exponentially.

Companies should manage compliance costs and whistleblowing-related risks by maintaining policies that encourage whistleblowers to report internally, instead of the media, and to approach the authorities only if absolutely necessary. However, according to accounting firm Ernst & Young, less than a third of the companies

in the Asia-Pacific region have whistleblower policies and companies with such policies rarely publicise them to avoid actively encouraging whistleblowing.<sup>5</sup> It is submitted that companies must establish internal schemes and maintain them to manage growing whistleblower risks while complying with local and extraterritorial anti-corruption laws. This article examines how multinationals could do so when operating in Asia, particularly in mainland China, Hong Kong and India, and when subject to the FCPA.

## The SEC Whistleblower Programme

Under the Dodd-Frank Act,<sup>6</sup> the SEC operates a programme that solicits reports of violations of federal securities regulations and the FCPA. The programme rewards tips with bounties (10 percent to 30 percent of the sum recovered in a SEC action);<sup>7</sup> protects tipsters from identification and retaliation; and supports whistleblower schemes in companies.<sup>8</sup> The Department of Justice operates a similar programme in enforcing the False Claims Act, as do several other US authorities.<sup>9</sup> The SEC programme has received nearly 10,200 tips since 2010 when it began.<sup>10</sup> It received globally 3,620 tips in 2014, of which four percent came from Asia (largely from China and India),<sup>11</sup> and overseas whistleblowers have even received bounties.

The number and size of bounties awarded by the SEC are growing year on year.<sup>12</sup> In September 2014, the SEC awarded an overseas whistleblower US\$30 million for

information provided in an enforcement action.<sup>13</sup> Yet, the award rate is low; the SEC has only made 14 awards in nine cases thus far.<sup>14</sup> It is unclear how many reports are frivolous, because a useful tip could still be disqualified from an award, and the SEC does not disclose detailed statistics about the tips it has received. Nevertheless, whistleblowers face complex legal requirements and procedures when they seek to obtain bounties or employ anti-retaliatory protections under the Dodd-Frank Act.

A whistleblower must meet several conditions to obtain a bounty: the whistleblower provides 'original information' about a violation 'that leads to [a] successful enforcement [action] by the [SEC],' where US\$1 million or more in sanctions are recoverable.<sup>15</sup> The information must be independently known and volunteered without a regulatory request.<sup>16</sup> A current or former employee (an 'internal whistleblower') need not report internally before reporting to the SEC. Nonetheless, the SEC incentivises initial internal reporting by uplifting the award amount for whistleblowers who have reported within their companies.<sup>17</sup> Where the whistle is first blown internally, a whistleblower's priority for an award is preserved providing that she or he reports to the SEC within 120 days after reporting internally.<sup>18</sup> The 120-day period practically imposes a deadline on the company to investigate the matter and decide whether it should self-report to the SEC.<sup>19</sup> The company could gain cooperation credit from the regulator if it reported early. However, the whistleblower may decide to report to the SEC before the period expires, and, if so, the company would have an even shorter time to react.

Individuals with audit, compliance or investigation functions, including directors and external accountants, cannot report to the SEC and claim an award unless they have reported to senior legal or compliance officials 120 days prior.<sup>20</sup> Subject to professional conduct rules, attorneys are generally barred from claiming an award for themselves, unless they act for an issuer and make disclosures to prevent or rectify a violation of securities law or to prevent perjury by the issuer.<sup>21</sup> The SEC will normally award compliance professionals and attorneys where the company has whitewashed its wrongdoings or turned a blind eye.<sup>22</sup>

An employee who has tipped off the SEC but has suffered retaliation in the workplace could sue the employer for compensation or reinstatement of employment.<sup>23</sup> The SEC is increasingly willing to initiate its own sanctioning of

companies where whistleblowers who have cooperated with the regulator have been fired or otherwise mistreated.<sup>24</sup> A person who has a 'reasonable belief' that a 'possible violation ... has occurred, is ongoing, or is about to occur', is protected from retaliation, regardless of whether enforcement action is eventually taken.<sup>25</sup> The protections are available regardless of whether a bounty is ultimately awarded. US courts have held that whistleblowers must report internally before they can sue on the ground of retaliation, although they need not have reported first to the SEC.<sup>26</sup> But whether whistleblowers are entitled to protections under the Dodd-Frank Act without reporting to the SEC at all remains unsettled.<sup>27</sup> Furthermore, the SEC bars companies from restricting the power of internal whistleblowers and third parties to report wrongdoing to the SEC, for example, by entering into confidentiality agreements or bounty waivers, or by offering incentives for non-disclosure.<sup>28</sup>

Recently, US courts have examined the extraterritoriality of whistleblower laws. In August 2014, the Second Circuit Court of Appeals in *Liu Meng-Lin v Siemens AG* held that the anti-retaliatory provisions of the Dodd-Frank Act do not protect whistleblowing outside the US.<sup>29</sup> In that case, Liu Meng-Lin, a former compliance officer of Siemens China, was demoted then dismissed after he told his employer that certain employees were bribing North Korean and Chinese officials.<sup>30</sup> The Court of Appeals followed *Morrison v National Australia Bank*, where the Supreme Court held that a statutory provision has no application outside the US, unless it contains a 'clear statement of extraterritorial effect.'<sup>31</sup> US courts have yet to settle on how this presumption could be defeated.<sup>32</sup> Multinationals should be alert to the case development on this issue, as those defending a retaliation claim commonly seek early case dismissal by arguing against extraterritoriality.

## Legal Landscapes of Mainland China, Hong Kong and India

Mainland China and India have long reported high rates of retaliation, but, like many Asian jurisdictions, provide weak anti-retaliatory protections.<sup>33</sup> This may explain reports that corporate insiders in Asia are more likely to report wrongdoings and grievances externally – taking matters into their own hands – than their US and European counterparts who tend to report to internal channels.<sup>34</sup> While whistleblowers in Mainland China, Hong Kong and India could generally seek legal recourse under criminal, labour and public laws, these laws provide fragmented



**In Mainland China, central and local government authorities have recently established dedicated corruption reporting channels.**

responses to concerns specific to the whistleblowing context. For example, while most Asian jurisdictions provide relief against unfair dismissals by employers, few protect against co-worker harassment or negative job references given post-employment and in bad faith.<sup>35</sup>

An overview of whistleblowing-related laws in Mainland China, Hong Kong and India are set out below to illustrate the diversity of regulatory environments in Asia.

**Mainland China**

In Mainland China, central and local government authorities, including the Supreme People’s Procuratorate (‘SPP’) and the Administration of Industry and Commerce, have recently established dedicated corruption reporting channels.<sup>36</sup> The SPP supervises the National Bureau of Corruption Prevention and provides the Rules of the People’s Procuratorate on Whistleblowing (‘SPP Rules’), under which a whistleblower is entitled to ‘spiritual honour and material rewards’ if a tip leads to a conviction in a public corruption case.<sup>37</sup> The SPP Rules were overhauled in October 2014, and, among other things, set out a whistleblower’s rights to: (1) anonymity; (2) enquire into the investigation progress; (3) appeal against the SPP’s refusal to investigate; and (4) protective

orders against personal harm and property damage.<sup>38</sup> However, whistleblowers are only protected if they file their reports via the official SPP hotlines and websites, and they must not deliberately falsify evidence or act dishonestly to harm others. The bounty is awarded out of the sum recovered from the defendant and, subject to the SPP’s discretion, the bounty size is typically capped at 200,000 yuan (or about US\$33,000).<sup>39</sup> It may be increased to 500,000 yuan (or about US\$81,000) or more, if the tip contributed substantially to a conviction.

**Hong Kong**

Hong Kong, which is a Special Administrative Region of the People’s Republic of China (‘PRC’) and maintains a separate legal system, has no government-run whistleblower programme. Yet, Hong Kong has little corruption when compared with mainland China and India.<sup>40</sup> Whistleblowers can report cases of public and private corruption to Hong Kong’s primary anti-corruption body, the Independent Commission Against Corruption (‘ICAC’), which administers rigorous informant confidentiality policies and witness protection laws.<sup>41</sup> Although the Hong Kong Stock Exchange requires its listed companies to have internal whistleblower policies, the exchange operates no whistleblower programme.<sup>42</sup>



## India

The Indian corruption watchdog, the Central Vigilance Commission ('CVC'), established a programme in 2004 to receive and investigate tip-offs, but it has annually received only a few hundred tips nationwide.<sup>43</sup> So far, India has no specific anti-retaliatory laws or bounty scheme, although the Whistle Blowers Protection Act 2011 ('WBPA') will commence in late 2015. Since October 2014, companies listed on the Stock Exchange Board of India must have mechanisms for employees to report to management concerns about fraud and legal and internal violations.<sup>44</sup> The WBPA represents major legal reform and would provide the CVC with unprecedented powers to protect whistleblowers in public corruption cases. In retaliation claims, the WBPA reverses the burden of proof and requires the public official to show that there was no retaliation. Protections would apply to persons reporting on the corrupt conduct, abuse of office and criminal offences of public servants. The CVC could request police assistance in its investigations and reinstate the employment of dismissed whistleblowers.<sup>45</sup>

The WBPA has several drawbacks. It does not define victimisation or expressly sanction against physical violence, a common form of reprisal in India. The WBPA disallows anonymous reports, as they are difficult to follow up,<sup>46</sup> although it provides for strict confidentiality in CVC investigations. Any public official who discloses a whistleblower's identity, without proper approval, may be sentenced to three years' imprisonment and a fine of 50,000 rupees (or about US\$800). Whistleblowers, however, can be jailed for two years and fined 30,000 rupees (or about US\$480) for false or frivolous reports and complaints are time barred after seven years.<sup>47</sup>

## Implications for Internal Corporate Schemes

Following global legal trends, the growth of pro-whistleblower laws and policies in Asia is expected. The proliferation of high-value bounty schemes (like the SEC's) is, however, unlikely, given the fear that cash incentives could motivate an explosion of false reports. The Serious Fraud Office in the United Kingdom, which operates a whistleblower programme, also decided against having a bounty scheme in mid-2014 due to similar concerns.<sup>48</sup> But public data on false reports is lacking and it is unclear whether such concerns are well founded. Regardless, companies should consider how government-run programmes affect their legal rights and adjust their compliance processes accordingly. To mitigate retaliation claims, legal and human resources teams must collaborate on ensuring proper employment practices and sharing of investigation intelligence while the internal investigation of the complaint is underway. In this sense, investigation records should be prepared with a view to help the company defend on multiple fronts. As such, whistleblower laws impose additional regulatory costs on companies responding to whistleblowing contingencies.

Multinationals could be facing a legal minefield when responding to whistleblowers because they must address the complexities of cross-border compliance. In 2011, the SEC sued Deloitte Touche Tohmatsu CPA Ltd in Shanghai to compel disclosure of audit documents relating to Longtop Financial Technologies, a Chinese company, in a fraud investigation.<sup>49</sup> Deloitte resisted on the grounds that Chinese state secrecy laws protected the documents and it risked criminal liability if it complied with the SEC's request.<sup>50</sup> The SEC dropped the suit in 2014 only after it obtained the documents from its Chinese counterpart, the China Securities Regulatory Commission. While whistleblowing played a small role in this case, cross-border transfer of information carry major legal risks. Companies should consult local and international counsel to address cross-border restrictions when handling tip-offs and leaks.

Companies should also find ways to incentivise whistleblowers to report internally first, particularly as US courts have opposed corporate incentives for staying silent and restrictions on speaking out. According to the SEC, 80 percent of its whistleblowers preferred to report internally before tipping off the regulator.<sup>51</sup> However, individuals can behave erratically when facing enormous financial, legal, social, and even physical risks in deciding to report. A one-time bounty, large as it may be, does

not always motivate whistleblowing, especially where a whistleblower's reputation and career would likely be ruined. The chances of obtaining a SEC bounty are still slim and the procedures cumbersome, often involving lengthy litigation. Perhaps whistleblowers would tip off the media directly where neither internal nor regulatory routes seem safe or effective for conveying their messages.

In any case, companies designing their internal schemes must understand the range of risks and costs motivating whistleblower behaviour. In eliciting whistleblower cooperation, external and internal reporting routes compete with each other on three dimensions: how well they prevent the leak of whistleblower identity; remediate losses suffered; and acknowledge or credit helpful reports.<sup>52</sup> In safeguarding whistleblower identity and divulged information, companies should have protocols for involving legal counsel at an appropriate time after receiving a complaint to maintain attorney-client privilege. Integration of internal schemes and compliance systems are essential not only to strengthen legal defences, but also to eliminate corrupt practices at their sources.

#### Appendix: Tips for Corporates in Developing an Effective Internal Whistleblower Programme

- Allow whistleblowers to ventilate grievances in a controllable environment
- Secure and publicise the reporting channels
- Establish clear and reliable whistleblowing processes
- Foster a corporate culture that encourages speaking out
- Ensure that the management is independent and impartial, and seen to be so
- Adapt the programme to account for local laws, industry and general culture
- Learn from state whistleblower programmes to incentivise whistleblower cooperation
- Utilise the programme to establish robust defences in regulatory and legal proceedings

## Conclusion

Like safety valves, internal whistleblower schemes allow whistleblowers to ventilate grievances in a controllable environment. In designing and implementing such schemes, companies can learn from government-run programmes to incentivise whistleblower cooperation (although not necessarily with bounty offers). An effective internal scheme requires a secure and well-publicised reporting channel and a corporate culture that encourages speaking out.<sup>53</sup> Management must be seen as independent and impartial and its processes must be clear and reliable. Moreover, in implementing internal schemes, companies should consider the psychological and social factors influencing tip-offs, including industry culture and national history.<sup>liv</sup> Internal schemes could help Asian multinationals establish robust defences in regulatory and legal proceedings. But the schemes must address the risks arising from the rapidly changing legal environment in the Asia region as well as regulatory pressures, both native and cross-border.<sup>55</sup> Let's heed the call for whistleblower schemes.

## Notes:

- 1 See Lowy Institute, 'G20 2014: Reform of the International Organizations, Financial Regulation, Trade, Accountability and Anti-Corruption,' *G20 Monitor* (September 2014), 45-47, <http://www.lowyinstitute.org/files/g20-monitor-september-2014.pdf>.
- 2 See Christopher Matthews & Jessica Hodgson, 'GlaxoSmithKline Probes Bribe Allegations in China,' *Wall St Journal* (12 June 2013), <http://www.wsj.com/articles/SB10001424127887324798904578529413574312372>; Tom Mitchell, 'China Begins Probe into Sanofi Whistleblower's Bribery Claim,' *Financial Times*, <http://www.ft.com/cms/s/0/49e71c06-0248-11e3-880d-00144feab7de.html#axzz3OckkzCyW>.
- 3 See SEC, *2014 Annual Report to Congress on the Dodd-Frank Whistleblower Program*, 1-3 (November 2014) ('SEC Report'), <http://www.sec.gov/about/offices/owb/annual-report-2014.pdf>.
- 4 15 U.S.C. s 78dd-1.
- 5 Ernst & Young, *Building a More Ethical Business Environment: Asia-Pacific Fraud Survey 2013*, 9-11 (2013), [http://www.ey.com/Publication/vwLUAssets/2013\\_Asia-Pacific\\_Fraud\\_Survey/\\$FILE/EY-Asia-Pacific-Fraud-Survey.pdf](http://www.ey.com/Publication/vwLUAssets/2013_Asia-Pacific_Fraud_Survey/$FILE/EY-Asia-Pacific-Fraud-Survey.pdf).
- 6 15 U.S.C. ss 77v(a) & 922 (2012).
- 7 Rules and Regulations under the Securities Exchange Act of 1934, 17 C.F.R. s 240.21F-5.
- 8 17 C.F.R. s 240.21F-1.
- 9 1 U.S.C. ss 3729-3733 (2012). See John Koskinen, *Statement on IRS Whistleblower Program* (Aug. 2014), [http://www.irs.gov/pub/whistleblower/Koskinen%20whistleblower%20statement%20-%20version%20082014%20\(2\).pdf](http://www.irs.gov/pub/whistleblower/Koskinen%20whistleblower%20statement%20-%20version%20082014%20(2).pdf); Department of Justice, *The False Claims Act: A Primer* (April 2011), [http://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS\\_FCA\\_Primer.pdf](http://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf).
- 10 SEC Report at 20.
- 11 *Ibid* at 27-29.
- 12 *Ibid* at 10.
- 13 See SEC Rel. 73174, *Order Determining Whistleblower Award Claim* (22 September 2014), <http://www.sec.gov/rules/other/2014/34-73174.pdf>.
- 14 SEC Report at 1.
- 15 17 C.F.R. s 240.21F-3, F-4 & F-8.

- 16 *Ibid.*
- 17 17 C.F.R. s 240.21F-5 & F-6.
- 18 17 C.F.R. s 240.21F-4(c)(3). See also Sean McKessy, *Statement on Court Filing by SEC to Protect Whistleblowers From Retaliation* (20 February 2014), <http://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370540812998#.VKtclWSUdhc>.
- 19 See United States Sentencing Commission, *Guidelines Manual*, s 8b2.1 (2014), <http://www.ussc.gov/guidelines-manual/2014/2014-ussc-guidelines-manual>.
- 20 17 C.F.R. s 240.21F-4(b)(4)(iii) & (v). See SEC Press Release 2014-180 'SEC Announces \$300,000 Whistleblower Award to Audit and Compliance Professional Who Reported Company's Wrongdoing' (29 August 2014), <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542799812#.VKpkHGSUdhc>.
- 21 17 C.F.R. ss 240.3(d)(2) & 240.21F-4(b)(4)(i)-(iii). See also *United States ex. rel. Fair Lab. Practices Assocs. v. Quest Diagnostics, Inc. & Ors*, No 05 Civ. 5393, 5 (SDNY, 5 April 2011).
- 22 See Christian R Bartholomew *et al.*, 'Ten Things to Know About the SEC Whistleblower Program,' *Corporate Counsel* (4 December, 2014), <http://www.corpcounsel.com/id=1202677971374/10-Things-to-Know-About-the-SEC-Whistleblower-Program#ixzz3O1V4qMds>.
- 23 Securities Exchange Act of 1934, s 21F(h)(1), 15 U.S.C. s 78u-6 (h)(1)(B); 17 C.F.R. s 240.21F-2(b)
- 24 See e.g., Securities Exchange Act Rel. 72393, In the Matter of Paradigm Capital Management, Inc. & Anor. (16 June 2014), <http://www.sec.gov/litigation/admin/2014/34-72393.pdf>.
- 25 17 C.F.R. s 240.21F-2(b).
- 26 SEC Release No. 34-64545, *Implementation of the Whistleblower Provisions of Section 21F of Securities Exchange Act of 1934*, 56 (25 May 2011), <http://www.sec.gov/rules/final/2011/34-64545.pdf>.
- 27 *Cf. Asadi v. G.E. Energy (USA), LLC*, 720 F.3d 620 (5th Cir. 2013).
- 28 17 C.F.R. s 240.21F-17. See Bruce Carton, 'SEC Fights 'Pre-taliation' Against Dodd-Frank Whistleblowers,' *Compliance Week* (6 January 2015), <http://www.complianceweek.com/blogs/enforcement-action/sec-fights-pre-taliation-against-dodd-frank-whistleblowers#.VM8Y2mSUF5c>.
- 29 763 F.3d 175, 182-184 (2d Cir. 2014).
- 30 *Ibid.*
- 31 561 U.S. 247, 274-276 (2010).
- 32 See e.g., *Villanueva v. Core Lab. NV & Anor.*, ARB No. 09-108 (ARB 22 December 2011).
- 33 Simon Wolfe *et al.*, *Whistleblower Protection Laws in G20 Countries: Priorities for Action* (September 2014), 4-7, 31-33, 39-40, <https://blueprintforfreespeech.net/wp-content/uploads/2014/09/Whistleblower-Protection-Laws-in-G20-Countries-Priorities-for-Action.pdf>. See also Rebekah Mintzer, 'US Companies Hear the Sound of Whistleblowing Overseas,' *Corporate Counsel* (25 September 2014), <http://www.corpcounsel.com/id=1202671078382/US-Companies-Hear-the-Sound-of-Whistleblowing-Overseas#ixzz3O1RxxSjW>.
- 34 See Rebekah Mintzer, 'Companies Failing to Prioritize Whistleblower Programs,' *Corporate Counsel* (3 December 2014), <http://www.corpcounsel.com/id=1202677833231?>
- 35 See Ronald C Brown, *East Asian Labor and Employment Law*, 422-23, 428, 511-12 (2014). See also John Bowers QC *et al.*, *Whistleblowing: Law and Practice* (2nd ed. 2012).
- 36 See Wendy L Wysong *et al.*, 'Blowing the Whistle on Corruption in the U.S. and China,' *Corporate Compliance Insights* (29 September 2011), <http://www.corporatecomplianceinsights.com/blowing-the-whistle-on-corruption-in-the-u-s-and-china/>.
- 37 Renmin Jianchayuan Jubao Gongzuo [Rules of the People's Procuratorate on Whistleblowing, also known as the SPP Rules] (promulgated by the Supreme People's Procuratorate, 21 July 2014, effective 30 September 2014) (PRC), Art 8.
- 38 SPP Rules, Preamble.
- 39 SPP Rules, Art 8.
- 40 See Transparency International, *Corruption Perceptions Index 2014*, 7, [http://files.transparency.org/content/download/1856/12434/file/2014\\_CPIBrochure\\_EN.pdf](http://files.transparency.org/content/download/1856/12434/file/2014_CPIBrochure_EN.pdf).
- 41 See the Prevention of Bribery Ordinance (Cap 201 of the Laws of Hong Kong) s 30. See also Witness Protection Ordinance (Cap 564 of the Laws of Hong Kong) s 10.
- 42 Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited, Appendix 14 (Corporate Governance Code and Corporate Governance Report), para C.3.8. See also the Commission Against Corruption, 'Good Governance and Internal Control: A Corruption Prevention Guide for Listed Companies,' Best Practices (2008), [http://www.icac.org.hk/filemanager/en/Content\\_1031/listed\\_comp.pdf](http://www.icac.org.hk/filemanager/en/Content_1031/listed_comp.pdf).
- 43 See Kaushiki Sanyal, 'The Whistle Blowers Protection Bill, 2011,' *PRS Legislative Research* (24 January 2011), 4, <http://www.prsindia.org/uploads/media/Public%20Disclosure/Legislative%20Brief%20-%20Public%20Interest%20Disclosure%20Bil.pdf>.
- 44 Himank Sharma, 'SEBI Approves New Corporate Governance Code,' *Reuters* (3 February 2014), <http://in.reuters.com/article/2014/02/13/india-sebi-corporate-governance-code-idINDEEA1C0E620140213>.
- 45 Whistle Blowers Protection Act 2011 (India) s 11(4). See Megha Chandhiok, 'Whistleblower Protection Bill in India: Who Pays for it Anyway?,' 3(1) *International Journal of Management Excellence* 288 (2014), 289-290. See also Deborshi Chaki, 'Whistleblowing and India's Giant Corporations,' *Al Jazeera In-Depth* (10 January 2014), <http://www.aljazeera.com/indepth/features/2014/01/whistleblowing-india-giant-corporations-201411092559554454.html>.
- 46 Whistle Blowers Protection Act 2011 (India) s 4(6). See e.g., Public Concern at Work, *FAQ Answers*, <http://www.pcaw.org.uk/faq-answers>.
- 47 Whistle Blowers Protection Act 2011 (India) s 16. See Sanyal, *supra* at 43, 2-3, 5.
- 48 See Joe Mont, 'U.K. Officials Recommend Against Whistleblower Bounties,' *Compliance Week* (1 July 2014), <http://www.complianceweek.com/blogs/global-glimpses/uk-officials-recommend-against-whistleblower-bounties#.VKuWVMSUdhc>. See also Indira Carr, *The UK Bribery Act: Business Integrity and Whistleblowers*, 4 (4) *Financial Fraud Law Report* 361 (2012), 382-384.
- 49 See Litigation Release No. 22088, *SEC Files Subpoena Enforcement Action Against Deloitte & Touche in Shanghai* (8 September 2011), <http://www.sec.gov/litigation/litrelases/2011/lr22088.htm>.
- 50 See e.g., Michael Rapoport, 'SEC to Drop Suit Against Deloitte Over China Documents,' *Wall St Journal* (27 January 2014), <http://www.wsj.com/articles/SB10001424052702304691904579347310116035206>.
- 51 SEC Report at 16.
- 52 See Tom Devine & Tarek F Maassarani, *The Corporate Whistleblower's Survival Guide: A Handbook for Committing the Truth* 9-16, 46-47 (2011).
- 53 See Iskra Miralem, 'The SEC's Whistleblower Program and Its Effect on Internal Compliance Programs,' 62 *Case Western Reserve University Law Review* 329, 332-333 (2011-2012).
- 54 See Devine & Maassarani, *supra* at 52, 82-88.
- 55 See the Appendix, 'Tips for Corporates in Developing an Effective Internal Whistleblower Program.'



## Sebastian Ko

Sebastian Ko, an associate in Debevoise & Plimpton (Hong Kong office), has been admitted to practice in Hong Kong and New York. His practice focuses on complex and cross-border disputes, and on internal investigations and regulatory enforcements. Mr Ko was recognised as an IPBA Scholar in 2014.



# The New Portuguese Arbitration Law

This article describes the main aspects of the new Portuguese arbitration law. It is based on the last version of the United Nations Commission on International Trade Law ('UNCITRAL') Model Law and includes some of the most modern positions of legal commentators and case law as defined in some of the countries involved in arbitration. One of the main points of the new law is the adoption of the monist option concerning the regime of setting aside domestic awards in comparison with the regime of recognition and enforcement of foreign arbitral awards which are practically the same.



In Portugal, arbitration is a faster form of dispute resolution compared to litigation. It is therefore recommended to use arbitration for dispute resolution in the case of commercial disputes. There is limited judicial intervention allowed, and unless the parties have expressly agreed that the arbitration award may be subject to appeal on the merits of the case, as well as on procedural arbitration matters, the intervention of the Portuguese courts in respect of arbitration proceedings is strictly not allowed. However, the courts may provide support for arbitration by way of injunctive relief where there is a need for the urgent production of evidence and in respect of the recognition and enforcement of foreign and domestic awards.

Portugal is well positioned as a centre for international arbitration, particularly in respect of disputes involving Portuguese and Spanish-speaking parties. Full neutrality is ensured.

It has a modern and comprehensive new arbitration law, which was entered recently into force on 14 March 2012 (Law No 63/2011, dated 14 December 2011) (the '2011 Law'). In addition, Portuguese courts are generally favourable to arbitration. Portugal is a signatory to the New York Convention and has a number of arbitrators and counsel with a great deal of experience in domestic and international arbitration.

The 2011 Law is based on the UNCITRAL Model Law (the 'Model Law'). With regard to aspects of the law not directly covered by the Model Law, the 2011 Law contains provisions which are very friendly to arbitration and which provide some of the most modern solutions to arbitration issues.

The principal sources of arbitration law in Portugal are the 2011 Law, the New York Convention, the Model Law, the ICSID Convention, 42 bilateral investment treaties and 10 international treaties or agreements on conciliation, judicial settlement and arbitration entered into between Portugal and other countries.

In Portugal, only the courts may, in very limited cases, set aside an arbitration award, unless the parties have expressly agreed to allow for the appeal of the award on substantive and procedural issues.

Parties have complete freedom to choose arbitrators. There are no restrictions on the parties' ability to choose arbitrators on the basis of their qualifications or the number of arbitrators or on other grounds. Arbitrators are subject to disclosure requirements regarding their impartiality and independence.

A party cannot challenge an arbitrator that it appointed on the basis of something it already knew before the nomination. If the arbitrator does not withdraw from the arbitration, after having been challenged, the arbitral tribunal shall decide on the matter with the participation of the challenged arbitrator.

Arbitrators are not liable for acts related to the elaboration and adjudication of the award's contents, that is, their decision about how they have judged the dispute, which falls under the same exclusion of liability as judges. However, arbitrators may be found liable for breach of the agreement entered into with the parties to form the tribunal which they are deemed to have entered into upon acceptance of their appointment as arbitrator (which could include liability for breach of express or implied duties to render the award within the statutory or contractual time limit, to be impartial and independent, absence of corruption, duties of confidentiality, and so on).



Portugal is well positioned as a centre for international arbitration.

Arbitrators are bound to keep the arbitration proceedings and the award confidential, unless the parties waive this obligation. This is an essential component of arbitration. Also, the parties are bound by a duty of confidentiality (Article 30(5) of the 2011 Law) regarding all information and documents they have obtained during the arbitration proceedings. However, the parties are entitled to make public any part of the proceedings to the extent necessary to protect/defend their rights, and also where they are bound by a mandatory duty to disclose them to the authorities.

Any party may apply to a court to order the counter-party to disclose a confidential document (notwithstanding that the parties may have agreed duties of confidentiality). The party from whom disclosure is sought is entitled to oppose it based on the confidentiality of the document. The court will decide the issue, taking into consideration both the interests of the applicant, the position of the party owning the document and the nature and contents of the document (Article 575 of the Civil Code). In such a case, the court shall attempt to deal with the application in a confidential manner as far as possible.

There are no grounds on which national courts will stay arbitral proceedings in particular; the courts are not permitted to grant anti-suit arbitration injunctions in order to respect the principle of competence-competence.

There is no presumption of arbitrability or policy in support of arbitration. Under Portuguese law the following matters are in general terms defined as being arbitrable:

- (1) any disputes which are not required to be settled exclusively by mandatory arbitration or under the state court jurisdiction by reason of any special law; and
- (2) the issue under dispute concerns alienable assets or rights or it is a dispute on which a settlement agreement is legally allowed.

The procedure of an arbitration and/or the conduct of an arbitration hearing are matters to be agreed upon by the parties in the first instance and/or as provided for in the rules of the relevant institution where applicable. If no agreement exists or no institutional rules apply regarding the procedure to be followed then the arbitrators themselves can decide this.

The arbitrators must adjudicate the award within 12 months of the date that the last arbitrator accepted his or her appointment. This deadline may be freely extended by the parties or by the tribunal one or more times. The tribunal must justify any extension of the initial term sought and any party is entitled to challenge this. The arbitrators may be liable for damages if they do not render the award within the relevant deadline without justification.

The parties may agree on the rules of disclosure. However, if there are not agreed, arbitrators under the civil law system tend to follow examination of witnesses in accordance with civil law (not common law) methods. In principle, only documents filed by the parties voluntarily are considered. The arbitrators may, however, order any party to file documents which have not been filed voluntarily by any party. If a party, given notice for such purposes, does not comply with a tribunal's order, a party may, after obtaining permission from the tribunal, apply for disclosure of the relevant document to the court of law of the area where the arbitrators are seated. This includes any third party who has a document relevant to the tribunal.

Cross-examination is used, reflecting the principles of the right to be heard and the equality principle. This should be understood as each party, together with the arbitrators, at their right opportunity during a hearing, are entitled to examine not only the witnesses offered by the party, but also cross-examine the witnesses presented by the counter-party.

Arbitrators are fully empowered to require the parties to cooperate in the production of evidence, especially documentary evidence. If a party refuses to cooperate, the arbitrators may take this into consideration in their deliberations. There is no statutory rule, but it is generally accepted as a common practice. A party may also request that the court grant a preliminary order which is similar to (and based on) the Model Law provisions. The preliminary order and the subsequent injunction may relate to the production of documentary evidence or any other injunctive relief.

The 2011 Law provides, following the UNCITRAL Model Law, for the possibility of Portuguese courts to grant injunctive relief in support of an arbitration seated outside Portugal.

Arbitrators have the power to fashion appropriate remedies, for instance, specific performance, injunctions,

interest and costs, etc., if the parties have not agreed otherwise and the applicable substantive law allows for such remedies in general. Punitive and exemplary damages are unknown in Portuguese law.

The tribunal must decide on the issue of costs and will issue any adverse costs award against the party or parties who are held liable to pay them. If the tribunal considers that it is fair and reasonable, it may order the unsuccessful party to compensate the successful party for the full or partial costs which were reasonably incurred by it during the arbitration.

If the tribunal concludes that it is fair and reasonable, the costs of corporate counsel, external counsel and business executives (which can include amounts charged in respect of their time and costs), may be included in the costs award. There are no specific rules about the payment of taxes, including value-added tax ('VAT'), and so general tax legislation applies to the arbitrators.

The severability of arbitration clauses is a fundamental principle of modern arbitration. Under Portuguese law, an arbitration clause is considered to be autonomous and independent of the rest of the contract; accordingly, the arbitration clause will remain valid even if the rest of the contract in which it is included is determined to be invalid.

Competence-competence is another fundamental principle recognised in Portuguese arbitration law. Portuguese state courts are not permitted to grant anti-suit injunctions or to prevent or interfere with the arbitration procedure and may only do so at the end of the arbitration procedure through an action to set aside the award or an appeal (if the parties have agreed that the award can be appealed). Although anti-suit injunctions are valid in some Common Law jurisdictions, they are not accepted in Portugal. The Court of Justice of the European Union has recently also decided unfavourably regarding anti-suit injunctions. However, some commentators have sustained a different position based on the Recast Regulation No 2015/2012 which replaced Regulation No 44/2001.

Portuguese arbitration law only allows third parties to participate in a pre-existing arbitration if the original parties to the arbitration and the tribunal allow it and provided that the third party consents to the pre-existing arbitration agreement.

The parties are free to agree on the substantive applicable law. If they fail to do so, the arbitrators in international arbitration may determine the applicable law and, in such cases, may apply the law they consider most appropriate. There are some limited mandatory international private law rules which must be applied by arbitrators in Portugal irrespective of any conflict of law rules. They are called *normas de aplicação imediata (lois de police)*. The judgment adjudicated by the Court of Justice of the European Union in the case of *Unamar* raised questions about the *lois de police* applicability vis-à-vis Article 9 of the Rome I Regulation.

State courts do not have the power to prevent or limit tribunals' power to grant interim relief. It should be noted that arbitrators' powers as regards injunctive relief are limited in the sense that the tribunal is entitled to award interim relief, but it is not empowered to enforce it. Only the state courts are empowered to enforce such interim measures.

Courts may only interfere to set aside an award in very limited circumstances which relate mainly to procedural matters, such as the violation of the equality of the parties principle and the principle of contradictory proceedings. The only grounds for the court to set aside an award based on substantive law is in respect of public policy (*ordre public*). Defining public policy has proved particularly difficult. The 2011 Law provides that in domestic arbitrations, an award may only be set aside if it is contrary to Portuguese international public policy principles. For international awards, there is an apparent still more limited application of Portuguese international public policy principles in respect of which the courts may only refuse recognition of an international award if the award manifestly breaches such principles. Portuguese international public policy principles are those principles which the Portuguese state may not derogate from by way of any legislation, because such principles are intrinsic to Portuguese culture and are fundamental to and characteristic of the Portuguese legal system.

The parties are allowed to exclude the right of appeal. However, in principle, the parties cannot exclude the right to apply to a state court to set aside an award. The state court is not entitled, under any circumstances, to review the merits of the award or reconsider any further question decided upon by the arbitration tribunal in an action to set aside the award. However, it may review

the merits with regards to public policy issues but only to determine whether such public policy laws were violated. Review of the merits is naturally allowed in the case of an appeal.

Portugal has ratified the New York Convention. A reservation was made in order to accept to recognise and enforce an award if it has been given in a member state. In the case of domestic awards, a successful party wishing to enforce an award must file an application to enforce the award at the state court (first instance) of the district (*comarca*) in which the seat of arbitration is located. If such application is successful, the award will have the same effect as a judgment of a state court at first instance.

Enforcement of a foreign award must be preceded by its recognition in a *Tribunal da Relação* (a second instance state court). The grounds on which recognition of a foreign award may be refused are essentially the same as those provided for in Article V of the New York Convention and the Model Law. After recognition is obtained (*exequatur*), the applicant must file an action for enforcement. Enforcement may take between six months and one year or more depending on the

extent to which the unsuccessful party seeks to oppose the enforcement proceedings. It is important to say that immediately after the action for enforcement is commenced, an execution officer (*solicitador de execução*) will attach the debtor's assets without notice. The same applies to the enforcement of a foreign award. The costs of enforcement depend on the value of the claims. Instructing local counsel is naturally advisable.

Finally, Portuguese courts are obliged to support any arbitral tribunal located outside of Portugal as to adjudication of interim relief or collection of evidence in the Portuguese territory.



**Manuel P Barrocas**  
Managing partner,  
Barrocas Advogados

Manuel Barrocas is experienced in corporate law, M&A, banking law, patents and general contract arbitrations. He is an arbitrator and a member of several arbitration institutions. He is also an Invited professor on Arbitration at the Universidade Nova Law School, Lisbon, Portugal. He has had two books published: 'Manual de Arbitragem' and 'Comments on Portuguese Arbitration Law'.

**Making Business Sense**  
Targeting Your Customers for MAXIMUM Results

For advertising in Inter-Pacific Bar Association Journal, please contact:

**Jennifer Luk**

E: [jennifer@ninehillsmmedia.com](mailto:jennifer@ninehillsmmedia.com)

T: +852 3796 3060

ninehills  
media

# IPBA Arbitration Wisdom

This article<sup>1</sup> provides a guide to some gems of wisdom relating to arbitration, as expressed by 107 members of the IPBA Dispute Resolution and Arbitration Committee in the first IPBA Arbitration Directory. It structures the pieces of advice and invites the reader to accompany the author on a walk through the wisdom of life and arbitration.



## Introduction

In 2015, 107 members of the IPBA Dispute Resolution and Arbitration Committee contributed to the first edition of the *IPBA Arbitration Directory* which was officially released during the IPBA Annual Meeting in Hong Kong on 6 May 2015 on the occasion of the first IPBA Dispute Resolution and Arbitration Committee Drinks. The link between the wisdoms and the chosen occasion for the release, calls for some elaboration:

- In cross cultural arbitrations it is not only important to think, act, plan and deliver in a precise and predictable way (to the extent that this is possible), but as an arbitrator and arbitration counsel, you also need to adjust to the circumstances of cross-cultural challenges.
- When we as lawyers need to decide whether or not to work within another jurisdiction, it is important to know your colleagues within the arbitration scene. The decision of whom to work with or whom to choose as an arbitrator is based on what kind of perception you have of them; their reasoning, their sincerity and their commitment.
- In finding this out, some wine may help. For this, in a culture going back to 753 BCE and fading away in the fifth century CE, the Romans had a saying: *'In vino veritas'*, which may be translated in a modern way as: *'Discussions made over the consumption of*

*some (excellent) wine will actually reveal if and to what extent your discussion partner is honest and straightforward, and what he or she really thinks'*. In short: *'The wine reveals the truth.'* Similar sayings exist in other cultures, for example, the Greek culture (*'Εν οίνω ἀλήθεια*) or the Chinese culture (酒後吐真言 – *'After wine blurts truthful speech'*).<sup>2</sup>

- There may be a presumption that those dispute resolution and arbitration specialists who have joined the IPBA are, by definition, honest and committed representatives of their jurisdictions. Yet everybody has to find that out for him- or herself. This is why the decision to release the first edition of the *IPBA Arbitration Directory* at the first IPBA Dispute Resolution and Arbitration Committee 'Drinks', did seem appropriate.

The contributions compiled for the first edition of the *IPBA Arbitration Directory* came from 107 arbitration specialists of varying expertise (including, sadly, only 22 women) in 22 jurisdictions worldwide. The majority of the contributions come from truly 'Asian-Pacific' specialists including arbitration specialists from Asia, Australia and the US West Coast (69). About one third were from the other parts of the world such as Europe, the Arabic World and East USA (38). African and South American colleagues are still missing.<sup>3</sup>



Everybody was asked to contribute a piece of wisdom. The question was posed in a very open way. Accordingly, the editors of the Directory – the Co-Chairs of the Dispute Resolution and Arbitration Committee, Mohan Pillay (India)<sup>4</sup> and Juliet Blanch (UK), as well as the author of this note – received a wide variety of wisdoms representing different interpretations of the question. The pieces of wisdom can be structured into six categories:

- General wisdom and life experience.
- Wisdom focusing on coping with cross-cultural challenges.
- Wisdom focusing on general advocacy skills.
- General arbitration wisdom.
- Arbitration focused wisdom for counsel.
- Arbitration focused wisdom for arbitrators.

This article provides an overview. It seeks to guide you through over 100 pieces of advice from the perspective of an arbitration lawyer.

### General Wisdom and Life Experience

The first group of pieces of wisdom relates to basics: What a great world this could be if we all were able to consider these wisdoms at all times on a regular basis! If our clients would all act according to these principles, there would be less arbitration.

A number of wisdoms invite us to keep **learning**:

- No matter where you are in your career, you can still learn. Stay curious and take time to learn from others.<sup>5</sup>
- Seek to learn something from what happens.<sup>6</sup>
- Never stop learning – always keep improving yourself.<sup>7</sup>
- Be open to learn something new from others (comprising the parties in a dispute) every day.<sup>8</sup>
- Be grateful for every piece of work (whatever the size or value); complete it well, with integrity, and go the extra mile if there are any mistakes (by yourself or others) along the way, learn from them, and move on.<sup>9</sup>
- Take advantage of the experience learned from peers, clients and client's counterparts.<sup>10</sup>
- Take criticism as a way to improve.<sup>11</sup>

We need **patience**:

- Remain steady and committed in whatever you do – success will follow.<sup>12</sup>

Further, **humour** is helpful: *In arbitration, as in life, a well-dosed spot of humour can go a long way.*<sup>13</sup>

So is an open mind:

- Never say never.<sup>14</sup>
- There is nothing permanent except change.<sup>15</sup>

... and an **understanding of our perspective**:

- See the big picture but understand the detail!<sup>16</sup>
- Don't miss the forest for the trees. The end-goal is the objective.<sup>17</sup>
- Always keep an eye open for the big picture.<sup>18</sup>

We need **commitment** in order to be on top of things and at the top:

- Always Try Your Best.<sup>19</sup>
- 'A mind needs books as a sword needs a whetstone, if it is to keep its edge.' Keep pursuing knowledge and constantly be on the lookout for the latest trends, articles, awards, jurisdictional updates and journals surrounding the legal world – specifically the global alternative dispute resolution scene.<sup>20</sup>

Commitment and hard work having been done, we can **trust** that the rest will follow:

- Be professional, sincere, responsive, work hard, follow ethics and leave the rest to god.<sup>21</sup>
- Never give up and never relent – You never know which turn it could take!<sup>22</sup>

To work well, we need **structure**:

- Decide what you want to do, plan ahead and execute with precision and determination.<sup>23</sup>
- 'Talk is silver – silence is golden'.<sup>24</sup>
- Think enough before taking actions.<sup>25</sup>
- Quidquid agis prudenter agas et respice finem. (Whatever you do, do it wisely and consider the end).<sup>26</sup>

We always need to be **thorough** and **prepared**:

- Be thorough and prepared, whether as counsel or arbitrator.<sup>27</sup>

We should keep things as **simple** as possible:

- Keep it simple.<sup>28</sup>

It helps to not forget the reasons why clients engage in trade and production. We need to develop or safeguard a certain **business mind**:

- Be commercial.<sup>29</sup>

It is, of course, important to be **efficient**:

- Strive to be flexible and firm when needed – and always effective.<sup>30</sup>

**Happiness** helps to not only feel better, but to even be better and convincing in your job:

- Enjoy your work and you will do well.<sup>31</sup>
- Happiness is when what you think, what you say, and what you do, are in harmony.<sup>32</sup>

Among the so-called 'soft skills' as compared to the law, **gentleness** also helps:

- 'Let your gentleness be evident to all'.<sup>33</sup>
- Stay calm and focused in any situation irrespective of the (supposed) pressure.<sup>34</sup>

This comes along with **respecting** others:

- Respect the professionals.<sup>35</sup>

More generally, we need to act with **integrity**:

- Maintain your personal integrity at all costs.<sup>36</sup>
- Always do everything to preserve integrity – your own and your fellow arbitrators/arbitration colleagues. Integrity of the arbitrators is the backbone of arbitration and vital for its acceptance by users.<sup>37</sup>

Integrity is based on an **ethical mind-set** which provides its basis:

- Do what is ethically right: It takes years to build trust but seconds to destroy it.<sup>38</sup>
- Follow the Wisdom of English Philosopher and Rock 'n' Roll Survivor Keith Richards: 'I've always just tried to avoid doing anything that would make me cringe. Anything I do, I like to be able to live with.' (Jessica Pallington West, What would Keith Richards do? Daily Affirmations from a Rock 'n' Roll Survivor, 2009, p 116).<sup>39</sup>



Nonetheless, in this complex world, it helps to also look around:

- Back yourself.<sup>40</sup>

With these skills and basics of a general nature, we are ready to enter the more complex world of cross cultural challenges which we often face in international arbitration (see further Part III **below**).

### Wisdom Focusing on Coping with Cross-Cultural Challenges

Sebastian Ko of Hong Kong puts many of the numerous basic skills set forth above in Part II into perspective with the challenges of cross-cultural work:

- Be effective and efficient. **Adapt to different styles and cultures of arbitration** and advocacy.
- Be pragmatic and practical. Organise your case and get your client's story across.
- Do not mindlessly adopt the rules and manners of litigation. Do not engage in cheap games and hold off a good settlement – do act in your client's best interests.<sup>41</sup>

Also, Patrick Norton of Washington, DC (United States) reminds us of the impact of legal diversity on international arbitration:

- Familiarise yourself with the basic litigation rules and procedures of the civil and common law systems; both strongly affect the conduct of international arbitration.<sup>42</sup>

**Cultural diversity** goes beyond the culture of arbitration and the diversity of law:

- As an arbitrator in an international commercial arbitration, be aware of the **different business cultures** that parties often operate in and the diverging cultural values that they have been brought up with. They may have chosen the governing law of the contract, but their actions are often inspired if not dictated by their **cultural genes and norms**.<sup>43</sup>
- As an arbitrator in an international arbitration: **do not assume that everyone is on the same page** as to how arbitrations are conducted. Understand the cultural background from which the parties come and accommodate their way of doing things to the

extent possible.<sup>44</sup>

- Be **sensitive to the real differences in corporate cultures and legal practices** in cross-border disputes.<sup>45</sup>

Gerhard Wegen of Stuttgart (Germany) provides encouraging words to all of us, regardless of where we come from. We **all can learn to cope with cross-cultural challenges** on the basis of good training in our home jurisdiction:

- It is not important in which jurisdiction you have studied law and are admitted to. It is decisive that you are an excellent lawyer in that jurisdiction. On that basis, you may expand into other jurisdictions and develop your cross cultural legal awareness which will prove to be an important element of success in international arbitration.<sup>46</sup>

With this set of basic and cross-cultural skills and wisdoms as a foundation (as described above in Parts II and III), we are prepared to approach the art of advocacy in Part IV below.

### Wisdom Focusing on General Advocacy Skills


Robert Davidson of New York (USA) reminds us of the reason why we are needed as lawyers:

- There is no world commerce without a means to the swift, certain and honest enforcement of contractual obligations.<sup>47</sup>

Thus, the law provides the **backbone** for international trade. Such an important purpose of the law should inspire us to **live up to our best**:

- Your most important case should always be the case on which you are currently working.<sup>48</sup>
- Be **precise** and be **effective** and act **in good faith** to enable seek relief for your Client. Respect your timelines and stick to your schedule and last but not the least do not advise Clients to challenge every order passed by the Arbitrator irrespective of whether there's merit in the challenge or not.<sup>49</sup>
- Be **strategic** and **think at all times of your client's objectives** and end game.<sup>50</sup>
- **Design the process** to suit the dispute.<sup>51</sup>
- Each case deserves a **fitting procedure**.<sup>52</sup>
- Based on **comprehensive analyses**, make the optimal choice.<sup>53</sup>

- As counsel, **plan meticulously and strategise** to ensure the client gets the desired result.<sup>54</sup>
- Written submissions should be as **concise** as possible.<sup>55</sup>
- **Present evidence** in a manner that is **clear and easy to understand**. If you can't understand what your expert is saying, there is no way the Tribunal will be able to either.<sup>56</sup>
- Must have **capability to see all sides** of argument.<sup>57</sup>
- Check if your submission can be more **concise** and easier to read/view.<sup>58</sup>



Counsel and evidence  
decide the case.

Of course, we need to **concentrate on the client**:

- Be **sensitive to when you must listen** to the client and let the client know when it must listen to you.<sup>59</sup>
- Put yourself in clients' shoes and think always of creating added-value for them.<sup>60</sup>
- Make sure your client knows what the game plan is, what steps will be happening at any given time, and confirm each of these steps. This **manages expectations**, allows the client to arrange resources, and avoids misunderstandings.<sup>61</sup>

In managing the client's expectations, it may be helpful to remind him that he must help with **evidence**:

- Counsel and evidence decide the case.<sup>62</sup>

If we live up to our best, with all the tools as described above, there is nothing to worry about. Anton Maurer of Stuttgart (Germany) reminds us of the fall-out if we act otherwise (which is unthinkable with the IPBA mind-set described above in Part I):

- If you don't take care of your client, somebody else will.<sup>63</sup>

In providing our best, we should **never forget the basic values** already set forth above in Part II. Duncan McComb of London (United Kingdom) reminds us of the necessary combination between general behavioural skills and the art of advocacy:

- Polite but firm is the only style of advocacy which actually gets results.<sup>64</sup>

*A personal note:* This saying reminds me of my childhood in Hamburg, Germany, where my father taught us a Roman saying in the same direction: *Suaviter in modo, fortiter in res* (Be gentle in your doing, but strong with respect to substance).<sup>65</sup>

Armed with such general advocacy skills we are ready to engage as counsel in arbitration (see Parts V-VI below). Wilfred Abraham of Kuala Lumpur (Malaysia) encourages us to actually **get involved in arbitration**:

- Arbitration is a progressive form of dispute resolution. It does not have the rigours of court proceedings. Encourage the younger lawyers to get involved in arbitrations; it is a growing field and an interesting area.<sup>66</sup>

## General Arbitration Wisdom

Arbitration is important:

- Arbitration is an important Branch of Mercantile law and can help resolving disputes. In my Opinion, Arbitration should be encouraged.<sup>67</sup>

From a paramount perspective, counsel and arbitrators work towards **a joint goal**. Girolamo Abbatescianni of Milano (Italy) correctly reminds us :

- As there is no appeal on the merit against Arbitral Awards, Counsel and Arbitrators have a primary duty **to achieve a just and fair decision**.<sup>68</sup>

In this context, Sitpah Selvaratnam of Kuala Lumpur (Malaysia) underlines similar duties for counsel and arbitrators to work on **developing the right understanding of the case**:

- Much of judicial finding is premised on perception. So, as Counsel, place yourself in the shoes of the Tribunal, to assess how your client's position may be viewed by the Tribunal. As Arbitrator, see the case from the perspective of the respective parties, especially when disputes bear cross-cultural elements, for a wholesome appreciation of the circumstances.<sup>69</sup>

Tan Sri Cecil Abraham, also of Kuala Lumpur (Malaysia), underlines the duty to work in a **spirit of efficiency**:

- It is important that an arbitration be conducted efficiently hence time and cost considerations are important.<sup>70</sup>

The foundation of **respect for cultural diversity** which is known to us through the numerous pieces of wisdom focusing on cross-cultural challenges (see Part III above) is also part of the general wisdom of arbitration. Felix Dasser of Zurich (Switzerland) describes the impact of diversity as follows:

- Arbitration is many different things to many different people. So, choose your venue, your counsel and your arbitrator wisely – it makes all the difference in the world!<sup>71</sup>

Marc Frilet of Paris (France) gives an example of using arbitration and the creation of arbitration centred as **a tool to develop the legal system in developing countries**:

- As an upfront lawyer for development and negotiation of complex construction, infrastructure, and mining projects, mostly in France and Francophone Africa, I am more involved on a day to day basis in the organisation of disputes, avoidance, and ADR mechanisms, such as Partnering, Dispute Boards and others. My main practice relating disputes is ADR. I have participated to the **design of Arbitration Centres** and I am promoting **simpler and more efficient arbitration for developing countries** (essentially within the OHADA framework).<sup>72</sup>

Of course, in arbitration, we may **not forget the foundations** set forth in Part II above, for example, our **readiness to always learn**, improving our skills:

- Be ready to learn of new developments in the practice of arbitration.<sup>73</sup>

Isabelle Smith Monnerville of Paris (France) goes one step further and suggests distilling from each arbitration what can be learnt to prevent such disputes from unfolding again.

- Apply **RETEX methods**: Keep a **record of what caused disagreements** to degenerate into disputes so that lessons are learned for future projects as part of a **kaizen approach aimed at preventing disputes**.<sup>74</sup>

## Arbitration Focused Wisdom for Counsel

Within the chronology of arbitration, some advice – from Gerald (Jerry) S Clay, Honolulu (USA) and Benjamin F Hughes of Seoul (Korea) – suggests to take a moment before even agreeing to an arbitration and to consider alternatives to arbitration:

- Try Mediation First – both you and your client will benefit.<sup>75</sup>
- Try mediation. It works surprisingly often, and can save you (or your client) a great deal of time, money and frustration.<sup>76</sup>

If mediation does not work or is not an option under the circumstances, it is time to focus the concentration on the process of arbitration and on our **function as arbitration counsel**.

One of the **key duties** of counsel is **to choose the best possible arbitrator** for the case under the circumstances. A number of wisdoms focus on this duty:

- Your **arbitration is only as good as your Arbitrator!**<sup>77</sup>
- Appoint an arbitrator both **suitable** to the dispute and who **genuinely has time available** to ensure prompt resolution of the reference.<sup>78</sup>
- Ideally, the panel should include at least a member who is **trained in the substantive law** of the case.<sup>79</sup>
- [... make as many 'IPBA-friends' as possible, because,] when choosing an arbitrator you need to have a **good feeling for his or her way of thinking.**<sup>80</sup>
- Carefully select an arbitrator who holds adequate experience as well as the **appropriate expertise and skills** for each particular case.<sup>81</sup>
- There are **more good arbitrators around than you believe.**<sup>82</sup>

There are a number of **strategic options** with respect to the person of the arbitrator. Here are two complimentary and/or different views. A number of us look for **experience**:

- To ensure fair and independent awards and avoid its challenge, appoint trained and adequately qualified arbitrators.<sup>83</sup>
- Consider appointing an international arbitrator with much experience and do not limit your candidates only to someone based in the seat of arbitration or who has the same nationality with your client.<sup>84</sup>
- Consider choosing an arbitrator who has vast experience in both disputes and transactions for clients in different jurisdictions.<sup>85</sup>

A counter-voice calls for the **rising star**:

- It is often better to appoint a rising arbitrator who is eager to prove himself and the quality of his work.<sup>86</sup>

Young Seok Lee of Seoul (Korea) reminds us in this context of the primordial importance of the **choice of the chairperson** (which, in a three-person-arbitrator setting<sup>87</sup> is usually a **key function of the co-arbitrators**, who – in many arbitration cultures – may liaise for this purpose with the counsel who have appointed them, provided that they do not discuss the case itself):

- Especially for a chair position, it is important to find an **arbitrator who respects due process**, but at the same time paying attention to resolve disputes **promptly and efficiently.**<sup>88</sup>

When choosing an arbitrator, we need to have the **fundamental values** in mind discussed in Part II above:

- **Competence and integrity** – essential criteria in choosing an arbitrator or counsel.<sup>89</sup>
- **Never appoint a friend** as an arbitrator! Even if you behave ethically correct in your jurisdiction (the issue is meanwhile on the orange list of the IBA Guidelines on Conflicts of Interest in International Arbitration), by appointing a friend you block yourself because you cannot meet that person in private during the entire duration of the arbitration. Professional work and success should never jeopardise a personal friendship.<sup>90</sup>

The cross-cultural dimension of a case (see Part III above) also requires our attention, as noted by Sae Youn Kim of Seoul (South Korea):

- Appointing an international practitioner with **both a civil and common law background** will be useful where parties come from different jurisdictions and parties are aiming to enforce their awards in various jurisdictions.<sup>91</sup>

Once the arbitration tribunal is constituted, you need to concentrate on **the arbitration procedure itself**. A series of wisdoms give good advice with respect to the conduct within the arbitration itself:

- Besides understanding the substance, **strategy plays an important role** in dealing with arbitration cases.<sup>92</sup>
- Show the tribunal that it can trust your submissions: **stick carefully to the facts** and don't be tempted to take **unreasonable positions.**<sup>93</sup>
- Most arbitrators will rely on his or her judgment of fairness when conducting an arbitration, and then guide these regulations to fit in with these beliefs. And thus, **winning the arbitrator's judgment of fairness is tantamount to a win in arbitration.**<sup>94</sup>

Omar Puertas Álvarez of Shanghai (China) and Edmund Wan of Hong Kong (Greater China) remind us that the art of arbitration already begins at the level of **contract drafting and negotiation**:

- A well-drafted and well-designed dispute resolution clause is the key in many occasions to actually push the parties to find an amicable solution before

initiating formal proceedings. A poorly drafted or non-existent dispute resolution clause will most likely be exploited to its benefit by one of the parties.<sup>95</sup>

- Care must be taken in drafting arbitration and dispute resolution clauses, especially in transactions which involve a suite of contracts and several parties. Arbitration practitioners should be involved in the drafting and negotiation of arbitration clauses in complex transactions.<sup>96</sup>

In this context, Alfred Wu of Hong Kong (Greater China) reminds us of the **paramount importance of the seat** of the arbitration (which implies, for example, the applicable arbitration law and the competence of the – common or civil law – court in case assistance by a state court is needed):

- Choose the right seat for your arbitration.<sup>97</sup>

In this context, it must be noted that as of today over 1,000 arbitration institutions exist. They are of different backgrounds, specialisations and scope. K Shanti Mogan, Kuala Lumpur (Malaysia) reminds us of one of the new rising stars in the arbitration scene:

- **Sophistication, expertise and the ease of enforceability** has long been viewed as the hallmark of arbitration – this remains true today in light of the use the ADR mechanism in investor state disputes, international banking and financial disputes, and cross-border mergers and acquisitions. In this connection, 2014 has seen the launch of the **new KLRCA<sup>98</sup> rules** and ongoing negotiations to host the Permanent Court of Arbitration in Malaysia. Malaysia is definitely headed in the direction of becoming the **choice centre for arbitration in the Asian region.**<sup>99</sup>

A modern angle – since the change of the ICC Arbitration Rules in 2012<sup>100</sup> – is the issue of the **emergency arbitrator** which needs consideration at the drafting stage:

- In negotiating [an] arbitration clause, the party should carefully consider whether to opt out of the emergency arbitrator or not.<sup>101</sup>

In this context, we must consider **national enforcement problems**, of which Edgardo Balois of Makati City (Philippines) reminds us:

- From the Philippine perspective, arbitration is **not cheap nor a speedy** recourse to redress commercial contractual breaches. An enforcement of a London Court award was **contested in the local courts for 6 years** and has been pending with the Supreme Court for 3 years already. An ICC award is being enforced but is mired in a local court for about 2 years as of March 2015. It will take another 4 to 5 years for the Supreme Court to rule on it if elevated by a party adversely affected by the local court's ruling. An ICSID pecuniary award will be voluntarily satisfied by the losing party but the payment procedure and proof/form of satisfaction of the award are still being negotiated.<sup>102</sup>

With experience as counsel, the time will come to move on and to also act as arbitrator – if your peers decide to choose you. *Bernhard F Meyer* of Zurich, Switzerland, has observed this latter aspect, combined with a formulation which calls for diligence and patience in a way which lets us sense seniority and experience:

- You cannot make yourself an arbitrator, only your colleagues can. Get a good international education, have a multi-cultural attitude, be diligent, prepared to work hard – and be patient! Success will come ...<sup>103</sup>

Masafumi Kodama of Osaka (Japan) reminds us of the **positive synergy** which arbitrating has upon counselling:

- You will find that you will become a better advocate as a lawyer when you gain experience as an arbitrator.<sup>104</sup>

### Arbitration Focused Wisdom for Arbitrators<sup>105</sup>

Conducting an arbitration is a complex matter, especially in an international context. As arbitrators we are expected to basically be endowed with all the wisdom set forth in Parts I through V above. We are expected to know and observe the applicable laws, the foundations of the legal process and the behavioural skills such as integrity and civility. A number of the IPBA arbitration wisdoms underline these essentials.

Jihn U Rhi of Seoul (South Korea) reminds us of the **importance of understanding** the underlying business issue.

- Be an arbitrator **trying to understand business**. Listen to what the parties would like to present and sometimes wait until the case becomes mature to be arbitrated.<sup>106</sup>

Manuel P Barrocas of Lisbon (Portugal) points towards the **importance of serving justice** and applying the law (we are there to decide matters on the basis of the agreed or otherwise applicable law):

- Think at all times of serving Justice and not salomonic solutions.<sup>107</sup>

Philip Koh Tong Ngee of Selangor Darul Ehsan (Malaysia) and Denis Brock of Hong Kong, give advice with respect to the **style** of conducting an arbitration procedure:

- A wise Adjudicator of dispute **listens** with courtesy and **civility but with firm hands** manages a just outcome on law and facts.<sup>108</sup>
- **Be flexible** and not obsessed with form over substance.<sup>109</sup>

Also as an arbitrator, it is important to pay attention to the **cross-cultural dimension** of the arbitration. Susan Munro of Beijing (China) reminds us of this key aspect:

- When sitting as an arbitrator in international disputes, it is important to **pay close attention to the respective cultural norms and expectations** of the parties, particularly if they are not represented by experienced international counsel. The ability to tune in to cultural nuances can often contribute significantly to a smooth and efficient arbitration.<sup>110</sup>

At the same time, it is also important to act in a **cost efficient** way, as pointed out by Arthur X Dong, also of Beijing (China):

- Parties [...] choose to arbitrate because it's efficient. Therefore, the tribunal shall try every means **within the framework of governing law** and arbitration rules to **expedite the proceedings**, to save the parties time and money.<sup>111</sup>

The ultimate goal of the arbitration proceeding is resolving the dispute. If the parties do not settle, they expect an enforceable award. To this end, Dong (Eric) Liu of Beijing (China) and Net Le of Ho Chi Minh City (Vietnam) remind us **to always keep an eye on the conditions for enforceability of the arbitral award**:

- Pay special attention to **procedural details** of the arbitration to ensure your award will be recognised

and enforced in China.<sup>112</sup>

- Strict **compliance with local arbitration law, arbitration rules, and the arbitration agreement** are a key aspect of sustaining the arbitral award in Vietnam, due to the supervision of the Vietnamese court in arbitration proceedings.<sup>113</sup>

## Conclusion

All of these pieces of personal wisdom serve as a series of snapshots on various key aspects of the art of arbitration. In their sum, these personal wisdoms provide an impressive overview which can be used as a tool of inspiration. It is the cumulative wisdom from 22 nations, united through IPBA membership, which has led to the value of its substance.

It should inspire us to look out into the world, to get to know our IPBA relations and to have an open mind towards them. In the words of Pierfrancesco Fasano:

- Lawyers, when and where you need.<sup>114</sup>

The words addressed by Masafumi Kodama to **young Japanese practitioners**, by Chloe Bakshi of London (United Kingdom) to **young arbitrators** and by Jo Delaney of Sydney (Australia) to **young female practitioners** apply to all of us:

- Go abroad and present yourself more!<sup>115</sup>
- For young arbitrators: Building and maintaining your international network from the very beginning of your career is invaluable in order to grow in your own career in international arbitration and to service your case needs. Always follow up with new contacts and make the time to reach out to your existing contacts on a regular basis. You never know when the opportunity to work together may arise.<sup>116</sup>
- For young female arbitrator lawyers, I would advise becoming involved in the arbitration community. Be confident in doing so!<sup>117</sup>

Tan Ai Leen of Singapore puts these encouragements in yet a broader and **encouraging context**:

- International arbitration is a great way to meet arbitration colleagues around the world.<sup>118</sup>

Paul Sandosham of Singapore calls upon us **to share our wisdom in teaching**:

- Get involved in teaching arbitration courses. You'll find it very gratifying!<sup>119</sup>

Teaching permits reciprocal learning; this encouragement thus closes the circle with the emphasis on learning made by many of us in the pieces of general wisdom and of life experience with which this overview started.<sup>120</sup>

To close, I will cite Robert Christopher Rhoda of Hong Kong who convincingly summarises an important **goal** of the IPBA Dispute Resolution and Arbitration Committee:

- **Get to know as many of your IPBA friends as possible;** the ability to pick up the telephone to fellow practitioners across the globe is priceless.<sup>121</sup>

**Notes:**

- 1 This article is dedicated to *Dr Bernhard F Meyer*, Senior Partner MME Legal AG, Zurich, Switzerland and Jurisdictional Council Member, IPBA. *Bernhard Meyer* was the first to support the idea of the IPBA Arbitration Directory in Rio de Janeiro, where the idea was born, the first to reply to the questionnaire and to supply a piece of personal wisdom. By error, he was not included in the first printed edition of the Directory. See footnote 102 below.
- 2 Wikipedia.org (English version), visited on 6 May 2015.
- 3 Yet, this will change in the future. Special recognition should be given to arbitration lawyer Ronaldo Veirano of Veirano Advogados

- in Rio de Janeiro (Brazil). He has co-hosted the IPBA Mid-Year Meeting 2014 where the idea for the *IPBA Arbitration Directory* was born. His firm was one of the sponsors of the first IPBA Arbitration Drinks, where the *IPBA Arbitration Directory* was released (along with Brödermann Jahn of Hamburg (Germany), MME of Zurich (Switzerland), Rajah & Tann of Singapore and Consulegis, an international network of law firms).
- 4 The CV of the arbitration specialist Mohan R Pillay is not yet mentioned in the *IPBA Arbitration Directory* and is due for inclusion in the second edition.
  - 5 Chiann Bao, Hong Kong (Greater China). All highlights in the quotes have been supplemented for the purposes of this article.
  - 6 Paul Key QC, London (United Kingdom).
  - 7 Edmund J Kronenburg, Singapore.
  - 8 Ivett Paulovics, Milano (Italy).
  - 9 Naresh Mahtani (Singapore).
  - 10 José Rosell, Paris (France).
  - 11 Christopher To (Hong Kong).
  - 12 Lalit Bhasin, New Delhi (India).
  - 13 Christopher Boog (Singapore).
  - 14 Maxine Chiang, Taipei (Taiwan).
  - 15 Vyapak Desai, Mumbai (India).
  - 16 Alec James Emmerson, Dubai (UAE).
  - 17 Daniel Lim Ying Sin (Singapore).
  - 18 Monika McQuillen, Zurich (Switzerland).
  - 19 Colin YC Ong, Bandar Seri Begawan (Brunei).
  - 20 Sundra Rajoo, Kuala Lumpur (Malaysia).
  - 21 Dhruv Wahi, New Delhi (India).
  - 22 Balz Patrik Gross, Zurich (Switzerland).
  - 23 Teh Guek Ngor Engelin (Singapore).
  - 24 Simon Gabriel, Zurich (Switzerland).
  - 25 Marvin Lei Li, Beijing (China).



Teaching permits reciprocal learning.

- 26 Peter Heckel, Frankfurt/Main (Germany).  
 27 Tunku Farik Ismail, Kuala Lumpur (Malaysia).  
 28 Lars Markert, Stuttgart (Germany).  
 29 Timothy Elsworth, London (United Kingdom).  
 30 Janet Walker, London (United Kingdom).  
 31 Peter Chow (Hong Kong).  
 32 Mugi Sekido, Tokyo (Japan).  
 33 Kap-You (Kevin) Kim, Seoul (South Korea).  
 34 Urs Weber-Stecher, Zurich (Switzerland).  
 35 Zhang Hongjiu, Beijing (China). This basic reminder is important and relevant because, in some arbitration hearings, some counsel tend to forget such basics. It is the art of the arbitrator to reduce such tensions, be it by a short break or another method.  
 36 Paul Mitchard (Hong Kong).  
 37 Dorothee Ruckteschler, Stuttgart (Germany).  
 38 Young-Moo Shin, Seoul (South Korea).  
 39 Stephan Wilske, Stuttgart (Germany).  
 40 Robert Newlinds, Sydney (Australia).  
 41 Sebastian Ko (Hong Kong).  
 42 Patrick Norton, Washington, DC (USA).  
 43 Theodoor Bakker, Jakarta (Indonesia).  
 44 Sumeet Kachwaha, New Delhi (India).  
 45 Abraham Vergis (Singapore).  
 46 Gerhard Wegen, Stuttgart (Germany).  
 47 Robert B Davidson, New York (USA).  
 48 Nils R Eliasson (Hong Kong).  
 49 Shweta Bharti, New Delhi (India).  
 50 Juliet Blanch, London (United Kingdom).  
 51 Doug Jones AO, London (United Kingdom).  
 52 Martin Wiebecke, Zurich (Switzerland).  
 53 Jason WU (Tzi-Sheng WU), Taichung City (Taiwan).  
 54 Suchitra Chitale, New Delhi (India).  
 55 Yoshimasa Furuta, Tokyo (Japan).  
 56 Alexander Gunning QC, London (United Kingdom).  
 57 Michael Kim, Seoul (South Korea).  
 58 Masafumi Kodama, Osaka (Japan).  
 59 Sumeet Kachwaha, New Delhi (India).  
 60 Luong Van Trung, Ho Chi Minh City (Vietnam).  
 61 Michael Cartier, Zurich (Switzerland).  
 62 Shiro Kuniya, Tokyo (Japan).  
 63 Anton Maurer, Stuttgart (Germany).  
 64 Duncan McComb, London (United Kingdom).  
 65 According to the website Wikipedia (visited on 6 May 2015), the saying is attributed to Claudio Aquaviva (1543-1615) who lived in Naples and Rome.  
 66 Wilfred Abraham, Kuala Lumpur (Malaysia).  
 67 Sultan Ahmad Sheikh, Karachi (Pakistan).  
 68 Girolamo Abbatescianni, Milano (Italy).  
 69 Sitpah Selvaratnam, Kuala Lumpur (Malaysia).  
 70 Tan Sri Cecil Abraham, Kuala Lumpur (Malaysia).  
 71 Felix Dasser, Zurich (Switzerland).  
 72 Marc Frilet, Paris (France).  
 73 Dato' Karam Chand Vohrah, Kuala Lumpur (Malaysia).  
 74 Isabelle Smith Monnerville, Paris (France).  
 75 Gerald (Jerry) S Clay, Honolulu (USA).  
 76 Benjamin F Hughes, Seoul (Korea).  
 77 Gary Soo (Hong Kong).  
 78 Ravi Aswani, London (United Kingdom).  
 79 Frank Spoorenberg, Geneva (Switzerland).  
 80 Eckart Broedermann, Hamburg (Germany).  
 81 Sally Harpole, San Francisco (USA).  
 82 Björn Etgen, Munich (Germany).  
 83 Nusrat Hassan, Mumbai (India).  
 84 Hiroyuki Tezuka, Tokyo (Japan).  
 85 Chang Rok Woo, Seoul (South Korea).  
 86 Dato' Nitin Nadkarni, Kuala Lumpur (Malaysia).  
 87 This is the usual default rule in UNCITRAL Model Law countries, see Art 10 para 2 of the UNCITRAL Model Law on International Commercial Arbitration (1985 and 2006 versions).  
 88 Young Seok Lee, Seoul (South Korea).  
 89 Arthur Autea, Makati City (Philippines).  
 90 Eckart Brödermann, Hamburg (Germany).  
 91 Sae Youn Kim, Seoul (South Korea).  
 92 M Husseyn Umar, Jakarta (Indonesia).  
 93 Angus Rodger, London (United Kingdom).  
 94 Nef Le, Ho Chi Minh City (Vietnam).  
 95 Omar Puertas Álvarez, Shanghai (China).  
 96 Edmund Wan, Hong Kong (Greater China).  
 97 Alfred Wu (Hong Kong).  
 98 KLRCA stands for the 'Kuala Lumpur Regional Centre for Arbitration'. Its arbitration rules are based on the UNCITRAL Arbitration Rules, as is this case of the Chinese European Arbitration Centre ('CEAC') in Hamburg, Germany, which the author manages. These joint roots were one of the reasons for the conclusion of a Cooperation Agreement between the KLRCA and CEAC in 2010.  
 99 K Shanti Mogan, Kuala Lumpur (Malaysia).  
 100 ICC Arbitration Rules 2012 Art 29 and Appendix V.  
 101 Junichi Yamazaki, Tokyo (Japan).  
 102 Edgardo Balois, Makati City (Philippines).  
 103 Electronic Addendum to the IPBA Dispute Resolution and Arbitration Committee, with an email- 'Erratum'.  
 104 Masafumi Kodama, Osaka (Japan).  
 105 For the important task of co-arbitrators to choose a chairperson, see the wisdom referred to above in Part VI.  
 106 Jihn U Rhi, Seoul (South Korea).  
 107 Manuel P Barrocas, Lisbon (Portugal).  
 108 Philip Koh Tong Ngee, Selangor Darul Ehsan (Malaysia).  
 109 Denis Brock (Hong Kong).  
 110 Susan Munro, Beijing (China).  
 111 Arthur X Dong, Beijing (China).  
 112 Dong (Eric) Liu, Beijing (China).  
 113 Nef Le, Ho Chi Minh City (Vietnam).  
 114 Pierfrancesco C Fasano, Milano (Italy).  
 115 Masafumi Kodama, Osaka (Japan).  
 116 Chloe Bakshi, London (United Kingdom).  
 117 Jo Delaney, Sydney (Australia).  
 118 Tan Ai Leen (Singapore).  
 119 Paul Sandosham (Singapore).  
 120 See the wisdoms which invite us to keep learning in Part II above.  
 121 Robert Christopher Rhoda, Hong Kong (Greater China).



**Eckart Brödermann**  
Managing partner, Brödermann  
Jahn RA GmbH; Arbitrator

Professor Dr Eckart Brödermann LLM (Harvard), *Maître en droit* (Paris), FCI Arb (London) is a managing partner of the German law firm Brödermann Jahn RA GmbH and a Professor at Hamburg University Law School. He is co-editor in chief of the *Hamburg Law Review* and author of numerous publications, including a book on German Private International Law (since seven editions, 7th edition 2015, the 5th edition was also published in Chinese) and a commentary on the German Civil Code (since ten editions, 10th edition 2015).



# IPBA New Members

## March – May 2015

We are pleased to introduce our new IPBA members who joined our association from March – May 2015. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

<b>Bangladesh</b> , Al Amin Rahman <i>FM Associates</i>	<b>Hong Kong</b> , Madeline Leong <i>Watson Farley &amp; Williams</i>
<b>Bangladesh</b> , Sabrina Zarin <i>FM Associates</i>	<b>Hong Kong</b> , Gregory Payne <i>Payne Clermont Solicitors</i>
<b>Canada</b> , Matthew Choi <i>Bull, Housser &amp; Tupper LLP</i>	<b>Hong Kong</b> , Maggie Tsui <i>Morgan Stanley</i>
<b>Canada</b> , Peter L. Glossop <i>Osler, Hoskin &amp; Harcourt LLP</i>	<b>Hong Kong</b> , Stuart John Valentine <i>Debevoise &amp; Plimpton</i>
<b>Canada</b> , Steven Trumper <i>Build Toronto Inc.</i>	<b>India</b> , Namita Chadha <i>Chadha &amp; Co.</i>
<b>China</b> , Jiayun Huang <i>Shanghai Shimin Law Offices</i>	<b>India</b> , Rohit Jain <i>Rajani, Singhania &amp; Partners</i>
<b>China</b> , Masanori Kawai <i>Nagashima Ohno &amp; Tsunematsu Shanghai</i>	<b>India</b> , Pawan Upadhyay <i>Unuc Legal LLP</i>
<b>France</b> , Stanley Chaney <i>Ravet &amp; Partners Law Firm</i>	<b>Indonesia</b> , Sathya Prasad <i>Fox Mandal</i>
<b>France</b> , Alexis Katchourine <i>Lerins Jobard Chemla Avocats</i>	<b>Japan</b> , Lianming He <i>TMI Associates</i>
<b>France</b> , Arnaud Picard <i>Lerins Jobard Chemla Avocats</i>	<b>Japan</b> , Tatsuhiko Makino <i>Anderson Mori &amp; Tomotsune</i>
<b>Germany</b> , Patrick Heid <i>Graf von Westphalen</i>	<b>Japan</b> , Tomohiro Nakamura <i>Fairness Law Firm</i>
<b>Germany</b> , Tobias Schneider <i>CMS Hasche Sigle Partnerschaft von Rechtsanwälten und Steuerberatern mbB</i>	<b>Japan</b> , Yasumasa Sakamoto <i>Kitahama Partners</i>
<b>Hong Kong</b> , Stefano Beghi <i>Gianni, Origoni, Grippo, Cappelli &amp; Partners</i>	<b>Japan</b> , Tetsuji Wakayama <i>Wakayama Law Offices</i>
<b>Hong Kong</b> , Richard Keady <i>Bird &amp; Bird</i>	<b>Korea</b> , Ferdinand Kim <i>Soorun Asia Law Office</i>

<b>Korea</b> , Kyung Geun Lee <i>Yulchon LLC</i>	<b>Singapore</b> , Jimmy W.K. Yim <i>Drew &amp; Napier LLC</i>
<b>Korea</b> , Nicolai Nahrgang <i>Continental Automotive Korea</i>	<b>Switzerland</b> , Andreas Blattmann <i>Niederer Kraft &amp; Frey Ltd.</i>
<b>Malaysia</b> , Boon Leong Chong <i>Rahmat Lim &amp; Partners</i>	<b>Taiwan</b> , John Eastwood <i>Eiger</i>
<b>Malaysia</b> , Jeremy Mark Joseph <i>Joseph &amp; Partners</i>	<b>Taiwan</b> , Jui-Hua Fan <i>Formosa Transnational Attorneys at Law</i>
<b>Malaysia</b> , Pui Yee Moy <i>Rahmat Lim &amp; Partners</i>	<b>Taiwan</b> , Samrong Hwang <i>Formosa Transnational Attorneys at Law</i>
<b>New Zealand</b> , Stewart Germann <i>Stewart Germann Law Office</i>	<b>Taiwan</b> , Shan Lee <i>Chiang &amp; Lee Attorneys-at-Law</i>
<b>New Zealand</b> , Dan Hughes <i>Anthony Harper</i>	<b>Taiwan</b> , Yvonne Liu <i>Tsar &amp; Tsai Law Firm</i>
<b>New Zealand</b> , Peter O'Dea <i>Helmores Ayers</i>	<b>Taiwan</b> , Shiau-Pan Yang <i>Lexcel Law Offices</i>
<b>New Zealand</b> , Sarah Louise Pilcher <i>The Franchise Lawyer</i>	<b>United Kingdom</b> , Adam Cooke <i>Multilaw</i>
<b>Pakistan</b> , Shahid Farooq <i>Al Noor Developers</i>	<b>United Kingdom</b> , Alex Holtum <i>International Law Firm Solutions</i>
<b>Peru</b> , Carlos Huayhualla Salazar <i>EY Peru</i>	<b>United Kingdom</b> , Hiroyuki Iwamura <i>Ashurst LLP</i>
<b>Philippines</b> , Christiana Andrea Golez <i>Romulo Mabanta Buenaventura Sayoc &amp; Delos Angeles</i>	<b>United Kingdom</b> , Richard Liddell <i>4 New Square</i>
<b>Russia</b> , Andrey Zharskiy <i>Alrud Law Firm</i>	<b>USA</b> , Carson Burnham <i>Ogletree, Deakins, Nash, Smoak &amp; Stewart, P.C.</i>
<b>Singapore</b> , Kin Soon Ignatius Hwang <i>Squire Patton Boggs Singapore</i>	<b>USA</b> , Anthony Ching <i>ACC Law Group</i>
<b>Singapore</b> , Saori Nakamura <i>Morrison &amp; Foerster (Singapore) LLP</i>	<b>USA</b> , Kay Hodge <i>Stoneman, Chandler &amp; Miller LLP</i>
<b>Singapore</b> , Siraj Omar <i>Premier Law LLC</i>	<b>USA</b> , Bonnie Puckett <i>Ogletree, Deakins, Nash, Smoak, Stewart &amp; P.C.</i>
<b>Singapore</b> , Tandip Singh Wasan <i>Premier Law LLC</i>	<b>USA</b> , Brice Ueda <i>Law Offices of Gary Y. Shigemura</i>
	<b>Vietnam</b> , Huu Tu Vo <i>Indochine Counsel</i>

# Discover Some of Our New Officers and Council Members



**Denis McNamara**

IPBA Leadership Position:  
Vice President

## What was your motivation to become a lawyer?

At school, I enjoyed debating and classics; maths and science were not favourite subjects. I also enjoyed working with people, so law seemed to be the only logical choice.

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

Too many to mention in specific detail. A number of 'experiences' are worthy of mention. First, I always get a buzz from successfully completing a transaction, especially ones that are challenging and require a degree of creativity and where I have really 'added value'. Second, in earlier times I became quite heavily involved in firm management and played a significant part in planning and implementing a strategy that took a seven-partner firm (when I became a partner) to one

of the largest law firms in New Zealand. Third, I take considerable pride in the success enjoyed by former members of my team, both legal and support, and (probably incorrectly) delight in taking some credit for my contribution to those successes.

## What are your interests and/or hobbies?

Sailing, relaxing at my beach house in Omaha Beach (a beautiful surf beach an hour or so north of Auckland) with family and travelling.

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

In 2001, I was invited to become the Honorary Consul for Mexico in Auckland, an invitation I accepted notwithstanding a lack of Spanish language skills. I have been the Honorary Consul for Mexico since then. Last year, I was unexpectedly awarded the 'Orden Mexicana del Aguila Azteca', a very high honour, for services to Mexico and Mexicans.

## Do you have any special messages for IPBA members?

It is important to retain the special character of the IPBA. The principles that are the basis of that special character are enshrined in the 'Spirit of Katsuura'.



**Tatsu Nakayama**

IPBA Leadership Position:  
Co-Chair, Scholarship Committee

## What was your motivation to become a lawyer?

One of my dreams in life is to make more people happier. In order to achieve this goal, I made up my mind to contribute to making Japan and Japanese people

more internationalised and, for this purpose, to become a bridge between Japan and overseas. To become an international lawyer should be an ideal position from which to achieve my dream and hope I can do more towards this through IPBA activities.

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

A foreign client told me in the course of my legal service, 'Thank you for your passion.' This comment reminded me that our passionate commitment to clients should be the most important factor in our professional lives.

### What are your interests and/or hobbies?

I am also a Karate instructor and instruct Karate to adults once a week (Friday evenings). I have been practising Karate for more than 15 years (First Dan, Shin-Kyokushinkai). If you come to Japan and happen to have some trouble in Japan, never fail to contact me, I can defend you both legally and physically!

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

I am not only a dancer or entertainer, but a litigator in Tokyo as well.

### Do you have any special messages for IPBA members?

I love you all!



**Sitpah Selvaratnam**

IPBA Leadership Position:  
Chair of Maritime Law Committee

### What was your motivation to become a lawyer?

I became a lawyer quite by default; there was simply nothing else I wanted to do. Being a lawyer seemed the least-worst option! But I quickly realised that it was one of the best decisions I made in my life, and my romance with commercial and maritime law in particular seems never ending.

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

One of my most memorable experiences was as a three-month-old advocate. I was thrown by circumstances to move the High Court for an injunction in a corporate insolvency case against a very senior lawyer. Winning that came as an unforgettable surprise and my addiction to advocacy began then. Ten years later, appearing before an eminent international tribunal of arbitrators, comprising a retired Law Lord of England and a former Solicitor General of Australia was enriching. Having them relate completely to my submissions was flattering to the ego to say the least! The compassionate moments when significant awards of damages were secured for individuals who had endured injustice were soul nourishing; reminding me of the essence of the law. And then, there was the case where my opponent became my husband ...

### What are your interests and/or hobbies?

Quite apart from the excitement that the practice of law provides, I am in wonderment of the energy that makes everything go round, and thrilled by the continued discovery of my inner self. Enthralled by the effects of energy connectivity between persons and the synchronicity of circumstances, I am naturally drawn to practice Kriya and Hatha Yoga, and the martial art of Aikido. In parallel, the Lifeline Technique, a modality that helps release unprocessed stress and trauma trapped within our subconscious mind and energy centres, is a source of tremendous relief and satisfaction. As a Certified Lifeline Practitioner, I enjoy guiding emotional shifts in friends and others who feel stuck in unproductive thought and behavioural patterns. This compliments the Reiki healing that I work with. Most of my weekends are filled with parenting sessions that I facilitate, which are premised on the philosophy that parents need to move towards emotional balance to enable the child to shift towards behavioural balance.

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

The aspects of my life described above may come as a surprise to many of my IPBA friends!

### Do you have any special messages for IPBA members?

What message do I have? It is this. Being a lawyer can be very stressful. In truth, stress lies *within* us, as a reaction to external circumstances. This reactive pattern flows from the remnant of the fearful child of our past, still alive deep within us. This child waits to be liberated so that we may fully experience the present moment with joy. Finding ways to return to permanent joy is probably the most rewarding pursuit, complementing a successful law practice and unlocking unlimited potential.

# A Tribute to Lee Kuan Yew, 1923-2015



The IPBA was very fortunate to have the late Mr Lee Kuan Yew as our special speaker when we held our annual conference in Singapore in 2010. Mr Lee was then 88 years old. One China delegate asked him about the Singapore experiment of using English as a common language of commerce in Singapore and how that compared with China and Japan where the dominant language of commerce continued to be Chinese and Japanese. Mr Lee asked the delegate in Chinese where he learnt his English from. 'In China,' replied the delegate, adding that he could function in English. Mr Lee's response was simple – China realised that it needed to go beyond the Chinese language and recognised that the English language is undeniably the world's commercial language of choice and the fact that the Chinese delegate could join in the IPBA conference in English was testimony to that desire to be relevant internationally. Even Japan being an economic

powerhouse had found it increasingly difficult to keep its competitive advantage if it continued to ignore the English language. Singapore is a country with a diverse language and racial composition and English is not an ethnic group language in Singapore. Mr Lee's vision in adopting English as the working commercial language had also helped to unite the country.

Mr Lee graduated as a lawyer from Cambridge with first class honours in 1949. His training in the law and his courage to fight for what he believed in enabled him to take Singapore on the road to independence. He first fought for self-government from the British colonial masters and later led Singapore into a merger with Malaysia, believing that this was the best option for Singapore's future. A year later, in May 1965, the People's Action Party joined several other multiracial parties to form the Malaysia Solidarity Convention, a political

bloc to fight for a 'Malaysian Malaysia'. Mr Lee's open criticism of Kuala Lumpur rankled the ruling elite there. In the face of irreconcilable differences, Singapore was expelled from Malaysia on 9 August 1965. Mr Lee and his team then faced the daunting task of ensuring the young nation's survival against overwhelming odds. Having observed the disadvantages faced by the minority in a nation's population, Mr Lee vowed to create a model multi-racial society in Singapore. He proclaimed that Singapore would not be a country that belongs to any single community, but would be a country that belongs to all. He thus set out to build an inclusive society where every race would be taken care of.

He and his dedicated team made tremendous strides to modernise the trade union movement. Mr Lee championed public home ownership so as to give every Singaporean a stake in the country. He also believed that home ownership would give Singaporean families an asset and a means of wealth accumulation.

Mr Lee recognised the importance of education in improving the lives of all Singaporeans. He swiftly overhauled the education system that Singapore inherited from the British, and implemented progressive policies that would enable Singaporeans to seize opportunities in the global economy. He made sure that all could enjoy basic education, and upheld the ideal of meritocracy. He promoted English as the first language

so Singaporeans could plug themselves into the global economy. But he also insisted on bilingualism so that they could be rooted in their respective cultures through their mother tongues. Meritocracy and bilingualism are among the most enduring of Mr Lee's legacies.

Singapore's dependence on Malaysia for water was a profound existential matter. Mr Lee secured two long-term water treaties with Malaysia in 1961 and 1962. To ensure that they were upheld, the treaties were guaranteed in Singapore's Separation Agreement with Malaysia and enshrined in the Malaysian Constitution. Just before relinquishing his Prime Ministership, Mr Lee also oversaw the signing of a new supplementary water agreement with Malaysia on 24 November 1990.

Knowing the risks of having the taps turned off, Mr Lee was determined to diversify and increase Singapore's water sources. Singapore now obtains its water from desalination, recycling, a vastly expanded local catchment system, as well as from Malaysia. Mr Lee also drove efforts to clean up Singapore's waterways and rivers, including the once-badly polluted Singapore River. Because of his ingenuity and foresight, Singapore has been able to turn a strategic weakness – its lack of water – into a source of strength, innovation and competitive advantage.

More importantly, Mr Lee will be remembered as a builder of institutions.



Li Shengwu, the grandson of Mr Lee, delivered his eulogy and said, 'It is often said that my grandfather built great institutions for Singapore. But what is an institution? It is a way of doing things that outlives the one who builds it. A strong institution is robust, it is persistent. It does not depend precariously on individual personalities. It places the rule of law above the rule of man. And that is the sacrifice of being a builder of institutions. To build institutions is to cede power – to create a system that will not forever rely on you. That this occasion passes without disorder or uncertainty shows that he succeeded in this task. We are bereft at his passing, but we are not afraid. The pillars that he built stand strong, the foundations that he dug run deep.'



There was an overwhelming outpouring of grief and emotion during the lying-in-state period when hundreds of thousands of Singaporeans of all races, faiths and walks of life came to pay their last respects to Mr Lee. On the day of his funeral, a heavy downpour threatened to dampen the spirits of Singaporeans mourning his passing. However, the crowds turned out in the thousands, lining the entire journey from Parliament House to the University Cultural Centre. As the gun carriage cortege passed by, Singaporeans honoured the man widely acknowledged as the architect of modern Singapore. That Sunday afternoon, heads were bowed, many knelt as the cortege passed by, and tears flowed freely.

There is no doubt that throughout his long public service, Mr Lee Kuan Yew was always tremendously respected, often even feared. However, that week following his passing it was obvious that Mr Lee was also deeply loved by the people he sacrificed so much for. Singapore had lost its founding Prime Minister. But Singaporeans have lost their nation's founding Father, an exceptional and incomparable leader, benefactor, mentor and protector.

As we reflect on the passing of Mr Lee, we thank him for gracing the IPBA Annual Conference in 2010. The values that he held dear also resonate with the IPBA. He gave up the most powerful leadership position in government and through succession planning saw two more prime ministers during his lifetime. The IPBA, too, was founded on

the principle that no one man or firm would dominate the leadership of the organisation to the exclusion of all others. Mr Lee rejected any form of hagiography and he will be remembered as a builder of institutions – institutions that would outlast their founders. In the same way, the IPBA has set the right tone through the Spirit of Katsuura, where our founding members have wisely provided that the IPBA should have a rotational presidency with shared leadership responsibility so that the IPBA will be an enduring institution, lasting well beyond its founding members. A guide to lawyers for many generations to come.

**Yap Wai Ming**

Past Secretary-General of the IPBA and a partner at Morgan Lewis Stamford LLC Singapore

**Lok Vi Ming**

Past IPBA JCM for Singapore and senior counsel of Rodyk & Davidson Singapore



# An Invitation to Join the Scholarship Programme of Inter-Pacific Bar Association

The Inter-Pacific Bar Association (IPBA) is pleased to announce that it is accepting applications for the IPBA Scholarship Programme, to enable practicing lawyers to attend the IPBA's 26th Annual General Meeting and Conference to be held in Kuala Lumpur, Malaysia, April 13-16, 2016.

## What is the Inter-Pacific Bar Association?

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

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

The highlight of the year for the IPBA is its annual multi-topic four-day conference. The conference has become the 'must attend event' for international lawyers practicing in the Asia-Pacific region. In addition to plenary sessions of interest to all lawyers, programs are presented by the IPBA's 22 specialist committees and one Ad Hoc committee. The IPBA Annual Meeting and Conference provides an opportunity for lawyers to meet their colleagues from around the world and to share the latest developments in cross-border practice and professional development in the Asia-Pacific region. Previous annual conferences have been held in Tokyo, Sydney, Taipei, Singapore, San Francisco, Manila, Kuala Lumpur, Auckland, Bangkok, Vancouver, Hong Kong, New Delhi, Seoul, Bali, Beijing, Los Angeles and Kyoto.

## What is the IPBA Scholarship Programme?

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

During the conference, the Scholars will enjoy the opportunity to meet key members of the legal community of the Asia-Pacific region through a series of unique and prestigious receptions, lectures, workshops, and social events. Each selected Scholar will be responsible to attend the Conference in its entirety, to make a brief presentation at the Conference on a designated selected topic, and to provide a report of his/her experience to the IPBA after the conference. The program aims to provide the Scholars with substantial tools and cross border knowledge to assist them in building their careers in their home country. Following the conference, the Scholars will enjoy 3 years of IPBA membership and will be invited to join a dedicated social networking forum to remain in contact with each other while developing a network with other past and future Scholars.

## Who is eligible to be an IPBA Scholar?

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

1. Lawyers from Developing Countries  
To be eligible, the applicants must:
  - a. be a citizen of and be admitted to practice in Vietnam, Laos, Cambodia, Myanmar, Mongolia, Bangladesh, or the Pacific Islands;
  - b. be fluent in both written and spoken English (given this is the conference language); and
  - c. currently maintain a cross-border practice or desire to become engaged in cross-border practice.
2. Young Lawyers  
To be eligible, the applicants must:
  - a. be under 35 years of age at the time of application and have less than seven years of post-qualification experience;
  - b. be fluent in both written and spoken English (given this is the conference language);
  - c. have taken an active role in the legal profession in their respective countries;
  - d. currently maintain a cross-border practice or desire to become engaged in cross-border practice; and
  - e. have published an article in a reputable journal on a topic related to the work of one of our committees or have provided some other objective evidence of committed involvement in the profession.

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

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

## How to apply to become an IPBA Scholar

To apply for an IPBA Scholarship, please obtain an application form and return it to the IPBA Secretariat in Tokyo no later than **31 October 2015**. Application forms are available either through the IPBA website ([ipba.org](http://ipba.org)) or by contacting the IPBA Secretariat in Tokyo ([ipba@ipba.org](mailto:ipba@ipba.org)).

Please forward applications to:  
The IPBA Secretariat  
Roppongi Hills North Tower 7F, 6-2-31 Roppongi, Minato-ku, Tokyo 106-0032, Japan  
Telephone: +81-3-5786-6796 Facsimile: +81-3-5786-6778 E-mail: [ipba@ipba.org](mailto:ipba@ipba.org)

## What happens once a candidate is selected?

The following procedure will apply after selection:

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





# An Invitation to Join the Inter-Pacific Bar Association

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

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

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

## **IPBA Activities**

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

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

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

## **APEC**

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

## **Membership**

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

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

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

Membership renewals will be accepted until 31 March.

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

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

## **Corporate Associate**

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

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

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

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

- Annual Dues for Corporate Associates ¥50,000

## **Payment of Dues**

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

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

## **IPBA Secretariat**

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

See overleaf for membership  
registration form





# IPBA SECRETARIAT

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@ipba.org Website: www.ipba.org

## IPBA MEMBERSHIP REGISTRATION FORM

### MEMBERSHIP CATEGORY AND ANNUAL DUES:

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

Name: \_\_\_\_\_ Last Name \_\_\_\_\_ First Name / Middle Name \_\_\_\_\_

Date of Birth: year \_\_\_\_\_ month \_\_\_\_\_ date \_\_\_\_\_ Gender: M / F

Firm Name: \_\_\_\_\_

Jurisdiction: \_\_\_\_\_

Correspondence Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

### CHOICE OF COMMITTEES (PLEASE CHOOSE UP TO THREE):

- |   |   |
|---|---|
| <input type="checkbox"/> Anti-Corruption and the Rule of Law (Ad Hoc) | <input type="checkbox"/> Insurance                              |
| <input type="checkbox"/> APEC   | <input type="checkbox"/> Intellectual Property                  |
| <input type="checkbox"/> Aviation Law                                 | <input type="checkbox"/> International Construction Projects    |
| <input type="checkbox"/> Banking, Finance and Securities              | <input type="checkbox"/> International Trade                    |
| <input type="checkbox"/> Competition Law                              | <input type="checkbox"/> Legal Development and Training         |
| <input type="checkbox"/> Corporate Counsel                            | <input type="checkbox"/> Legal Practice                         |
| <input type="checkbox"/> Cross-Border Investment                      | <input type="checkbox"/> Maritime Law                           |
| <input type="checkbox"/> Dispute Resolution and Arbitration           | <input type="checkbox"/> Scholarship                            |
| <input type="checkbox"/> Employment and Immigration Law               | <input type="checkbox"/> Tax Law                                |
| <input type="checkbox"/> Energy and Natural Resources                 | <input type="checkbox"/> Technology, Media & Telecommunications |
| <input type="checkbox"/> Environmental Law                            | <input type="checkbox"/> Women Business Lawyers                 |
| <input type="checkbox"/> Insolvency                                   |   |

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

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

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

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### PLEASE RETURN THIS FORM TO:

**The IPBA Secretariat, Inter-Pacific Bar Association**  
**Roppongi Hills North Tower 7F, 6-2-31 Roppongi, Minato-ku, Tokyo 106-0032, Japan**  
**Tel: +81-3-5786-6796 Fax: +81-3-5786-6778 Email: ipba@ipba.org**

# VITAL SUPPORT FOR CRITICAL INFORMATION



Email us at [sales.hk@crownrms.com](mailto:sales.hk@crownrms.com)

*The power of memory*  
[www.crownrms.com/hongkong](http://www.crownrms.com/hongkong)

**CROWN**   
RECORDS MANAGEMENT

# LOCAL ROOTS GLOBAL IMPACT

*"The only local arbitration commission which meets or surpasses global standards"* - The Economist Intelligence Unit

*"Professionalism, competence and transparency"* - Global Arbitration Review



## BAC/BIAC Profile

The Beijing Arbitration Commission (BAC), also known as the Beijing International Arbitration Center (BIAC), was established in 1995 as a non-governmental arbitration institution, and became the first self-funded Chinese arbitration institution in 1999. It provides institutional support as an independent and neutral venue for the conduct of domestic and international arbitration and ADR proceedings. It is operated by a Secretariat headed by its Secretary General under the supervision of its Committee. The BAC/BIAC Arbitration Rules 2015 were unveiled on December 4, 2014, and came into force on April 1, 2015. The 2015 rules widely adopt UNCITRAL Arbitration Rules and further accept up-to-date international practice.

# BIAC

Beijing Arbitration Commission  
Beijing International Arbitration Center

Tel: +86 10 6566 9856

Fax: +86 10 6566 8078

Email: [bjac@bjac.org.cn](mailto:bjac@bjac.org.cn)

Address: 16/F, China Merchants Tower,  
No. 118 Jian Guo Road,  
Chaoyang District, Beijing 100022, China



Hearing Room

## BAC/BIAC Growth

- From 7 cases filings in 1995 to over 24,000 cases in total by 2014
- 1500+ new filings on average per year since 2005
- 600+ international cases in total
- Parties from various jurisdictions including USA, UK, Germany, Australia, Japan, South Korea, Singapore, Hong Kong and Taiwan, etc.
- The sum in dispute of around 11.1 billion RMB (approx. 1.8 billion USD or 1.7 billion EUR) per year on average since 2010 with a highest claim amount of 10 billion RMB (Approx. 1.62 billion USD or 1.48 billion EUR) in 2015

## Recommended BAC/BIAC Model Clause:

All disputes arising from or in connection with this contract shall be submitted to Beijing Arbitration Commission / Beijing International Arbitration Center for arbitration in accordance with its rules of arbitration in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.