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# IPBA Journal

June 2016

No **82**

NEWS & LEGAL UPDATE



INTER-PACIFIC BAR ASSOCIATION

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# IPBA Journal

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## The President's Message

**Dhinesh Bhaskaran**  
President



Dear Colleagues,

As I write this message, I have mixed feelings.

With the conclusion of the Kuala Lumpur Conference, I am finally able to revert to normality—in short, getting back to the uninterrupted practice of law. This should come as a welcome relief, but I feel that something is missing in my daily routine now that the Conference is over.

Organising the Conference was immensely challenging, but when the day arrived it proved to be a truly rewarding experience. Welcoming many of my IPBA friends on home turf, and meeting so many new delegates, was memorable. Even with two plenary sessions, 54 committee sessions and various social events, the Conference passed by in the blink of an eye. I hope that delegates found the sessions and events educational and enjoyable. The numerous side meetings organised between delegates and with local law firms enhanced the networking opportunities that were available.

It was indeed heartening to see that more than 900 delegates from 52 countries registered for the Conference. This was despite various law firms around the world cutting back on their conference budgets. In fact, some regulars on the IPBA circuit were forced to miss this year's Conference due to budgetary issues, which was unfortunate. Nevertheless, the large number who turned up bear testament to the value placed on the annual conference by delegates, and the support that law firms and other organisations are prepared to give the event. This must mean that the IPBA is doing something right and giving significant value to delegates.

What was also interesting was obtaining feedback from delegates who had never been to Malaysia, or had not been to Kuala Lumpur for many years, who commented on how different Kuala Lumpur and Malaysia are from

what they had previously perceived. As always, first-hand experience is far more accurate than received wisdom. In this case, it made for a better assessment of the viability of doing business in Malaysia, and of looking at the potential of the broader Southeast Asian region.

With the end of the Conference came the start of my tenure as President. I will undoubtedly have a tough time following in the footsteps of Huen Wong, who did much to enhance the image of the IPBA during his term, as did his predecessors.

During my term, I intend to focus on promoting the IPBA to younger lawyers. It is a fact that the membership of the IPBA has become younger in recent years. This is in tandem with the increasingly younger makeup of law firm partnerships across the globe, and the willingness of law firms to invest more in their younger talent. The IPBA needs to attract this younger membership and foster their interest, so that they view the IPBA as a long-term venture and not just an occasional opportunity to attend an event or an annual conference. This will also ensure continuity and allow the IPBA to grow as an organisation.

I also intend to try and make the IPBA more accessible to law firms in emerging markets. An example that springs to mind is Southeast Asia, with its diverse economies and opportunities. With the formation of the ASEAN Economic Community on 31 December 2015, the 10 member countries of ASEAN (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) have officially stated their intention to form an economic bloc. While this is clearly a long-term vision, the fact remains that there are exciting possibilities worth exploring. The time is ripe to attract more lawyers from some of these countries to the IPBA, as they will benefit from the networking opportunities and resources that the IPBA has to offer.

ASEAN is but one example; there are similar opportunities to be found across the globe. It is important to spread the wings of the IPBA so that we can attract an even more diverse range of members. One of the strengths of the IPBA has been its ability to allow delegates at events to form friendships with ease and to understand cross-cultural issues. A more diverse membership can only enhance this critical aspect of the IPBA.

I look forward to your support as I undertake these initiatives over the next year, and to serving the IPBA during my term as President.

**Dhinesh Bhaskaran**  
**President**

## IPBA Upcoming Events

Event	Location	Date
<b>IPBA Annual General Meeting and Conference</b>		
27th Annual General Meeting and Conference	Auckland, New Zealand	April 6-9, 2017
28th Annual General Meeting and Conference	Manila, Philippines	Spring, 2018
<b>IPBA Mid-Year Council Meeting &amp; Regional Conference</b>		
2016 Mid-Year Council Meeting and Regional Conference (October 7-9 Council only; October 10 open to the public)	Brussels, Belgium	October 7-10, 2016
<b>IPBA Local and Regional Events</b>		
2nd IPBA Asia Pac Arbitration Day	Kuala Lumpur, Malaysia	Sep 8, 2016
2nd Annual East Asia Forum	Seoul, Korea	Fall, 2016
<b>IPBA-supported Events</b>		
Kluwer Law International's India International Arbitration Summit	India	June 15, 2016
Kluwer Law International's Japan: 2nd Annual Global Competition Law Forum	Tokyo, Japan	June 30, 2016
Kluwer Law International's Shanghai International Arbitration Summit	Shanghai, China	July 20, 2016
Kluwer Law International's Shanghai Global Competition Forum	Shanghai, China	July 21, 2016
Kluwer Law International's Turkey & ME: 3rd Annual International Arbitration Summit	Turkey	September 1, 2016
Kluwer Law International's Hong Kong: 6th Annual International Arbitration Summit	Hong Kong	September 22, 2016
ABA Section of International Law's Fall Meeting	Tokyo, Japan	October 18-22, 2016
Kluwer Law International's Japan: 3rd Annual International Arbitration Summit	Japan	October 20, 2016
marcus evans' "Corporate Counsel Asia Summit 2016"	Kuala Lumpur, Malaysia	October 24-25, 2016
Kluwer Law International's Beijing: 2nd Annual Global Competition Forum	Beijing, China	November 16, 2016
Kluwer Law International's Beijing: 2nd Annual International Summit	Beijing, China	November 17, 2016
Kluwer Law International's Indonesia and SE Asia: 4th Annual International Arbitration Summit	Indonesia	December 7, 2016

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)



## The Secretary-General's Message

**Miyuki Ishiguro**  
Secretary-General



Dear IPBA Members,

### **IPBA Annual Conference**

Another successful IPBA Annual Meeting and Conference took place, this time in Kuala Lumpur, from 13-16 April 2016. Dhinesh Bhaskaran and his host committee, along with the conference organiser, put together an unforgettable four-day event. I very much enjoyed seeing so many friends there, and had the pleasure of meeting new ones. All conference delegates by now should have received an e-mail from the conference organiser with a link to the conference photos, access to the session materials, and the attendance certificate which you can use to apply for CPD/CLE points in your jurisdiction. If you didn't get a chance to join us this year, you can read about the conference and see photos in this issue of the Journal.

As the IPBA's reputation grows around the world, our annual conferences attract more and more delegates. In recent years we've consistently seen over 900 attendees. We are beginning to find that an increasing number of local law firms wish to take advantage of the large number of lawyers in town by organising their own social events to coincide with our conference. Unfortunately, some of these events clash with our conference schedule, being held at the same time as our receptions or dinner events. While we can't control this 100 percent of the time, and we do appreciate the support that is given to us by local firms, we hope that anyone interested in hosting an event around our conference would contact the host committee to discuss the schedule before making their own plans. The host committee goes to great lengths to ensure that all delegates enjoy the activities of our conference and we would like to ensure that IPBA members and delegates don't feel pressure to attend too many outside activities.

Huen Wong's term as IPBA President ended at the AGM in Kuala Lumpur where he introduced the new President, Dhinesh Bhaskaran. The IPBA President's hardest work

is done by the time he or she takes the lead: namely, organising the annual conference. Now Dhinesh will spend his year focusing on representing the IPBA at other organisation's events and at the same time he will help to promote the IPBA to potential new members. Our long-term members are starting to retire, cut back on their legal work or move on to other careers, so we are now especially targeting younger lawyers to join the IPBA. The freshness of youth is already apparent in the enthusiasm of our newer members and we hope to keep up this momentum into the future.

Our conference in 2018 will be held in Manila, the Philippines. This will be the third time for us to host an event in that jurisdiction, having had annual conferences there in 1996 and 2009. IPBA Vice President Perry Pe is in charge of the planning this time and the host committee has already begun their work. We look forward to seeing you in Manila in two years.

### **IPBA Committees**

The IPBA Committees are a vital part of the IPBA. We now have 22 regular committees and one *ad hoc* committee that hold substantive sessions at our annual conferences, as well as an increasing number of local and regional activities based on the committee area of expertise. All IPBA members can choose up to three committees on which to be active and we do hope that you will indeed be active and help the committee leaders with organising and speaking at the sessions and promoting the IPBA. Most of the committees are rather healthy, but some of them could use a boost, as you can see from the chart on the opposite page.

The list of the leaders is found on pages 2 and 3 of this Journal, and you can find their contact information on the IPBA web site. Be sure to get in touch with the leader(s) of the committee(s) on which you would like to become active. Each Committee Chair, Co-Chair and



Vice-Chair serves a two-year term, which is extendable for one more two-year term. The Chairs have a variety of duties, not the least of which is putting together the committee sessions at the Annual Meeting and Conference. Two years is not much time to accomplish everything necessary, so many of the Chairs end up serving for four years. Each committee is required to have a Mission Statement that is reviewed and revised from time to time and submit a Programme of Work and Annual Evaluation each year as specified in the IPBA Manual, a large tome that guides the IPBA leadership in conducting their duties. In the past, these important documents had not been submitted, so this year our Committee Coordinator, Masafumi Kodama and Deputy Committee Coordinator Nini Halim are aggressively soliciting these items from new and experienced Chairs now, with some success.

Committee leaders keep in touch with their constituents through the IPBA web site committee page and through the Committee Forum section in the Member Only side of the IPBA web site. This feature has been in place for a few years and more and more leaders are starting to make use of it, particularly prior to the annual conference.

We are also happy to say that many IPBA members are enthusiastically supporting the committee activities. In particular, Corey Norton, Chair of the International Trade Committee, has taken the initiative to start a new section in our monthly e-newsletter, Eye on IPBA, devoted to committee news. He contacts the committee chairs and gathers information for publication each month. His own committee also has a listserv account for easier communication among its members. These ideas are keeping the IPBA lively and interesting.

As mentioned above, the Committee Chair, Co-Chair and Vice-Chairs serve a short, two-year term, extendable just once. This means that the IPBA is constantly looking for new leaders to fill those roles. It is ideal for one of the Vice-Chairs to be escalated to Chair after being active on the committee for a while, but occasionally candidates who are a good match but haven't been a Vice-Chair yet are considered.

The Committee Coordinators are responsible to monitor this leadership overall and analyse it to ensure that the committees are in compliance with IPBA policies. We are careful to keep a fair representation of law firms, jurisdictions and gender. The nominations for potential appointees are vetted for several months beginning from immediately following the Annual Conference. Suggestions are solicited from the Committee Chairs and

the Committee Coordinator then presents those to the Nominating Committee for consideration. The process has already begun for terms beginning from immediately after Auckland, 2017.

Our next major event is the Mid-Year Council Meeting in Brussels, Belgium, 7-10 October 2016. There will be a Regional Conference held on Monday, 10 October 2016, which is open to all members. Please join us there!!

**Miyuki Ishiguro**  
Secretary-General

Committee (as of 7 June 2016)	Number of IPBA Members	Chairs	Vice- Chairs	Advisors
APEC	30	1	4	3
Aviation Law	38	1	4	
Banking, Finance & Securities	231	1	5	
Competition Law	131	2	5	
Corporate Counsel	219	1	4	
Cross-Border Investment	443	2	11	
Dispute Resolution and Arbitration	504	2	12	
Employment & Immigration	106	1	5	
Energy & Natural Resources	147	1	7	
Environmental Law	43	1	3	
Insolvency	96	2	7	
Insurance	62	1	3	
Intellectual Property	189	2	4	
International Construction Projects	126	1	5	
International Trade	212	1	4	
Legal Development & Training	46	1	7	
Legal Practice	144	2	4	
Maritime Law	73	1	5	
Scholarship	12	1	2	
Tax Law	92	1	6	
Technology, Media & Telecommunications	106	1	4	
Women Business Lawyers	121	1	3	
Anti-Corruption & the Rule of Law (Ad Hoc)	63	2	3	2

# IPBA 26th Annual Meeting and Conference Kuala Lumpur



The conference was held at the Kuala Lumpur Convention Centre, at the foot of the iconic Petronas Twin Towers.



The Officers and Officers-to-be were hard at work prior to the conference.



The IPBA Council met the day before the start of the conference.



Dhinesh Bhaskaran welcomed the delegates to Malaysia at the Welcome Reception on the first night of the conference.



Delegates enjoyed, food, drink, entertainment, and various crafts at the Welcome Reception.



Keynote Speaker His Royal Highness Sultan Nazrin Shah, Ruler of the State of Perak, was ushered in by IPBA President Huen Wong (L) and President-Elect Dhinesh Bhaskaran (R).



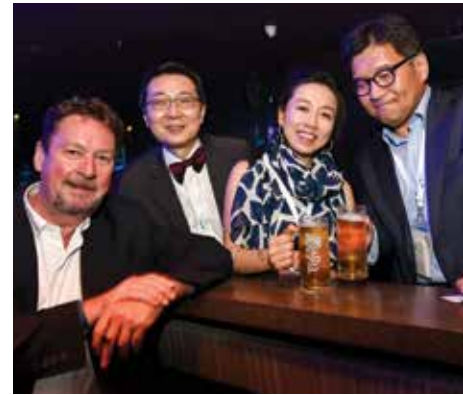
Committee sessions included this innovative round-table discussion, which was well received by those who attended.



The Gala Dinner event drew a large, lovely, and lively crowd.



Our multinational membership is well represented by these Gala Dinner guests.



Diehard delegates danced the night away at the After Party at local nightclub Zouk.



IPBA Scholars from nine different jurisdictions were chosen to attend the conference this year.



Everyone's a winner at the IPBA!



The IPBA has enjoyed a long collaborative relationship with AIJA, and our leaders met with AIJA Immediate Past President Mr. Dirk Nuyts.



At the end of the AGM, the IPBA Presidency was transferred from Huen Wong (L) to Dhinesh Bhaskaran (R).



Over 200 members attended the Annual General Meeting (AGM) on the last day, where they heard the reports of the IPBA Officers.



The IPBA spirit of camaraderie and friendship is clear in this picture.

# IPBA Moderators' Highlights from the Conference



## How to Participate in Trade Negotiations— Focus on the Trans-Pacific Partnership Regional Free Trade Agreement

**Bruce Aitken** (*Aitken Berlin LLP, USA*)

Welcome by Steven Thiru, President, Malaysian Bar (Kuala Lumpur) and by Varya Simpson, Simpsonlaw (San Francisco) and Chair, IPBA Legal Development & Training Committee; Introduction by Moderator Bruce Aitken, Aitken Berlin LLP/Global Development Law & Consulting Group (Wash., D.C.)

## Presentations

**Raj Bhala** (*Associate Dean and Rice Distinguished Professor of International Law, University of Kansas Law School; Author, International Trade Law*)

Not all sectors gain from Free Trade Agreements ('FTAs'). During the Uruguay Round, many countries lacked resources to cope with its complexity (800 pages plus Schedules). FTAs are not only commercial but also address ethical and social issues (for example, labour,

carbon footprint, IP). The Trans-Pacific Partnership ('TPP') is more than a trade deal; it is a national security treaty aimed at containing PRC influence in Asia. Lawyers need not be trade experts to represent clients in FTA negotiations. Developing countries such as Malaysia face serious challenges without training help.

**Chulsu Kim** (*Former South Korean Minister of Trade, Industry & Energy, Charter Deputy Director General, World Trade Organization*)

The developing countries in Asia are currently engaged in active FTA negotiations across the region. These negotiations are regarded as the important tool for economic development and reform in these countries. The extensive scope and the complexity of these negotiations represent a considerable strain on their trade negotiations capacities. Therefore, the Trade Negotiations Training Center ('TNTC') is proposed to be established for the purpose of improving the capacity of trade officials.

**Y Bhg Tan Sri Dr Rebecca Fatima Sta Maria** (*Secretary-General of the Malaysian Ministry of Trade and Industry*)

Rebecca advised that she was involved in the negotiation of, and the outreach for, the TPP, which she described as 'not your average trade agreement' in its complexity and rules-making. She highlighted the importance of Malaysia being a TPP member. She informed us about APEC's & ASEAN's roles in encouraging FTAs and the importance of liaison with civil society and potential stakeholders.

**Peter Tritt** (*Director, Asia-Pacific, The College of Law of New Zealand*)

New Zealand has many FTAs. Peter presented detailed charts on the TPP. All FTAs include schedules of rights and protections. Sovereignty is an issue. The TPP Investor Protection provisions are noteworthy, addressing such issues as discrimination, uncompensated expropriation, capital transfer, rights to regulate, burden of proof, frivolous claims, arbitrator ethics, transparency, remedies etc. The TPP has notable exceptions, such as separate IPP rules and Government Procurement.

**Ngsong Fonkem** (*Attorney, Corneille Law Group, Green Bay; former Law Lecturer, University of Technology Law School, Malacca*)

Ngsong addressed the potential impact of FTAs on the automotive sector and how counsel can effectively participate in FTA negotiations. First, he explained government structures responsible for developing trade policies and negotiating objectives. Second, he explained tools used by governments to promote ongoing FTAs to their domestic audience. Finally, he prescribed a strategy on how a private sector attorney can inject themselves into an ongoing FTAs, and as such be of service to their client.

**Bruce Aitken** (*Appointed to Dispute Resolution Panels of US-Can. FTA; NAFTA; WTO and WIPO; created Trade Negotiations Training Programme for American Univ.'s Law School, 2004; taught Core Courses, 2004-2009*)

39 Regional and Bilateral Post-Uruguay Round FTAs, with over 12,000 issue positions, have created a proverbial 'Asian FTA Noodle Bowl' and an enormous challenge to LDCs and DCs in participating in FTA negotiations. As a

result, two NGOs, Global Development in Washington DC and ITI in Seoul, are creating the TNTC being launched today and for which we are seeking Corporate, Development Agency Foundation and government funding. Detailed power points explain this in detail. Available upon request.

**Neutralising the Effects of Hybrid Mismatch Arrangements**

**Neil A Russ** (*Buddle Findlay, New Zealand*)

Our session had a title only a tax lawyer could love: 'Neutralising the Effects of Hybrid Mismatch Arrangements'! In fact, the issues raised in this session were of global importance, as nations and lawyers come to grips with the new international political consensus around companies paying their fair share and not taking double deductions in two jurisdictions, or taking a deduction in one country without recognising income in another, under arrangements with different taxation characteristics in different countries—so-called 'hybrids'.

We were delighted to have a world-class group of speakers: Pieter L de Ridder, Mayer Brown JSM, Singapore; Gary P Tober, Garvey Schubert Barer, USA; Brígida Galbete Ciaurriz, Cuatrecasas, Goncalves Pereira, Spain; Rajesh Simhan, Nishith Desai Associates, India; Julie H Cheng, Jun He, China; Yushi Hegawa, Nagashima Ohno & Tsunematsu, Japan and Aurobindo Ponniah, PwC Taxation Services, Malaysia. What followed was a fascinating series of presentations, and a lively and engaging discussion with the audience and among panellists, of the different approaches taken in relation to hybrids in different jurisdictions around the world, as well as some of the unintended consequences of trying to counter the tax effects of certain financing and investment arrangements. There emerged considerable concern about the prospects of success of achieving global success in neutralising the effects of hybrids—especially when some of the negative and costly consequences of doing so were realised, as amply demonstrated by the speakers. The Tax Committee, now ably chaired by Ricky Valdez, continues to go from strength to strength!

The slides for the session will, I understand, be available for reference on the IPBA web site in due course. My sincere thanks to all the panellists for their hard work and superb presentations, and to the audience, for a fun and engaging session.

## Transactions Between North-East Asia and ASEAN Countries

*Swee-Kee Ng (Shearn Delamore & Co, Malaysia)*

This session, attended by 70–80 delegates, explored/discussed the cultural differences between the North-east Asian countries and the ASEAN countries as it may affect investment decisions as well as the foreign investment laws and regulations of the ASEAN countries. The session was intended to provide practical insights and information which may assist lawyers when advising their clients in their acquisition and investment endeavors in the region.

Chester Toh (Rajah & Tann) kick-started the session with a presentation of investment and trade flows data from Korea, Japan and China into ASEAN. He said that 'Leveraging its network of free trade agreements and double tax treaties, Singapore has emerged as an attractive jurisdiction for North Asian Investors to set up holding companies for investment into the ASEAN region.'

Yong-Jae Chang (Lee & Ko) said 'AEC became the second biggest export market (US\$138 billion) for South Korea in 2014 and it is expected that there will be increased investment activities in ASEAN countries (in particular, Vietnam, Indonesia and Myanmar) by South Korean companies.' Nobuo Fukui (Nagashima Ohno & Tsunematsu, Singapore) noted that 'Deep deliberation and long-term perspective are the distinctive attitudes Japanese companies consistently have toward their investment to ASEAN countries.' Dr Helen Haixiao (Zhong Lun) noted the characteristics of Chinese investors and said that 'more and more cross-border transactions under the China initiative of One Belt, One Road should be highly anticipated to come into ASEAN countries.'

From ASEAN, Niwes Phancharoenworakul (Chandler & Thong Ek) discussed Thai FDI regulations and said 'With healthy FDI performance particularly from Northeast Asia, AEC integration, and the government's stimulus programmes, 2016 looks like a promising year for Thailand's economy.' Dr Le Net (LNT Partners), who discussed Confucian and Buddhist values, mentioned that 'M&A will grow at an unprecedented rate this year in Vietnam due to AEC and the Trans-Pacific Partnership ('TPP'). The South (that is, Vietnamese investors) needs to be prepared and understand the need of the North better. The North might study the scenario of coexistence rather than dominance.' Kurniawan Tanzil

(Makarim & Taira), who discussed Indonesia regulatory culture, said 'Indonesia, as one of the world's leading emerging markets and the largest archipelago, now offers an even broader range of opportunities for investors, including those from North-East Asian countries.' Ben Smith (Minter Ellison) noted that 'North Asian Investment into Australia has continued in 2016 with a shift from energy and resources to new sectors such as healthcare.'

## Challenges and Compliance for Managing the New Global Workforce in the Age of Uber

*Siva Kumar Kanagasabai (Skrine, Malaysia)*

**Speakers:** Roland Falder (Emplaywers, Germany), Sandra Mccandless (Dentons US LLP, USA), Johannes Sahetapy-Engel (Arfidea Kadri Sahetapy-Engel Tisnadisastra, Indonesia), John Stamper (Hadeff & Partners, UAE).

There were around 80 delegates who attended the session, which was conducted in the form of a panel discussion. The discussion evolved around the emergence of a new form of economy—the 'on-demand' economy (of which Uber was a prime example) and the legal implications on the workers and entities which operated within it.

After an introduction to the topic by Roland Falder, the Panel dived into the key issues at hand. The discussion dealt with experiences in several jurisdictions on, among other issues, the status of the people who worked within it (were they contractors or employees or a third category of workers?), the potential liability of misclassifying them, the benefits and risks to the workers and the businesses and the legal challenges that have been faced by the on-demand economy in various jurisdictions.

The audience also participated during question time by not only asking questions, but in sharing the experiences from their own jurisdictions.

## Asian Competition Policy and Practice Roundtable

*Stephen Harris (Winston & Strawn LLP, USA)*

*Shawn Neylan (Strikeman Elliott LLP, Canada)*

The Competition Law Committee's ('CLC') programme at Kuala Lumpur featured an exciting new roundtable format that included discussions of:

- innovative new protections for parties subject to dawn raids in Korea (led by HyunAh Kim of Shin & Kim)
- the rapidly developing leniency application procedures in China (led by Janet Hui of Jun He)
- the Malaysian Competition Commission's focus on trade associations during the first few years of enforcement of Malaysia's Competition Act (led by Anand Raj of Shearn & Delamore)
- procedural fairness and due process issues in Japan including right to counsel and investigator interview procedures (led by Atsushi Yamada of Anderson Mori & Tomotsune)
- mandatory supply remedies including the Swiss Competition Commission's approach in relation to the supply of watch movements and the balance between essential facility concepts and free riding issues (led by Christian Wind of Bratschi Wiederkehr & Buob)
- merger control and cartel risk assessment for joint ventures highlighting different approaches in various jurisdictions (led by Kala Anandarajah of Rajah & Tann)

Each discussion topic generated thoughtful and insightful discussion by session attendees who commented from the perspective of their own jurisdictions.

### Directors' Responsibilities Under Insolvency Situations

**John N Birch** (*Cassels Brock & Blackwell LLP, Canada*)

The Insolvency Committee presented a lively panel discussion about directors' liabilities and responsibilities when companies become insolvent. The session brought together legal perspectives from Malaysia (presented by Andrew Ean Vooi Chiew of Lee Hishammuddin Allen & Gledhill of Kuala Lumpur), Singapore (presented by Gregory Vijayendran of Rajah & Tann) and Canada (presented by David Ward of Cassels Brock & Blackwell LLP of Toronto).

The panellists reviewed directors' responsibilities outside of insolvency and found much commonality on issues of statutory duties, fiduciary duties, duties of care and the obligation to act in the best interests of the corporation. Similarly, all of these nations punish directors that participate in fraud or who enrich themselves to the detriment of the corporation.

However, the divergence in directors' responsibilities became evident across these countries in the case of insolvency proceedings. For example, Singapore has laws that can impose penal consequences on directors if it can be shown that a company engaged in insolvent trading. This concept is not found in Canada, where directors are rarely subject to penal consequences, except in the case of clear fraud.

The Malaysian and Singaporean insolvency regimes typically lean toward liquidation of corporate assets and a winding up of the business. In those cases, the directors resign to avoid personal liability. The panellists discussed whether potential director liability might prevent restructuring of insolvent companies in countries where directors are subject to severe consequences. This contrasts with countries like Canada, which have a strong restructuring culture and which are also less inclined to severely punish directors for attempting to save a company. Perhaps relieving directors from certain liabilities in insolvency situations would allow them to focus on saving their company, rather than saving themselves from civil and criminal liability.

### Is TPP an Environmentally Sustainable Trade Agreement?

**Shweta Bharti** (*Hammurabi & Solomon, India*)  
**Jeffrey Snyder** (*Crowell & Moring, USA*)

The Environmental Law and International Trade Committee joint session (Friday, 15 April 2016) was entitled 'Is TPP an Environmentally Sustainable Trade Agreement?'. Because environmental policies are increasingly designed to address environmental concerns, they must be reconciled with international trade rules, including the the WTO Law and the Trans-Pacific Partnership ('TPP'). This joint session was designed to address this timely and important topic. The session was moderated by Shweta Bharti, Hammurabi & Solomon, New Delhi and Jeff Snyder, Crowell & Moring LLP, Washington, DC.

Opening the session, Shweta Bharti gave a panoramic overview of the environmental aspects of the TPP to set the stage. Next, Sergio Guzman, Grupo Vial, Santiago, spoke about Chile's experience as one of the most open trading countries in the world, including a brief explanation about the TPP and other trade agreements to which Chile is a party. Ang Hean Leng, Lee Hishammuddin Allen & Gledhill, Kuala Lumpur, spoke of the experience in Malaysia, including aspects of the

Federal-State structure interplay with the TPP in Malaysia. Paolo Vergano, Fratini Vergano, Brussels, compared some of the European Union's environmental policies and trade agreement in the light of the TPP and WTO Law; he presented recent examples of EU environmental policies/measures that encroach into trade law and are highly dubious under the WTO, including a discussion of the EU's approach to trade and environment in its 'new generation' Preferential Trade Agreements ('PTAs') as a comparison to the model provided by the TPP. Vidaur Mora Espinosa, Rivadeneyra, Trevino & De Campo, Mexico, discussed the effort Mexico has undertaken to fulfill FTA's environmental policies and avoid new trade barriers, including a comparison of the key features of the WTO and NAFTA in comparison to the TPP, and the likely impact of the TPP on the law in Mexico.

The Joint Session was very well attended with a robust Q&A session, reflecting the strong regional interest in the TPP.

### Anti-Corruption Programmes in Today's Law Firm

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

This 90-minute programme was co-sponsored by the Ad Hoc Committee on Anti-Corruption and the Rule of Law together with the Legal Practice Committee.

Roger Best, of Clifford Chance in London, addressed risk to the legal profession from involvement in corrupt transactions or with clients that have been involved in the same and on clients' expectations of law firms to address corruption risk and to undertake reporting obligations. Kapil Kirpalani, of HarbourVest Partners in Hong Kong, discussed clients' demands for anti-corruption warranties and other anti-corruption assurances from their law firms. And Lim Koon Huan, of Skrine in Kuala Lumpur, explored what should be in a law firm's anti-corruption compliance programme.

### Liquefied Natural Gas (LNG)—Is It Still Popular?

**Peter T Chow** (*Squire Patton Boggs, Hong Kong*)

The Energy & Resources Committee held a session at the IPBA Annual Conference in Kuala Lumpur, Malaysia, on the topic: 'LNG—Is It Still Popular?'. It was a sequel to the subject covered a few years ago: 'LNG—Why Has It Become So Popular?', reflecting current changes in the LNG market. The keynote address was given by Ambassador Manuel Teehankee, former Philippine

Ambassador to the WTO and former Undersecretary for Justice. He gave a high-level presentation on LNG as a strategic resource, touching on issues relating to access and security. This was followed by country development reports on North America (Robert Kwauk), China (Wang Jihong) and Japan (Hiroyasu Konno). The LNG business is a global one, and it was clear from the reports given that developments in a major country impact the LNG market in another, particularly the pricing of LNG. Jeffrey Holt, the Chair of the Committee, wrapped up the session with a presentation on transportation issues in the LNG business. This was followed by lively comments and questions from participants. The session was moderated by Peter Chow, the incoming Chair of the Committee.

### Insurers in the Asian 21st Century— Financial Models for Capital

**Tunku Farik Bin Tunku Ismail** (*Azim, Tunku Farik & Wong, Malaysia*)

**Speakers:** Dato' Sri Mohamed Hassan Bin Md Kamil (Group Managing Director, Syarikat Takaful Malaysia Bhd, Malaysia), Bishr Shibliq (Arendt & Medernach, Luxembourg), Elaine Tay (Rajah & Tann LLP, Singapore), Shinya Takizawa (Anderson Mori & Tomotsune, Japan), Anita Menon (Chief Risk Officer, Prudential BSN Takaful Bhd, Malaysia), Andrew White (Yulchon, South Korea), Rupert Boswell (RPC, UK).

Dato' Sri Hassan spoke about Risk-based Capital Framework for Takaful Operators in Malaysia and PIDM (Deposit Insurance). Bishr spoke on the development of Takaful in Europe and the opportunities. Elaine spoke on the Capital Regulatory Framework for Insurance Companies in Singapore and the existence of a retakaful company in Singapore and the potential of Singapore as hub for reinsurance and retakaful. Shinya spoke about the general financial requirements on insurers under Japanese law, including minimum capital requirements, policy reserve requirements, solvency margin ratio requirements, business plan requirements, etc., and the key differences between domestic and foreign insurers in Japan in terms of the business model they choose to adopt. Anita and Andrew gave their experience on takaful and whether takaful are the new insurers of the Asian 21st Century. Rupert gave his view on the fact that there are prospects for takaful in the UK given the fact that there is an Islamic Bank of Great Britain. On a practical note, it was noted that takaful operators have to rely on conventional reinsurers for their retakaful needs



to finance their risks. Dato' Sri Hassan gave his view that Malaysia had potential as a retakaful hub given its developed infrastructure in the Islamic financial market and as the new insurers of the Asian 21st Century.

**Panel on Warranty and Indemnity Insurance**  
**Dr Florian Joerg** (*Bratschi Wiederkehr & Buob Ltd, Switzerland*)

The Panel started with an introductory block addressing questions like 'How does it work' and 'When is Warranty and Indemnity Insurance ('WII') used?'. In the next block, the panellists discussed the situation when WII is mostly encountered, whether financial or industrial sellers/buyers prefer insurance and whether more sellers or more buyers use an insurance solution. In addition, the various panellists talked about the specialties of their respective jurisdiction. Under the heading 'Practical difficulties', the Panel then discussed issues like the risks covered, transparency rendered to the insurance company, the balance between including and excluding risks,

providing the DD Report to the insurer, the percentage of the warranty claim that is usually covered, caps, and whether insurers rely on in-house DD Reports. The next group of questions was entitled 'Impact of WII on deal' and addressed pricing, integration of WII into the M&A process as well as advantages and disadvantages of an insurance solution. Finally, the panellists shared their experience regarding payments made under WII and the rules of the parties in case of a claim.

**'A Ball of Confusion—Current Developments in International Public, Private and Sovereign Debt Restructurings'**  
**Dr Thomas Zwissler** (*Zirngibl Langwieser, Germany*)

**Speakers:** Randall Arthur (Kobre & Kim, Hong Kong), Maxim Alexseyev (ALRUD, Russia), Alexander Currie (Herbert Smith and Freehills, UAE).

The objective of this session was to highlight and discuss current developments in international debt

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restructurings. Dr Thomas Zwissler introduced the topic and highlighted the fact that despite a long history of sovereign insolvencies there is still a lack of internationally recognised insolvency procedures for sovereign debtors. Randall Arthur addressed the topic of debt restructurings from a litigation perspective. He provided an overview of the main difficulties faced by creditors in getting and enforcing a judgment. Maxim Alexseyev focused on the situation in Russia and described the developments triggered by the suspension of access to international capital markets. Alexander Currie analysed the impact of the historically low oil and commodity prices and its implications on financial systems. He pointed out that similar to the situation leading to the last financial crisis, it is very difficult to assess who really owns the risk of oil and gas bonds. The panel discussion focused on the question whether the debtor, creditors or even third parties should be in the lead of any formal or informal bond restructuring procedures. The panellists agreed that from a debtor's perspective and even though credibility may have suffered due to the risk of a default, it is the debtor himself who should try to act proactively.

### Cross-border Public Takeovers: Regulation and Practice

**Michael Burian** (*Gleiss Lutz, Germany*)

**Conrad Chan** (*Kwok Yih & Chan, Hong Kong*)

The Panel on cross-border public takeovers consisted of renowned M&A attorneys with extensive experience. The session featured Picharn Sukparangsee (BGL, Thailand), Brandon Myong-Hyon Ryu (Shin & Kim, Korea), Santiago Ferrer Pérez (Hogan Lovells, Mexico), David Robinson (Fladgate, United Kingdom) and Richard Vernon Smith (Orrick, United States). Moderators were two long-time IPBA members and M&A attorneys Michael Burian (Gleiss Lutz, Germany) and Conrad Chan (Kwok Yih & Chan, Hong Kong).

With the different backgrounds and frameworks of regulatory compliance in the various jurisdictions which the panel members belonged to, the session began with a backdrop of the regulatory regimes of takeovers in these jurisdictions, ranging from the non-statutory based to the more heavily regulated ones. The explanation of different types of offers shed light especially on the complex issue of the mandatory offer and its requirements and thresholds. In particular, in the process of stake building, thresholds can be reached which trigger restrictions and obligations in a takeover

process. The speakers then turned to the practice regarding tender offers in different jurisdictions and emphasised the challenges cross-border cases entail. The question of 'put-up-or-shut-up' regimes and the dos and don'ts during an offer period were also touched upon. The Panel subsequently turned to the subject of hostile takeovers and possible restrictions to takeover defense. At the end of the session, the slightly sensitive topic of the US 'long-arm jurisdiction' and its ramification for cross-border takeovers were explained and discussed, followed by a Q&A session.

### Time-Related Claims and Concurrent Delay— Civil Law vs Common Law, A Mock Arbitration Marion Smith QC (39 Essex)

**Panellists:** Daniel Koh (Eldan Law LLP, Singapore), Christopher Wright (Watt Tieder Hoffar & Fitzgerald LLP, USA), Naoki Iguchi (Nagashima Ohno & Tsunematsu, Japan), Matthew Christensen (Bae Kim & Lee, Korea), Colin Ong (Dr Colin Ong Legal Services, Brunei) and Hefin Rees QC (39 Essex).

Construction and infrastructure disputes around the world focus on time and money, and the question arises: who is responsible for the delays that occurred or overlapped during the project? There is no one rule, globally accepted, for the treatment of concurrent delay claims. It is a vexed topic, raising many questions. What is the rationale behind the different approaches? Is the division as simple as common law versus civil law? What is the 'best' solution? In order to debate and answer some of these questions, the ICP Committee held a mock construction arbitration. A hypothetical scenario was prepared to draw out the issues. Singapore law was selected as the contract's governing law, as Singapore has as yet no binding authority dealing with the issue of concurrent delay. The Developer, represented by Daniel Koh (Singapore) and Christopher Wright (USA), presented the common law approach. The main contractor, represented by Naoki Iguchi (Japan) and Matthew Christensen (Korea), developed the civil law approach. The Arbitrators, Colin Ong (Brunei) and Hefin Rees QC (England), grappled with submissions ranging from Germany's Civil Code section 343 and Japan's Civil Code (Act No 89 of 1896) article 420, to case law from Singapore, Malaysia, the US and UK. Competing chronologies were power pointed. Detailed submissions closely analysed the facts. The attendees, as third arbitrator, pitched in, sharing their knowledge

and insights. The final question, posed by Kirindeep Singh (Singapore), (who had prepared the fiendish scenario), took us back, as ever, to the contract terms: is the answer provided by clause 8.4 (FIDIC Red Book)? It was a very interesting, enlightening and lively session—what will the Singapore courts do when the issue arises?

### Outside Directors and/or Independent Directors; Diversity in Corporate Governance

**Takeshi Matt Komatsu** (*Mori Hamada & Matsumoto LLP, Singapore*)

**Evelyn Ang** (*Rodyk & Davidson LLP, Singapore*)

**Panellists:** Professor Dan Puchniak (National University of Singapore, Faculty of Law), Kenneth J Stuart (Becker, Glynn, Muffly, Chassin & Hosinski), Kala Anandarajah (Rajah & Tann), Bui Ngoc Hong (LNT Partners) and Abadi Abi Tisnadisastra (AKSET).

This session focused on the increasingly important role play by Independent Directors ('IDs') around the world and whether there is a trend of moving towards a universal model or the American-type of independent directors.

Professor Dan Puchniak, who is a leading comparative corporate law professor, made the opening remarks where he touched upon the genesis of ID in the US and the global rise of American-style ID, the remarkable rise of ID in Asia over the past two decades, and the overlooked diversity of IDs in Asia. He noted that Asia's IDs are markedly different from the Anglo-American origins, and also markedly different from jurisdiction to jurisdiction in Asia in terms of their independence, qualifications, numbers and functions.

Against this background, the panellists who were from the US, Singapore, Vietnam, Indonesia and Japan shared their views on practical aspects of the IDs in their respective countries. The panellists echoed the view that whilst the American-type ID is viewed as a model which has been transplanted around the world, there is wide diversity of IDs in Asia and the concept of ID has been developed by adapting to and evolving with local conditions including shareholder structure, corporate culture, and legal history. The Panel, as a whole, demonstrated and shared the importance of analysing the real function of IDs in each jurisdiction by looking into the details and practice as well as other elements which are necessary to constitute better corporate governance.

### The Historic Iran Sanctions Deal—Reducing Risk for Asian Business

**Corey Norton** (*Trade Pacific PLLC, USA*)

This joint panel between the Cross-Border Investment and International Trade Committees examined business opportunities and risks resulting from sanctions relief countries offered in response to the historic nuclear deal with Iran that went into effect in January 2016. The panellists represented major global trading partners (Australia, Canada, France, Japan and the United States) and shared their respective jurisdiction's diverse histories of doing business with Iran and sanctioning Iran for its nuclear activities. The Panel also addressed the rich economic environment in Iran and the consequent desire of global businesses to enter that market now that many sanctions have eased.

Through the presentations it became clear that each jurisdiction, except the United States, has dropped its sanctions sufficiently for its exporters to engage in a wide variety of new business in Iran. However, the United States, motivated by its 1979 hostage crisis and other factors, continues to ban most US exports to Iran as well as much trade between Iran and non-US companies involving US goods. In some circumstances, the United States even sanctions trade with Iran that does not involve US companies or US goods. Developments have opened Iran to many global traders, but new transactions with Iran should still be vetted to determine whether lingering prohibitions apply.

### Modern Modes of Resolving Insurance and Other Financial Disputes

**Tan Chuan Thye** (*Rajah & Tann, Singapore*)

Panellists from civil law and common law jurisdictions came together to review their experiences of how claims ranging from basic motor insurance claims to multi-faceted catastrophic events claims to complex financial crisis claims have been addressed. We recognised a need for greater communication between disputants at an early stage and more acceptance of the benefits of mediation. There is also a need for representative actions, both in the sense of claimants as a class and actions that are issue-based and precedent-setting. And there needs to be flexibility and policy making, and the intervention of an ombudsman, where cases of mass individual hardship are concerned, to avoid the harshest implications of unfortuitous events.



The session ended with a question: in a globalised world where supply chains stretch across jurisdictions, is efficiency in dispute resolution or the achievement of the best possible outcome for your client the higher goal, and are they incompatible? Examples of how each goal can be furthered were presented but the debate shall only be resolved in an Antipodean setting.

### Labour Law Issues in M&A Transactions

**Eriko Hayashi** (*Oh-Ebashi LPC & Partners, Japan*)

**Fernando Hurtado de Mendoza** (*Rodrigo, Elias & Medrano Abogados, Peru*)

**Committees:** Cross-Border Investment and Employment and Immigration Law.

**Panellists:** Henry J Chang (Blaney McMurtry LLP), Caroline Berube (HJM Asia Law & Co LLC), Frédérique David (LEX2B), Oene Marseille (ABNR).

This session focused on labour law issues commonly encountered in M&A transactions. The Panel spoke about unique labour regulations, some practical steps to be taken by practitioners, as well as the importance of drafting relevant provisions in agreements to minimise risks. Frédérique David from France, who is a Vice-Chair of the Employment and Immigration Committee, made the opening presentation and gave an overview of the issues concerning labour law in M&A transactions as well as some of the special aspects of French labour law such as the mandatory prior consultation process. Speakers representing major regions of the world including Canada, Indonesia and China, introduced very interesting issues being faced in their own jurisdictions. This was followed by a very interactive Q&A session led by the moderators and actively participated in by the audience.

### Corporate Compliance

**Gerold W Libby** (*Zuber Lawler & Del Duca LLP in Los Angeles*)

**Young-Moo Shin** (*Shin & Park in Seoul*)

This 90-minute programme, sponsored by the Ad Hoc Committee on Anti-Corruption and the Rule of Law, addressed corporate compliance in relation to corruption issues.

Susmit Pushkar, of Khaitan & Co in New Delhi, addressed the new trend of outsourcing of compliance tasks to contractors. Taek Rim (Terry) Oh, of Lee & Ko in Seoul, discussed regulators' requirements and expectations regarding compliance programmes. Simone Nadelhofer, of Lalive in Zurich, discussed the new ISO Guidelines 19600: 2014 on Compliance Management Systems. She explained that these Guidelines are applicable to all types of organisations; the extent of their application depends on the size, structure, nature and complexity of the organisation in question. ISO 19600 is based on the principles of good governance, proportionality, transparency and sustainability. Mohammed Reza, of JWS Asia Law Corporation in Singapore, discussed protection and treatment of whistleblowers.

### Working with Witnesses in Cross-Border Disputes

**Jonathan Wood** (*RPC, Singapore*)

'Working with witnesses in cross-border disputes' provided a lively panel discussion among lawyers from civil law and common law jurisdictions, namely, England (Keith Oliver), France (Marie Danis), Japan (Yutaro Kawabata), Malaysia (Preetha Pillai) and the US (Lawrence Schaner). The session was moderated by Jonathan Wood from Singapore. The Panel focused on issues such as the ethics of approaching and interviewing potential witnesses and the controversial topic of preparing witnesses for trial and where the line was to be drawn. Various bar rules and 'soft law' guidelines on these topics such as the IBA and LCIA rules were considered. One highlight was when Lawrence Schaner produced the transcript of a deposition which his partner took of the moderator, Jonathan Wood, in a major piece of US litigation involving the London Insurance market. This was used as an example of the type of questions a witness might expect to be asked about how he or she might be prepared in US litigation by US lawyers. Fortunately,

the moderator acquitted himself with admiral skill in his responses! The other panellists each contributed with their own experiences, with reference being made to the signature case of *Berezovsky v Abramovich* before the English Court, where Mrs Justice Gloster commented on the court's scepticism as to whether the lengthy witness statements reflected more the industrious work product of the lawyers, than the actual evidence of the witnesses. Be warned!

**Woman Lawyers Who Run The Show—  
How They Walk the Walk; How They Talk the Talk**  
*Olivia Kung (Oldham, Li & Nie, Hong Kong)*

This session was conducted by way of a case scenario with a newly qualified female lawyer who had the desire to climb to the top of her career ladder. The case scenario led to discussions on two main topics: (1) soft skills female lawyers should possess or acquire; and (2) common challenges they might face and how to overcome them.

In terms of soft skills, the session addressed the following sub topics:

- (a) how to create a professional image—the importance of dressing appropriately at work, attitude and behaviour both at work and on social media, the importance of confidence and how to achieve it;
- (b) how to overcome the fear of networking and how to network efficiently and effectively; and
- (c) how to be a good leader and the importance of team work.

In terms of challenges, the session addressed the following issues:

- (i) general labelling of society between men and women;
- (ii) work/life balance—whether it is achievable and, if so, how?
- (iii) the gentlemen's club—to join them or to fight them?

The session was conducted in a 'chat show' format—informal and interactive between the audience and the Panel of successful female lawyers from different jurisdictions. As participants consisted of both male and female lawyers, it was interesting to share experiences and learn from different perspectives and cultures.

**Foreign Law Firms and Lawyers in a Globalised World**

*Tatsu Nakayama (Nakayama & Partners, Japan)*

Nine speakers from Mongolia, Nepal, Bangladesh, New Zealand, Cambodia, Vietnam, India, Sri Lanka and Malaysia, all of them distinguished IPBA Scholars, spoke on the entry of foreign law firms and practice of foreign law firms in each jurisdiction.

We learned that although some jurisdictions seem rather closed and protective against the opening of its local legal market, many jurisdictions in general are becoming more open to and welcoming foreign lawyers and foreign law firms in order to address 'Diverse Challenges, Global Solutions', the theme of this years' Annual Conference.

Our session was unfortunately scheduled in the early morning of the last day of the Annual Conference and we frankly could not expect many attendees. However, contrary to our humble expectation, we had a sufficient number of attendees that made our session interactive enough.

All the speakers were well prepared for each presentation and we strongly believe that all of the audience was given informative information on how to practise law or open foreign law firms in each jurisdiction. The credit goes to the excellent speakers/Scholars. I strongly hope that in the future IPBA Scholars will be given a valuable opportunity to become a speaker of one of the sessions in the Annual Conference.

Lastly, let me give special thanks to all the attendees who joined our session early in the morning!

**How to Manage Multi-Jurisdictional Trademark Disputes in the Asia Pacific Rim**

*Riccardo G Cajola (Cajola & Associati, Italy)*  
*Michael Soo (Shook Lin & Bok, Malaysia)*

The Intellectual Property Committee stand-alone session on 'How to manage multi-jurisdictional trademark disputes in the Asia Pacific Rim' took place on Saturday 16 April at the Kuala Lumpur Convention Center. The session was well attended and successful.

The panellists addressed several topics and considered that trademarks are more global than ever, giving rise

to an increasing number of multi-jurisdictional disputes. Trademark owners often have a choice of forum in which to hold the dispute, both in terms of geography and administrative, court or arbitration proceedings. WIPO—as well—recently introduced a dispute resolution system in exhibitions where IP disputes can be resolved within 24 hours. The session format was designed to ensure an active interaction among the panellists and the audience and included a hypothetical dispute and strategic discussion among the panellists regarding where to file, how to gain leverage and what other considerations arise in different jurisdictions.

The Committee Chair Riccardo G Cajola prepared the case scenario-fact pattern and Michael CM Soo successfully chaired and led the discussion throughout the session. Several questions by the audience were addressed and different jurisdictional views exchanged among the participants. The speakers roster included Ayumu Iijima from Kitahama Partners (Tokyo), Pan Lidong from Wang Jing & Co (Shenzhen), Frederic Serra from

Froriep (Zurich) and James Lee from Lee Tran & Liang (Los Angeles).

### **The Recalcitrant Respondent** **Chiann Bao (HKIAC, Hong Kong)**

The final dispute resolution committee panel session of the IPBA Kuala Lumpur entitled 'The Recalcitrant Respondent' featured a lively discussion by experienced practitioners from all over the world. Panellists debated the proposition: Parties have the right to take advantage of whatever procedural step available to them if they perceive delay to be in their own interest. We then shifted to a discussion about certain types of recalcitrant behaviours, including (1) a respondent that refuses to pay costs; (2) the non-participating respondent; and (3) the respondent that goes to court as a delaying tactic. Speakers as well as participants from the audience were not short on war stories about being on the opposing side of a badly behaved respondent or even representing the badly behaved respondent.

## **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 **Leonard Yeoh** at leonard.yeoh@taypartners.com.my and **John Wilson** at advice@srilankalaw.com. 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.

# Interview with The Honourable Tun Arifin bin Zakaria (Dato' Lela Negara), Chief Justice of Malaysia

On Thursday, 14 April 2016, the Publications Committee of the IPBA was given a special opportunity to interview The Right Honourable Tun Arifin bin Zakaria, Chief Justice of the Federal Court of Malaysia for the *IPBA Journal*.



YAA Tun Arifin bin Zakaria

The Rt. Hon. Tun Arifin bin Zakaria was called to the English Bar and received his LLM at the University of London in 1980, after reading law at the University of Sheffield. Prior to that, he had joined the Judicial and Legal Service of Malaysia in 1974 and over the years held several positions there in both the Judicial Office and the Legal Department. In 1992, he was appointed as Judicial Commissioner of the High Court of Malaya, and in 1994 was appointed as a High Court Judge of Malaya. He was elevated to the Court of Appeal in 2002, the Federal Court in 2005, and was appointed Chief Judge of the High Court of Malaysia on 18 October 2008. On September 12, 2011, he was made the Chief Justice of Malaysia.

## 1. What was Tun's motivation to become a lawyer?

To start with, I was a government scholar and I was sent to study in the UK on a government scholarship but for a different course, which was Political Science. But while in the UK, at Sheffield University, I changed the course after being registered for two weeks in the Political Science School. This was on the urging of some of my friends. The reasons being simply that

in Malaysia at that time, according to them, there was an acute shortage of lawyers because we didn't have a Law Faculty in Malaysia. The Law Faculty in Malaysia was only established in 1972; the first graduation was in 1976. So, that is the reason why I changed my course to do Law instead of Political Science. The other reason is that there may have been something inside me also that agreed with making the change and that moved me to do so,

and fortunately when I knocked on the Professor's door asking to change course, I was admitted into the law faculty. So it was fated that I will do law. These are generally the reasons why I did law.

**2. After law school, did Tun go on to study for the Bar Exams in the UK?**

No, I joined the government service because of my scholarship. I joined the Judicial and Legal Service. After four years, I went back to do a Master's degree and the Bar in London.

**3. So Tun's completed the LLM and the Bar together?**

Yes, It was a one-year course. So that is how I was admitted to Bar.

**4. Tun, what are the most important qualities a good judge must possess?**

I think the most important quality for a judge is integrity. One must have the highest integrity. Otherwise, you cannot be a judge. You might be clever, intelligent and highly qualified but if you have no integrity, you cannot be a judge. That is the first quality. Then of course the other one is patience. As a judge you are supposed to listen, to hear the parties. I

always believe that people come to court to sort out a dispute. There will be dispute between the parties and they want somebody to hear their case, their point of view, don't they? That is essentially what the court is for. And in doing so, you have to make your decision quite fast, you can't let the dispute to go on and on. The faster you decide, the better. Then at least they can move on. It is bad if the dispute lingers on.

**5. Apart from integrity and patience, is there any other point Tun would like to add as to judicial qualities?**

Of course your level of education must be of a certain standing because one of the sayings of the Prophet is that judges must be selected from the best of persons. A judge is not just simply anyone, he must be among the best of men and must be well picked. That is what the Prophet said. That essentially is the quality needed and the government should also pay well.

**6. Comparing the pay scale of judicial as well as government service, I think our neighbouring country, Singapore, is setting a very high standard. Does Tun agree with the standards being adopted by the Singapore government?**

Salary is, of course, relative. You have to look at the society. In Singapore they pay everybody well.





Not only judges, but also government servants and ministers. Their pay is higher. But I don't think in Malaysia we can adopt that.

**7. What would be Tun's recommendation?**

What we can do is at least pay judges a reasonable salary which I think the government has done so far—relatively better than even some of the senior government servants.

**8. The judiciary in Singapore in recent years has launched a programme called the Singapore Judicial College. Is there any chance for a similar initiative to be implemented here in Malaysia?**

Yes, what we have in place now is a Judicial Academy which is an academy in charge of training of superior court judges, that means the High Court and above. For the subordinate courts, we already have the training institute which is called the Judicial and Legal Training Institute. It is meant for subordinate court judges, judicial and legal officers and also enforcement agencies. The Judicial Academy is under the Judicial Appointments Commission. We do have training almost every month now. The trainers are judges. Judges from the appellate courts training the High Court judges and Judicial Commissioners.

**9. Would Tun consider the Judicial Academy the equivalent to the Singapore Judicial College?**

I look at it, the Judicial Academy, as a start, and it is important because it gives recognition to the fact that judges need training and to be updated with new laws and new circumstances.

**10. But it is not as structured until it considers itself a college?**

No, not yet, but it is moving towards that and the government makes certain provisions every year to support the Judicial Academy. Eventually what I plan to do is, in fact we have already started this move, to further improvise our judicial training. At the moment we have the Judicial and Legal Service Commission. The judicial and legal is a combined service, so you can, one day be a deputy public

prosecutor ('DPP') and the next day you can be a magistrate. Sometimes, this could give rise to a conflict of interest and the independence of the judiciary might be undermined. So what I have proposed to the Commission is to have this same Commission but split into two divisions. In other words, two divisions of service, the legal service and the judicial service, under two different heads. The head on the judicial side will be the Chief Registrar and the other side will be the Attorney General. Then you can avoid a conflict of interest. But officers can continue to be transferrable because that is beneficial to the career development of officers as they have got both training on the legal side and the judicial side. But when they want to come over to the other service, they have to apply and be transferred to the judicial side with our approval. There will be a clear division between these two sides. If that happens, the Judicial Academy can be expanded, not only to train judges, but also to include our judicial officers in the same academy. Then, perhaps, it can be more structured like in Singapore with bigger numbers. At the moment we have about 100 Judges, just the High Court judges. But it is a good start.

**11. What are the challenges Tun has faced after becoming the Chief Justice of Malaysia and what has Tun accomplished in Tun's tenure that can be said to be Tun's legacy before Tun moves on?**

The most important is that we started the judicial reform in 2009. The first hurdle was to clear the backlog of cases at that time and as a local practitioner, I'm sure you will realise, at that time there were a lot of cases in the court awaiting trial. It can take five years for cases to be disposed of. So we decided to clear up this backlog. That was one of the major things we did. For example in the Commercial Courts of Kuala Lumpur, there were about 6,000 cases pending and we had six judges. Cases may take five to six years to be disposed. The Chambers of Commerce representatives came to see us and told us that: "What is the purpose of filing a case if the case is going to be disposed or decided five years down the line?" So after thinking over it, I came across a similar problem in Ireland and they set up a new court, they called it the new Commercial Court or something to that effect. We followed their method and also called it the New Commercial

Court. We have two sets of judges, one set to do new cases while another set of judges handled the old cases. We cleared up the cases within nine months on the average, not more than 12 months. But the 6,000 old cases, I bet you will be surprised, we cleared those cases in two years. So old cases were cleared and new cases were disposed of within the stated time line.

**12. At one time in Malaysia the movement and disposal of cases was just as fast as, if not faster than, Singapore. Singapore was known to have the most efficient courts but Malaysia actually caught up and became even faster than Singapore.**

Yes because of this regime or new approach. And now we monitor the cases closely. So apart from Commercial Courts, we have also set up the Islamic Banking Court. It is crucial for Islamic Banking cases to be dealt with fast because there is no interest charged. So if the borrower doesn't pay, the cases languish in court for five years, the borrower benefitted because they didn't have to pay interest, so we decided to have such cases disposed of fast. Then we have the Intellectual Property Court and the latest is the Construction Court to cater for the construction industry. And much to our surprise, now a lot of construction cases come to the courts; this is because it is cheaper and faster than arbitration. The only thing is that court proceedings are without confidentiality which is still important to business people. But of course the defect and setback of arbitration is that it doesn't set as precedents and so it doesn't contribute to the development of the law and jurisprudence in particular areas of law because it is confidential. Also, I need to mention in Malaysia, the Judiciary is always supportive of arbitration; we hardly intervene unless there is a breach of natural justice, corruption, or a conflict of interest, but these are very narrow areas for us to intervene.

**13. Tun, apart from the 2009 judicial reform together with your predecessor, Tun Zaki, that basically sped up the disposal of cases and having more specialised courts, has there been anything else?**

The other thing is that after we cleared the backlog, then we realised that the other important

component is the quality of our decisions and judgments. This is the part we are trying to accomplish within the last couple of years. That is where the Judicial Academy came in. Apart from that we also receive funding from the government to send our judges for international conferences because I think through these conferences and networking, we will expose our judges to any new developments in the law. So I think it has been important to send judges abroad as well for conferences.

**14. Actually I have attended a lot of international conferences where I did meet judges from other countries. Their involvement was not so much networking in terms of business but networking in terms of sharing knowledge and experiences.**

In fact, apart from the ASEAN Law Association ('ALA'), we have the ASEAN Chief Justices' Meeting ("ACJM") on the side-lines of ALA. The last one we had was in Vietnam, Ho Chi Minh City. All the 10 Chief Justices attended. This is an important forum where we exchange ideas and we are trying to promote harmonisation of law and civil processes. For example, now if we want to serve our process in Thailand, there is no way we can do it, but we are in an ASEAN country. So in light of the ASEAN Economic Community which has been established recently, the Chief Justices are working together to support that. And we have agreed, more or less, to amend the Rules of Court of all the ASEAN countries to accommodate the service of process. This is the first step. We agreed on common judicial training which is led by Indonesia and the Philippines. This is for our judges and judicial officers. So we are sharing the training programme with all the ASEAN countries. We are learning from each other and trying to promote the level of efficiency and knowledge in ASEAN countries.

One other thing that I did was the setting up of the Environmental Court; this is just to give emphasis to issues relating to the environment. We also have the ASEAN Chief Justices' Roundtable Meeting on the Environment. In this forum one of the issues discussed was relating to the haze which affected both Malaysia and Singapore.

15. If there is nothing to add on the accomplishments, then this question is slightly more interesting for foreigners. How does Tun see the judiciary performing a role in the maintenance of racial and religious harmony in multi-racial and multi-religious Malaysia?

I think the most important thing is we have to uphold the rule of law: whether it is a racial or religious dispute, we have to stick to the rule of law. Meaning to say, you act according to the law as stated in the Constitution and also in the written laws. That is basically my approach. Conflict of laws do exist anywhere in the world. Our Constitution clearly states that the Syariah Court is not subject to the jurisdiction of the civil courts and vice versa. In other words, they are equal or on par and that is the difficulty. I don't think I can make any general statement on this. But so far we have done quite well, aside from the incident in 1969, we have not had any racial or religious problem. Generally there is mutual respect.

16. Tun, you mooted in one of your speeches earlier this year that you have in place a specialised team of judges to handle anti-profiteering goods and services tax court. How did this idea come about and why is it that Tun sees a need for this anti-profiteering goods and services tax court?

This anti-profiteering, goods and services tax court was established because we saw the need for it following the implementation of GST in Malaysia. It was also on the request of the Ministry, but we didn't set up that many courts, only one court in Kuala Lumpur. It has only 11 cases so far, two are pending and nine have been settled and the offences are compoundable. We created this court with a view to expedite disposal of such cases. It creates a kind of guide for the enforcement agency and also for the public—the decisions of the court will guide them.

17. Tun, which area of practice, for the purposes of practitioners, do you see in your personal view growing in Malaysia for the next five years?

Competition law.



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**18. How about environmental?**

If you look at the environment in the bigger perspective, it should encompass planning law, town and country planning, development and deforestation.

**19. As this interview is to be published in the upcoming IPBA journal, Tun, do you have any specific message for our readers? Since, as I mentioned earlier, it's an organisation of Asia Pacific and also international commercial and business lawyers with an Asian focus.**

First of all, I would like to congratulate whoever started IPBA because it is indeed an important association which covers a vast area. IPBA provides the platform for networking among the lawyers. It is important for lawyers to support this initiative by IPBA.

**20. And Asia is of course the future of the world.**

Yes, without doubt. The other thing is the role of a Bar. I think the Bar plays an important role in any

democratic society as part of the checks and balances. To me, the Bar, the Judiciary and the Attorney General, whatever our role is, we are still part of the legal profession, playing our different roles. And our ultimate aim is to establish justice and to uphold the rule of law. So it is important for us to play our parts correctly and to uphold what we believe, so that justice will prevail and democracy will thrive in all countries in the world. So I must again congratulate the IPBA for this effort.

**20. Thank you on behalf of IPBA. And the last question, but very important question, for every Malaysian or international guest, where does Tun find the best nasi lemak in Malaysia?**

Tanglin *nasi lemak* near Tanglin Medical Clinic. But whatever it is, when we talk about food, I think Malaysia is blessed because we have a fusion of so many cultures, we have Chinese, Indian, Malay and we have other people coming in as well. Now Kuala Lumpur is in fact like a big kitchen. We are never short of Japanese, Korean, even Middle Eastern food. And our own fusion between Chinese, Indian and Malay food is amazing as well. Take for example our Curry Mee and Curry Laksa. This is the beauty and this is a thing that we Malaysians sometimes never appreciate. The multi-religious, multi-racial, multi-cultural aspects are our strength and should not be looked at as a weakness. If we use our strength, we become more resourceful. For example, we have lawyers who are proficient in Chinese and Tamil apart from English and Malay. We have to use this to our advantage.



**Leonard Yeoh**  
Partner, Tay & Partners

Leonard Yeoh has substantial trial, appellate and arbitration experience and has litigated at all levels of the Malaysian and Singaporean court hierarchy. He represents leading Malaysian companies and multinational companies in domestic and international arbitrations. He has been involved in various landmark cases often acting as counsel in those cases. He has been voted and nominated consistently by clients, peers and the industry as one of Asia's leading lawyers in Labour & Employment and Dispute Resolution by Asialaw Leading Lawyers, Chambers Asia, Asia Pacific Legal 500 and Asian Legal Business.

# Singapore Implements the Hague Convention on Choice of Court Agreements: What This Means for International Disputes

The Hague Convention on Choice of Court Agreements is a significant judgment-recognition convention which strengthens the enforceability of Singapore court judgments abroad. This article explores Singapore's implementation of the Hague Convention and its broader implications on Singapore as an international hub for dispute resolution and for the promotion of Rule of Law in the region.



## Introduction: Enforcement of Foreign Court Judgments

In a Singapore Academy of Law 2015 study on Governing Law & Jurisdictional Choices in Cross-Border Transactions, 71 percent of respondents picked arbitration as their preferred dispute resolution mechanism and 46 percent of respondents indicated that enforceability of the judgment or award was the factor which influenced their dispute resolution choice.

Cross-border enforceability is undoubtedly a key reason for commercial parties choosing to arbitrate their disputes. The rationale for that preference becomes apparent when one considers that a Singapore international arbitration award can be recognised and enforced in any of more than 150 state parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ("New York Convention"). By contrast, a Singapore court judgment may be recognised and enforced in only 11 states pursuant to the foreign equivalent of Singapore's Reciprocal Enforcement of Commonwealth Judgments Act ("RECJA") and the Reciprocal Enforcement of Foreign Judgments Act ("REFJA").<sup>1</sup>

However, that number has increased more than threefold. In a speech on 22 January 2016, Singapore's Law Minister, Mr K Shanmugam, announced that Singapore would ratify and implement the Hague Convention of 30 June 2005 on Choice of Court Agreements ("Hague Convention"). Since then, the Choice of Court Agreements Bill was passed in the Singapore Parliament on 14 April 2016 ("the Act"). On 2 June 2016, Singapore ratified the Hague Convention and the Ministry of Law has announced that the Hague Convention will come into force in Singapore on 1 October 2016.

The question then arises: to what extent will the Hague Convention be a game changer?

## The Current Enforcement Regime in Singapore: Treaties and Uncertainties

Generally, a foreign judgment may only be recognised and enforced under the domestic laws of the enforcing state, unless that enforcing state is bound by enforcement obligations under a bilateral or multilateral treaty.

Being subject to the domestic laws of the enforcing state can be problematic as certain jurisdictions, for example

Indonesia, will not recognise and enforce the Singapore judgment. Instead, the entire matter must be re-litigated through fresh court proceedings. This prospect can be both daunting and expensive for commercial parties.

However, where a foreign judgment is sought to be enforced in Singapore under its treaty obligations (which have the force of law by way of RECJA and REFJA), recognition and enforcement is substantially easier. This is because the process of registering a foreign judgment is a formal one, in which the court adopts a light touch approach.<sup>2</sup>

The key limitation is that there are currently only 11 contracting states whose judgments of their superior courts may be recognised and enforced pursuant to Singapore's treaty obligations.

## The Hague Convention and the Act: Certainty, Numbers and Innovation

The Hague Convention will increase the number of contracting states whose court judgments may be recognised and enforced by Singapore's treaty obligations by another 28 states. Viewed solely in terms of numbers, the Hague Convention can only be good news for Singapore businesses which have, and which are considering engaging in, trade with counterparties in the EU (except Denmark) and Mexico—the other contracting states to the Hague Convention.<sup>3</sup> The USA and Ukraine remain signatories to the Hague Convention but have yet to ratify it.

However, the benefits of the Hague Convention and the Act go beyond increasing the number of foreign jurisdictions in which a Singapore court judgment may be enforced. In particular, the Act arguably goes further and departs from the Hague Convention in certain significant ways, which should be of interest to commercial parties and legal practitioners alike.

## Giving Effect to Exclusive Choice of Court Agreements and Foreign Judgments

The Hague Convention obliges a court in a contracting state to suspend or dismiss proceedings brought before it if it is not the designated court under an exclusive choice of court agreement ("ECC") which applies. Concurrently, where a judgment is given by a court of a contracting state designated in an exclusive choice of court agreement, that judgment shall be recognised and enforced in other contracting states.

Recognition and enforcement of an ECC or a foreign judgment may only be refused on the limited grounds specified in the Hague Convention.<sup>4</sup> But as discussed further below, the Act takes a different approach from the Hague Convention by dividing the grounds for such refusal as being either mandatory or discretionary.

### Enforceability of Non-monetary Judgments

One key difference between enforcement pursuant to the Hague Convention as opposed to the common law or RECJA/REFJA is that non-monetary judgments may be enforced under the Hague Convention.

### Presumption of Exclusivity

Another interesting difference between the Hague Convention and RECJA/REFJA is that the Hague Convention provides for a presumption that the choice of court agreement which designates the courts of a contracting state 'shall be deemed to be exclusive unless the parties have expressly provided otherwise.' Under the common law, it is a matter of contractual interpretation as to whether a choice of court agreement is exclusive, and there is no presumption either way.

### Promoting the Singapore International Commercial Court

Section 3 read with section 2 of the Act expressly provides that where the Singapore High Court is the designated court in an ECC, it would also include the Singapore International Commercial Court ("SICC") unless a contrary intention appears in the agreement.

Parties may therefore have the benefit of having their cases heard in the SICC, and enforcing their SICC judgment pursuant to the Hague Convention, without having to specify in the ECC that the SICC is the designated court. Even if the designated court in the ECC is the Singapore court, the case could still be transferred to the SICC in accordance with the relevant rules.

### No Superior Court Restriction

Under RECJA and REFJA, only judgments of the superior courts of the relevant jurisdictions can be enforced in Singapore. This meant that a judgment of a subordinate court in the UK (or any of the other relevant jurisdictions) would not have been enforceable in Singapore under RECJA or REFJA.



71 percent of respondents picked arbitration as their preferred dispute resolution mechanism.

The Act does not have any such restriction. All it requires is that the judgment is rendered by a court designated in an ECC.

### **Enforceability of Default Judgment**

The Hague Convention helpfully contemplates that a judgment which is obtained by default may be enforceable. However, where a judgment is obtained by default, the courts of a contracting state are not bound by the findings of fact made by the original court in making the judgment.

### **No Legalisation/Apostille Needed**

The Hague Convention expressly states that all documents forwarded or delivered under the convention are exempt from legalisation or the apostille process. This is very welcome as it eases the legal and administrative burden as the legalisation/apostille process is not an uncomplicated one. It can also be quite time-consuming as the relevant consulates and commissions may have limited opening hours or may require extensive travel, even into a neighbouring country.

## **Significant Differences between the Act and the Hague Convention**

### **Discretionary versus Non-Discretionary Refusal to Recognise or Enforce Foreign Judgment**

Unlike the Hague Convention, the Act provides for both discretionary and non-discretionary refusal on the part of the Singapore courts to recognise or enforce a foreign judgment.

Grounds for mandatory refusal include circumstances in which the defendant was not notified of the claim (or not provided with sufficient time to defend/respond to the same), where the foreign judgment was obtained by fraud or on public policy grounds (including a breach of natural justice).

In contrast, discretionary grounds include situations in which service of the claim documents on the defendant was 'in a manner incompatible with the fundamental principles in Singapore concerning the service of documents' or where there is an earlier inconsistent judgment, whether by a Singapore or a foreign court.

Recognition or enforcement may also be refused if the foreign judgment is being reviewed or appealed against or the time limited for such review or appeal has not expired.

### **Discretionary Refusal to Recognise or Enforce Non-compensatory Damages**

Section 16 of the Act stipulates that the Singapore court may refuse to recognise or enforce a foreign judgment if, and to the extent that, the foreign judgment awards damages (including exemplary or punitive damages) in excess of compensation for the actual loss or harm suffered by the party awarded the damages.

However, section 16(2) appears to provide for a savings clause in that such exemplary or punitive damages (or a portion thereof) could be justified as being awarded to cover the costs and expenses relating to the foreign court proceedings in which the judgment was obtained.

Presumably, this provision was drafted in contemplation that the USA, which is a signatory state to the Hague Convention, eventually ratifies the same. While the USA is the most prominent jurisdiction which awards exemplary or punitive damages, it is also one of the few (if not sole) common law jurisdictions in which costs do not follow the event, that is, the losing party does not pay the winning party's legal costs. It is theoretically possible that section 16(2) is applied to enforce a US court's award of exemplary or punitive damages.

Parties should also note that section 19 of the Act permits the recognition and enforcement of the severable parts of the foreign judgment.

### **Single Regime for Enforcement of Foreign Awards: Primacy of the Act**

The Choice of Court Agreements Bill recognised the possibility of an overlap between the Hague Convention and either RECJA or REFJA. For example, an English court judgment could be enforceable under RECJA and the Hague Convention.

However, any potential confusion has been remedied by ensuring the primacy of the Act over RECJA and REFJA. The bill implemented related amendments to both RECJA and REFJA, such that those acts would not apply to any judgment which may be recognised or enforced in Singapore pursuant to the Act.

## **Why the Date of the Act is Important to Commercial Parties**

Given that the Hague Convention and the Act will come into force on 1 October 2016, parties should use the interim period to consider whether to incorporate ECCs



or to convert boilerplate non-exclusive jurisdiction clauses to ECCs instead in order to avail themselves of the benefit of the Hague Convention.

The Act draws a critical distinction between Singapore ECCs and ECCs from other jurisdictions.

Essentially, once the Act comes into force, ECCs which designate the courts of the member states of the EU (excluding Denmark) or Mexico can already be enforced

in the Singapore courts, even if such ECCs were entered into prior to the Act coming into force. By contrast, only Singapore ECCs entered into after the Act is gazetted will be enforced by the Singapore courts.

### The Hague Convention: Courting the Freedom of Choice

The following table sets out a high level comparison between the Hague Convention and the New York Convention.

Issue	Hague Convention	New York Convention
<b>Consumer contracts</b>	Excluded	Not excluded in Singapore. Otherwise varies by jurisdiction.
<b>Employment contracts</b>	Excluded	Not excluded in Singapore. Otherwise varies by jurisdiction.
<b>Subject-matter jurisdiction</b>	List of excluded subject matters set out at Article 2(2).	Subject-matter arbitrability is not defined under the New York Convention.
<b>'International' cases</b>	Parties must not be from same contracting state and the elements of the dispute must not point to that same state.  Parties cannot choose to opt-in to the Hague Convention by choosing a court of a foreign contracting state as part of their exclusive choice of court agreement.	Parties may opt-in to either the domestic or international arbitration regime in Singapore.
<b>Interim measures</b>	Non-enforceability of interim measures issued by courts of another contracting state.  Does not preclude court of contracting state from issuing interim measure in support of foreign proceedings. However, this will be a matter of domestic law.	Non-enforceability of interim measures issued by tribunal seated outside of Singapore.  Singapore courts have the power to issue interim measures in aid of foreign proceedings.  Otherwise varies by jurisdiction.
<b>Default and summary judgments</b>	Default and summary judgments can be recognised and enforced.	Unless the arbitration rules provide for it, there is no default judgment or summary judgment mechanism in arbitration.

Given the similarities between the Hague Convention and the New York Convention, and the additional limitations which apply to the Hague Convention, it might appear that the Hague Convention does not offer any particular benefit over that of arbitration especially in terms of the extent of cross-border enforcement. Viewed in that light, the 28-signatory Hague Convention falls far short of its 156-party cousin.

However, there are reasons why parties may prefer litigation over arbitration:

- Parties may perceive litigation to be cheaper and more expeditious than arbitration in certain efficient jurisdictions.
- Parties might want the choice of an appellate process rather than the finality of an arbitral award.
- Arbitration institutions are only slowly catching up to the courts in having powers of joinder and consolidation. Even so, given that the bedrock principle of arbitration is consent by the parties, there will always be an issue where a third party is joined to the arbitration without its consent.
- Parties might consider the rigours and formalities of the court process to be an effective mechanism to streamline the dispute resolution process and prevent dilatory tactics from the counterparty.<sup>5</sup>

This preference for litigation over arbitration appears to be borne out by the statistics. By way of a rough comparison, the Singapore International Arbitration Centre ("SIAC") still does a fraction of the caseload that the Singapore High Court assumes. In 2014,<sup>6</sup> 6924 civil originating processes were filed in the High Court while only 222 new cases were filed in the SIAC.<sup>7</sup> In fact, according to one calculation,<sup>8</sup> the total number of new cases filed globally across 11 major arbitration institutions (including the SIAC) amounted to 4989, which is still less than the total caseload assumed by the Singapore High Court.

Therefore, the empirical evidence indicates that litigants may still prefer to have their disputes heard in the courts.

Notwithstanding the foregoing, the value that the Hague Convention adds is the real freedom of *choice* that it provides to litigants. Parties to disputes which apply the Hague Convention will no longer be constrained to arbitration because of the deficiencies in the legislative framework to support the recognition and enforce



There are reasons  
why parties may  
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arbitration.

foreign court judgments. Parties now have the freedom to choose between commencing court proceedings or commencing arbitration.

### Singapore: An International Hub for Dispute Resolution and the Promotion of Rule of Law

The court-arbitration dichotomy cannot be seen as a zero-sum game. The Hague Convention now provides parties with the freedom of choice; the Hague Convention courts that freedom of choice.

At a macro socio-economic level, coming hot on the heels of the establishment of the Singapore International Mediation Centre and SICC, the Hague Convention is Singapore's latest shot across the bow in Singapore's bid to further entrench its reputation as an international hub for dispute resolution.

The fact that the Act takes active steps to incorporate the SICC into the Hague Convention framework further burnishes the appeal of both the SICC and Singapore as a hub for international dispute resolution. In particular, the Act bolsters the services offered by the SICC and the enforceability of SICC judgments.

The potential effect of implementing the Hague Convention is not insignificant. The 28 states which have contracted to the Hague Convention include the EU member nations (except Denmark), which is Singapore's



third largest trading partner<sup>9</sup>, and which saw an almost 40-percent increase in trade in services between 2008 and 2013.<sup>10</sup> Mexico, which was the first signatory to the Hague Convention, is also a significant trade partner of Singapore. Bilateral trade between Singapore and Mexico doubled in the last decade to US\$3.83 billion in 2014, and Singapore's total foreign direct investment into Mexico amounted to US\$1.16 billion at the end of 2013.<sup>11</sup>

At the ASEAN level, the Hague Convention also provides a convenient ready-made vehicle for harmonisation of dispute resolution rules within the ASEAN member states. This is particularly significant if Singapore is to build upon the ASEAN Economic Community which was established in 2015. As the Honourable Chief Justice Sundaresh Menon said in his 2013 Keynote Address on ASEAN Integration Through Law, the Hague Convention 'is one area with significant potential for harmonisation and which would not require sieving through the web of the different substantive laws; and it holds the promise of considerably strengthening our regional infrastructure.' More recently, the Singapore Law Ministry has announced that the Hague Convention is part of its efforts to promote the Rule of Law and in the field of international law.<sup>12</sup>

It will be recalled that when the New York Convention was first signed in 1958, there were only 24 state signatories. However, that number has since grown to 156

contracting states. Like any network, its utility increases as the number of members increase. And as the network grows, it creates its own momentum. We are optimistic that the Hague Convention will go down the same path.

#### Notes:

- 1 The authors thank Justin Kwek, Associate, JWS Asia Law Corporation for his assistance on this article. United Kingdom, New Zealand, Sri Lanka, Malaysia, Windward Islands, Pakistan, Brunei Darussalam, Papua New Guinea, India (except Jammu and Kashmir), Australia and Hong Kong SAR (sole country in REFJA).
- 2 See *Singapore Civil Procedure 2016* (London: Sweet & Maxwell, Vol 1) at [67/0/3].
- 3 The UK is a contracting state to the Hague Convention as well as a designated jurisdiction under RECJA.
- 4 See the Hague Convention, Art 9.
- 5 Cf the benefits to arbitration as noted in point 2 of the Singapore International Arbitration Centre FAQs (available at <http://www.siac.org.sg/faqs>).
- 6 See Singapore's Supreme Court Annual Report 2014/15, available at <http://www.supremecourt.gov.sg/data/AnnualReport/AnnualRpt2014/> and SIAC's Annual Report 2014, available at [http://www.siac.org.sg/images/stories/articles/annual\\_report/SIAC\\_Annual\\_Report\\_2014.pdf](http://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2014.pdf).
- 7 The authors recognise that Singapore High Court civil proceedings include non-arbitrable matters such as probate, bankruptcy and insolvency, matrimonial as well as certain types of trusts disputes.
- 8 See <http://globalarbitrationnews.com/parties-preferences-in-international-arbitration-the-latest-statistics-of-the-leading-arbitral-institutions-20150805/>.
- 9 IE Singapore Annual Report 2014/2015.
- 10 See <http://ec.europa.eu/trade/policy/countries-and-regions/countries/singapore/>.
- 11 See <http://www.iesingapore.gov.sg/Venture-Overseas/Browse-By-Market/Americas/Mexico/Country-Information>.
- 12 See the Ministry of Law's Addendum to the President's Address dated 22 January 2016. A copy of the Addendum is available at <https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/addendum-to-the-president-s-address-.html>.



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# China's New Unfair Competition Law and Its Potential Effects on Commercial Bribery

This article examines the impact of the recent Draft for Review of the Chinese Law Against Unfair Competition on commercial bribery in China, by means of a comparison between the existing law and the upcoming one. The main focus lies in the important provisions relating to the definition of commercial bribery, employers' liabilities, and penalties.



## Background

On 25 February 2016, the Legislative Affairs Office of the State Council promulgated the Notice of the Legislative Affairs Office of the State Council on Promulgation of the 'Law of the People's Republic of China Against Unfair Competition (Revised Draft for Review) for Solicitation of Public Comments' and released the full text of the Law of the People's Republic of China Against Unfair Competition (the 'Draft for Review') for public comments until 25 March 2016.

Since the implementation of the Law of the People's Republic of China against Unfair Competition ('Law against Unfair Competition') in 1993,

there has been no amendment until now. In view of the implementation of the Law against Unfair Competition, there has been a great increase in the pace of market-oriented development of the economy in China as well as extensive and profound changes in the extent of market competition. The current Law against Unfair Competition can no longer meet the need of economic development. Therefore, the revision of the Law Against Unfair Competition was in place, listed as the preparatory project of the legislation plan of the Standing Committee of the 12th National People's Congress, the research project of the legislative work plan of the State Council in 2014, the preparatory plan of the legislative work in 2015 and eventually it was determined that the State Administration for Industry & Commerce shall be responsible for the revision of this law.

In 2014, the State Administration for Industry and Commerce formed eight research groups, including university experts, legal practitioners and regional Industrial and Commercial Bureaus. They discussed in depth vital issues during the revision of the law and held several seminars and symposia concerning the revision work. By taking into comprehensive consideration the opinions from all sectors, they revised the current Law against Unfair Competition and ultimately formed this Draft for Review.

The Draft for Review has changed tremendously compared to the current Law against Unfair Competition. Shimin Law Offices participated in the legislative research and discussions concerning the revision of provisions related to commercial bribery. Based on this experience and our practice in actual commercial bribery cases, the following is our analysis on the changes in the commercial bribery provisions of the Draft for Review.

## Main Differences Between the Current Law and the Draft for Review

No.	Current Law against Unfair Competition (effective since 1993)	Draft for Review
(1)	<p>Article 2: A business operator shall, in his market transactions, follow the principles of voluntariness, equality, fairness, honesty and credibility and observe the generally recognised business ethics.</p> <p>'Unfair competition' mentioned in this Law refers to a business operator's acts violating the provisions of this Law, infringing upon the lawful rights and interests of another business operator and disturbing the socio-economic order.</p> <p>A 'Business Operator' mentioned in this Law refers to a legal person or any other economic organisation or individual engaged in commodities marketing or profit-making services ('commodities' referred to hereinafter includes such services).</p>	<p>Article 2: Business operators shall, in their economic activities, follow the principles of voluntariness, equality, fairness, honesty and credibility and observe the generally recognised business ethics.</p> <p>For the purpose of this Law, 'unfair competition' refers to a business operator's acts violating the provisions of this Law, infringing upon the lawful rights and interests of any other business operators or consumers and disturbing the market order.</p> <p>For the purpose of this Law, 'business operators' refers to natural persons, legal persons and other organisations engaging or participating in the production of goods or the operation or provision of services.</p>

No.	Current Law against Unfair Competition (effective since 1993)	Draft for Review
(2)	<p>Article 8: A business operator shall not resort to bribery, by offering money or goods or by any other means, in selling or purchasing commodities. A business operator who offers off-the-book rebates in secret to another party, an entity or an individual, shall be deemed and punished as offering bribes. Any entity or individual that accepts off-the-book rebate in secret shall be deemed and punished as taking bribes.</p> <p>A business operator may, in selling or purchasing commodities, expressly allow a discount to another party and pay a commission to the middleman. The business operator who gives discount to another party and pays commissions to the middleman must truthfully enter them in the account. The business operator who accepts the discount or the commission must also truthfully enter it in the account.</p>	<p>Article 7: A business operator shall not commit any of the following acts of commercial bribery:</p> <ol style="list-style-type: none"> <li>(1) gain organisational, departmental or personal economic benefits through public services;</li> <li>(2) pay economic benefits to another business operator without making truthful records thereof in the contract and accounting documents; or</li> <li>(3) pay or offer to pay economic benefits to a third party having influence on the transaction, and cause harm to the lawful rights and interests of other business operators or consumers.</li> </ol> <p>Commercial bribery means that a business operator pays or offers to pay economic benefits to the transaction counterparty or a third party that may have influence on the transaction and thus induce the latter to give the business operator transaction opportunities or competitive advantages. Paying or offering to pay economic benefits constitutes the offering of commercial bribery; accepting or agreeing to accept economic benefits constitutes the taking of commercial bribery.</p> <p>Where an employee of a business operator uses commercial bribery to seek any transaction opportunity or competitive advantage for the business operator, such act shall be deemed as an act of the business operator. Where there is evidence showing that the employee receives bribery against the interests of the business operator, such act shall not be deemed as an act of the business operator.</p>
(3)	<p>Article 22: A business operator, who resorts to bribery by offering money or goods or by any other means in selling or purchasing commodities and if the case constitutes a crime, shall be investigated for criminal responsibility according to law; if the case does not constitute a crime, the supervision and inspection department may impose a fine of not less than 10,000 yuan but not more than 200,000 yuan in light of the circumstances and confiscate the illegal earnings, if any.</p>	<p>Article 20: Where a business operator violates Article 7 hereof, the supervision and inspection authorities shall order the business operator to stop the illegal act and impose on it a fine of not less than ten percent but not more than thirty percent of the illegal business revenue in light of the circumstances; if the violation constitutes a crime, criminal liabilities shall be imposed in accordance with the law.</p>



The Draft for Review comprehensively redefines the act of commercial bribery.

**Analysis on the Draft for Review  
Redefining the Act of Commercial Bribery**

The current Law against Unfair Competition does not elaborate on the definition of 'commercial bribery.' Based on the Law against Unfair Competition, the Interim Provisions on Prohibition of Commercial Bribery (the 'Interim Provisions'), promulgated by the State

Administration for Industry and Commerce, solely defines 'commercial bribery' from the perspective of 'offering a bribe' and it is meaningless to use the word 'bribe' to explain 'commercial bribery.' The Draft for Review comprehensively redefines the act of commercial bribery. The details are as follows:

<p>(1)</p>	<p>Renounces the use of phrases such as 'secretly offers a rebate off the book' and 'rebate' to define 'commercial bribery'.</p>	<p>Recent practice of commercial briberies varies greatly. It is no longer limited to traditional tricks such as secretly offering a rebate off the book or offering a discount to another party in an explicit way. Determining the existence of commercial bribery solely according to traditional methods is superficial and tends to cause ambiguity. Such rigid terms in the Law Against Unfair Competition makes the enforcement difficult and confuses business operators.</p>
<p>(2)</p>	<p>The party who accepts bribery is no longer only limited to 'a counterparty in the transaction'. 'A third party that may have influence on the transaction' could be deemed a recipient of bribery.</p>	<p>In commercial bribery, the bribing party often offers bribes not only to the counterparty of the transaction, but also to third parties that may facilitate the transaction. The receiving party is usually closely related to the transaction and has the power to influence the transaction. Such receiving party could be an intermediary agency, a broker or a government officer. The substantive characteristic of bribe recipients is their ability to influence the transaction. Therefore, the illegal recipient of bribes should not be limited to the counterparty in a transaction. By introducing the concept of the third-party recipient, the Draft for Review has significantly broadened the coverage of this law.</p>

<p>(3)</p>	<p>The Draft for Review specifies the purpose for commercial bribery as 'to seek any transaction opportunities or competitive advantages'.</p>	<p>The Draft for Review has expanded the definition of commercial bribery by elaborating the purpose from 'to sells or purchases any commodity' to 'to seek any transaction opportunities or competitive advantages'. However, from the business operator's perspective, 'to seek any transaction opportunities or competitive advantages' is an inevitable act in normal market competition. Therefore, 'to seek any transaction opportunities or competitive advantages' itself shall not consist of the substantive element for judging commercial bribery. Only acts that violate the provisions of the Draft for Review, that is, infringing upon the lawful rights and interests of any other business operators or consumers and disturbing the market order should be prohibited.</p>
<p>(4)</p>	<p>'Offering to pay' and 'agreeing to accept' will also qualify as commercial bribery.</p>	<p>Bribery will not only include acts of directly paying or accepting, but also 'offering to pay' and 'agreeing to accept' bribes. This is in line with the United Nations Convention against Corruption ('the Convention') and many other countries' legislation. The Convention defines the act of bribery as 'the promise to give, the offering, or the actual giving of bribes'. Moreover, this standard is internationally adopted. For instance, the US Foreign Corrupt Practices Act provides that the offering and promise of bribes alone is sufficient to constitute illegal conduct. By adopting these international standards, the Draft for Review has expanded the scope of commercial bribery and clarified the standard for attempted bribery.</p>

**Employees' Bribery Act Will Not Necessarily be Deemed the Acts of the Employer**

The current Interim Provisions state in Article 3 that where an employee sells or purchases goods or services on behalf of the employer by means of commercial bribery, the act shall be considered an act of the employer.

The Draft for Review on the one hand affirms the Interim Provisions, stating that 'where any employee of a business operator makes use of commercial bribery to seek any transaction opportunity or competitive advantage for the business operator, such act shall be deemed as the act of the business operator.' On the other hand, it adds an exception that 'where there is evidence

**The Draft for Review has imposed much heavier penalties on commercial bribery.**





showing that the employee receives bribery against the interests of the business operator, such act shall not be deemed as an act of the business operator.' This exclusion limits the liability scope of commercial bribery for employers. However, the definition of 'against the interests of the business operator' still remains unknown to the public. The laws and regulations shall further specify whether an employee's failure to comply with a well-disciplined code of conduct (including the provision on combating bribery) is 'against the interests of the business operator.'

### Three Typical Acts of Commercial Bribery

It is certain that the three typical acts of commercial bribery described in Article 7 of the Draft for Review are neither the definition nor an exhaustive list of commercial bribery. It is meant to provide some examples which are often seen in the new market environment, with the purpose of helping the general public understand what is meant by the term.

### Heavier Penalties for Commercial Bribery

Compared to the Law against Unfair Competition, the Draft for Review has imposed much heavier penalties on commercial bribery: 'The supervision and inspection authorities shall order the business operator to stop the illegal act and impose on it a fine of not less than ten percent but not more than thirty percent of the illegal business revenue in light of the circumstances.'

The Draft for Review eliminated the concept of 'illegal gains', the computing standard of which is controversial in practice. Instead, it bases the calculation of the penalties on illegal business revenue, without limiting the maximum amount of penalties. The formal legislative bill of the new Law against Unfair Competition should further specify how penalties are calculated in cases of attempted bribery.

### The Enactment of the Draft for Review Will Take Time

The Law against Unfair Competition was formulated by the National People's Congress. Pursuant to the Legislation Law of the People's Republic of China, the Draft for Review shall be submitted to the State Council, through the discussion held by the State Council, eventually forming a legislative bill. After the procedures of submission, deliberation, voting, and promulgation, the legislative bill can eventually be enacted into law. If past records can provide any indication, it may still take one or two years before the new Law against Unfair Competition will be promulgated.



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# IPBA New Members

## March – June 2016

We are pleased to introduce our new IPBA members who joined our association from March – June 2016. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

<b>Argentina</b> , Agustina Yedro <i>Beretta Godoy</i>	<b>Hong Kong</b> , Severino Sumulong <i>Equiom Group (Asia) Limited</i>
<b>Australia</b> , Benjamin Smith <i>MinterEllison</i>	<b>India</b> , Soumitra Banerjee <i>Fox Mandal &amp; Associates</i>
<b>Bangladesh</b> , Imam Hossain <i>Investment &amp; Development, Consultancy, Litigation, Arbitration (IDCLA)</i>	<b>India</b> , Ajay Bhargava <i>Khaitan &amp; Co.</i>
<b>Cambodia</b> , Yugo Nagata <i>TMI Associates</i>	<b>India</b> , Kudrat Dev <i>Khaitan &amp; Co.</i>
<b>Cambodia</b> , Samnang Sun <i>SP &amp; Partners</i>	<b>India</b> , Shyam Sundar Vasudevamurthy Honnavalli <i>Fox Mandal &amp; Associates</i>
<b>China</b> , Xiaojun (Warren) Hua <i>JunHe LLP</i>	<b>India</b> , Arush Khanna
<b>China</b> , Valentino Lucini <i>Wang Jing &amp; Co. Law Firm</i>	<b>India</b> , Rohitashwa Prasad <i>J. Sagar Associates</i>
<b>China</b> , Li Wei Song <i>Bignon Lebray</i>	<b>India</b> , Anshuman Shrivastava <i>Shrivastava Law Associates</i>
<b>China</b> , Asen Velinov <i>Co-Effort Law Firm</i>	<b>India</b> , Thiru Thiruvengadam B C <i>Thiru and Thiru</i>
<b>France</b> , Jacques Goyet <i>Bignon Lebray</i>	<b>Japan</b> , Ayako Kanamaru <i>Oh-Ebashi LPC &amp; Partners</i>
<b>France</b> , Amélie Guardiola <i>Lamy &amp; Associes</i>	<b>Japan</b> , Naoki Kondo <i>Oh-Ebashi LPC &amp; Partners</i>
<b>Hong Kong</b> , Pui Ying Patty Chan <i>Vivien Chan &amp; Co.</i>	<b>Japan</b> , Tetsuo Kurita <i>Baker &amp; Mckenzie</i>
<b>Hong Kong</b> , Anthony Houghton <i>Des Voeux Chambers</i>	<b>Japan</b> , Akira Matsuda <i>Iwata Godo</i>
<b>Hong Kong</b> , Eleanor Hughes <i>Skadden Arps Slate Meagher and Flom</i>	<b>Japan</b> , Mitsuru Misawa <i>TMI Associates</i>
<b>Hong Kong</b> , Ken Hung <i>Vivien Chan &amp; Co.</i>	<b>Japan</b> , Toru Okada <i>Kitahama Partners</i>
<b>Hong Kong</b> , Wai-Sum Leong <i>ONC Lawyers</i>	<b>Japan</b> , Yumi Sakamoto <i>Aoi Law Office</i>
<b>Hong Kong</b> , Moses Wanki Park <i>Liberty Chambers</i>	<b>Japan</b> , Ayumi Shimada <i>Kyocera Corporation</i>

<b>Japan</b> , Takashi Shimose <i>Miyakezaka Sogo Law Offices</i>	<b>Netherlands</b> , Erwin Rademakers <i>AKD</i>
<b>Japan</b> , Yuri Suzuki <i>Atsumi &amp; Sakai</i>	<b>Netherlands</b> , Patrick van Oppen <i>Loyens &amp; Loeff N.V.</i>
<b>Japan</b> , Yasutomo Wakiyama <i>Higashimachi LPC</i>	<b>Papua New Guinea</b> , Stephen Lewin <i>Leahy Lewin Lowing Sullivan</i>
<b>Japan</b> , Koji Yamada <i>Shiba-Yamada Law Office</i>	<b>Philippines</b> , Manuel A.J. Teehankee <i>Ateneo de Manila Law School</i>
<b>Japan</b> , Michi Yamagami <i>Anderson Mori &amp; Tomotsune</i>	<b>Russia</b> , Alla Barinova <i>Lawyer company "POVERENNY"</i>
<b>Japan</b> , Daisuke Yamaguchi <i>Anderson Mori &amp; Tomotsune</i>	<b>Singapore</b> , Paul Thomas Aston <i>Holman Fenwick Willan Singapore LLP</i>
<b>Korea</b> , Tong Soo Chung <i>Yulchon LLC</i>	<b>Singapore</b> , Corinne Chew <i>Drew &amp; Napier LLC</i>
<b>Korea</b> , Andrew White <i>Yulchon LLC</i>	<b>Singapore</b> , Ying Charn Benjamin Gaw <i>Drew &amp; Napier LLC</i>
<b>Luxembourg</b> , Cedric Schirrer <i>Wagener &amp; Associés</i>	<b>Singapore</b> , Rashmi Grover <i>Nagashima Ohno &amp; Tsunematsu Singapore LLP</i>
<b>Malaysia</b> , Alan Adrian Gomez <i>Tommy Thomas</i>	<b>Singapore</b> , Henry Heng <i>Kennedys Legal Solutions</i>
<b>Malaysia</b> , Michael Anthony <i>Messrs Shook Lin &amp; Bok</i>	<b>Singapore</b> , May Kim Ho <i>Duane Morris &amp; Selvam LLP</i>
<b>Malaysia</b> , Min Lee Boo <i>Wong Jin Nee &amp; Teo</i>	<b>Singapore</b> , Harjean Kaur <i>Advocatus Law LLP</i>
<b>Malaysia</b> , Shamesh Jeevaretnam <i>Jeevaretnam &amp; Co.</i>	<b>Singapore</b> , Kevin Kwek <i>Kennedys Legal Solutions</i>
<b>Malaysia</b> , David Lai Huat Lee <i>Zul Rafique &amp; Partners</i>	<b>Singapore</b> , Shiao Ning Lam <i>Oon &amp; Bazul LLP</i>
<b>Malaysia</b> , Janet Looi <i>Skrine</i>	<b>Singapore</b> , Chau Ee Lee <i>King &amp; Wood Mallesons</i>
<b>Malaysia</b> , Chong Mei Mei <i>Raja, Darryl &amp; Loh</i>	<b>Singapore</b> , Shaun Lee <i>JWS Asia Law Corporation</i>
<b>Malaysia</b> , Ganesan Nethiganantarajah <i>Tommy Thomas</i>	<b>Singapore</b> , Chong Kin Lim <i>Drew &amp; Napier LLC</i>
<b>Malaysia</b> , Ngee Meng Quek <i>Halim Hong &amp; Quek Advocates &amp; Solicitors</i>	<b>Singapore</b> , Mohammed Reza Mohammed Riaz <i>JWS Asia Law Corporation</i>
<b>Malaysia</b> , Joyce Teh Yen Yen <i>Raja, Darryl &amp; Loh</i>	<b>Singapore</b> , Kenneth Pereira <i>Aldgate Chambers LLC</i>
<b>Malaysia</b> , Mohamed Shahdy Anwar <i>Suood &amp; Anwar LLP</i>	<b>Singapore</b> , Julie Raneda <i>Schellenberg Wittmer Pte Ltd</i>
<b>Mongolia</b> , Nominchimeg Odsuren <i>Hogan Lovells Mongolia LLP</i>	<b>Singapore</b> , Omar Salah <i>De Brauw Blackstone Westbroek</i>
<b>Nepal</b> , Pratyus Nath Upreti <i>Upreti &amp; Associates</i>	<b>Singapore</b> , Zachary Sharpe <i>Jones Day</i>
<b>Netherlands</b> , Jeroen Pop <i>AKD</i>	<b>Sri Lanka</b> , Karunatilaka K.M. Chetana

<b>Sri Lanka</b> , Niduk Perera <i>Lincoln's Law Office</i>	<b>USA</b> , B. Otis Felder <i>Wilson Elser Moskowitz Edelman &amp; Dicker, LLP</i>
<b>Sri Lanka</b> , Amice van der Burg-Dissanayake <i>John Wilson Partners</i>	<b>USA</b> , Christopher Kao <i>Vinson &amp; Elkins LLP Vinson &amp; Elkins LLP</i>
<b>Switzerland</b> , Thomas Meister <i>Walder Wyss Ltd.</i>	<b>USA</b> , Taisuke Kimotor <i>Pillsbury Winthrop Shaw Pittman LLP</i>
<b>Switzerland</b> , Christoph Niederer <i>Vischer Ltd.</i>	<b>USA</b> , James Lee <i>LTL Attorneys LLP</i>
<b>Switzerland</b> , Dirk Nuyts <i>Fragomen LLC</i>	<b>USA</b> , Thomas Suh <i>LTL Attorneys LLP</i>
<b>Taiwan</b> , I-Ming Chen <i>Formosa Transnational Attorneys at Law</i>	<b>Vietnam</b> , Hong Bui <i>LNT &amp; Partners</i>
<b>Taiwan</b> , Su-Jen Chen <i>Chicony Electronics Co., Ltd.</i>	<b>Vietnam</b> , Nhat Minh Ngo <i>Phuoc &amp; Partners Law Co.,Ltd.</i>
<b>Taiwan</b> , Yi-Hsiu Chen <i>Lotes Co., Ltd.</i>	<b>Vietnam</b> , Tuan Anh Phung <i>VCI Legal</i>
<b>Taiwan</b> , Hsiang-Yang Hsieh <i>Formosa Transnational Attorneys at Law</i>	<b>Vietnam</b> , Anh Hung Tran <i>Bross &amp; Partners Law Firm</i>
<b>Taiwan</b> , Pei-Sheng Huang <i>Taipeilaw Attorneys-at-Law</i>	
<b>Taiwan</b> , Yuh Cherng Jyi <i>Chicony Electronics Co., Ltd.</i>	
<b>Taiwan</b> , Cheng Yu Lee <i>Chicony Electronics Co., Ltd.</i>	
<b>Taiwan</b> , Yen-Lin (Nicole) Lee <i>Dell Taiwan B.V. Taiwan Branch</i>	
<b>Taiwan</b> , William Lin <i>Chiang &amp; Lee Attorneys-at-Law</i>	
<b>Taiwan</b> , Wei-Ting Liu <i>TaipeiLaw Attorneys-at-Law</i>	
<b>Taiwan</b> , Pauline Wang <i>Lee and Li Attorneys-at-Law</i>	
<b>Taiwan</b> , Chunmin Weng <i>Formosa Transnational Attorneys at Law</i>	
<b>Thailand</b> , E.T. Hunt Talmage III <i>Chandler &amp; Thong-ek Law Offices Ltd.</i>	
<b>United Arab Emirates</b> , Ayman Merdas <i>Global Advocates and Legal Consultants</i>	
<b>United Kingdom</b> , Neil Hext <i>4 New Square</i>	
<b>United Kingdom</b> , Rashda Rana <i>39 Essex Chambers</i>	
<b>Uruguay</b> , Santiago Fontana <i>FERRERE</i>	

# Discover Some of Our New Officers and Council Members



**Ewe Leong LIM**

IPBA Leadership Position:  
New Zealand Jurisdictional Council  
Member

## What was your motivation to become a lawyer?

I was always interested in languages, literature as well as the rationality and logic of the science and maths disciplines. Law is a good combination of those interests.

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

My most memorable experiences as a lawyer are when I see young solicitors that I have mentored go through

to succeed in their respective fields, be it in private practice, corporate, academia or politics.

## What are your interests and/or hobbies?

Family, theatre and travel.

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

I am a collector of movie posters (particularly James Bond ones) and first edition books.

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

I have been a member of the IPBA since 1997 (on and off) and I have enjoyed meeting the delegates and making friends (some of which go back almost 20 years). It is a fantastic way to mix business and pleasure at each Conference. I do not think that there is any work-related conference that I look forward to more than the IPBA Conference each year.



**John Wilson**

IPBA Leadership Position:  
Publications Committee Vice-Chair

## What was your motivation to become a lawyer?

I grew up in a family which had a long legal tradition and connection with the law and legal practice. My grandfather, the late Senator John Wilson, was a very well-known lawyer in Ceylon (as it then was), and was in legal practice from the 1920s up to the late 1950s. He was succeeded by my father and from this environment I grew up understanding all kinds of things about law and legal practice from quite a young age. I suppose that one of the results of my growing up in an Asian cultural environment was that it was instilled in me that a good

profession would be the way forward for any young adult after completion of university education and there was every encouragement from my parents to enter a profession.

Apart from that, the main reason I studied law at university, in spite of the reputation of law as being a difficult subject at undergraduate degree level, was to a great deal motivated by my aptitude for and love of foreign languages. I was very fortunate in being able to secure a place on the Anglo French double law degree programme of King's College, University of London and the Université Paris I (Panthéon-Sorbonne), which involved studying for an LL.B. for two years and for a Maîtrise en Droit Privé (mention Droit Français et Anglais) for two years entirely in the French language. This was a wonderful opportunity for me to use my language skills and study and learn the law in the context of the two great traditions of law — the Common Law and the Civil Law.

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

Memorable experiences can be good and bad. Sleep deprivation for a period of 52 hours prior to a closing in a very complex M&A deal in the telecommunications sector is an experience I would rather not go through again. A standout good memory was winning in the Supreme Court a bitterly contested case involving parental child abduction in which we secured a return order in respect of a child who had been abducted from France to Sri Lanka.

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

I enjoy all water sports and am a keen water skier and deep sea diver. I also play tennis regularly and run a weekly tennis group, giving tennis players like me a chance to not only play the game but also socialise over a few beers after. I am a yoga enthusiast and have been practicing yoga for the past seven years. I find it an excellent way to relax and recuperate

from the pressures of legal practice and client-driven demands.

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

Most people can never guess that I am Sri Lankan and invariably look surprised when I tell them where I'm from. They manage to guess almost every other country apart from Sri Lanka.

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

My personal credo is that as lawyers and trusted professionals, we should be available but not at the disposal of our clients. In the coming years, I look forward to continuing to interact with the fantastic lawyers and personalities who are members of the IPBA, and exchanging ideas on this viewpoint and the other issues we face. Engaging in enriching discussions on legal practice and life as a lawyer and current affairs is what, for me, makes my membership of the IPBA so enjoyable.



**Nini Halim**

IPBA Leadership Position:  
Deputy Committee Coordinator

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

Growing up from a family of lawyers and being surrounded by lawyers since an early age, the thought of becoming a lawyer was not an interesting choice to me back then. However, the realisation that lawyering was my calling kicked in when I was finally able to see the work that my late father did. His dedication and perseverance for his country, his passions to his work and most importantly to the law, have really awed me and inspired me to become a lawyer.

My father's legacy of devotion and persistence to the profession has taught me well to enable me to embrace the profession and to face the many challenges in the variety of issues that will be entrusted by clients to me.

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

Everything is memorable in its own way.

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

Travelling, music, films and arts and crafts.

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

When things get tough, I like to sing to let go of my stress.

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

The IPBA is the best place to be. Not only will you find professional lawyers in each of their field of practice, but it is also a great place where you will find good people and good friends. I am honoured and happy to be a part of the organisation.

## IPBA Special Mention

### Morgan Lewis Singapore Office Managing Partner Receives Lifetime Achievement Award

Singapore, 8 April 2016: Morgan Lewis today announced that Lee Suet Fern, Managing Partner of its Singapore office, has been honoured with the prestigious Lifetime Achievement Award by Chambers and Partners.

This is only the fourth time that *Chambers Asia Pacific* has made this award, and Mrs Lee is the first woman to be conferred the honour. After graduating with a double first in law from Cambridge University in 1980 and qualifying as a Barrister-at-Law in 1981, she started work in London with Norton Rose before basing herself in Singapore, serving clients in the region. Mrs Lee advises clients on mergers and acquisitions, equity and debt capital markets, and corporate finance. She is ranked in Band 1 in the *Chambers Asia-Pacific* and *ChambersGlobal* guides in the Singapore Corporate/M&A category.

Chambers based the Lifetime Achievement Award on its own research in light of business developments in the market over the last year. Winners are selected from among lawyers who are senior and well established, are highly respected and ranked, and have made a significant contribution to the market as a whole or to a particular practice area.

The international business community and media recognise Mrs Lee as a business leader and pioneer. Legal publications and directories have consistently praised her work and acknowledged her as a leading lawyer in the practice areas of banking, capital markets, corporate finance, and mergers and acquisitions. *Asian Legal Business* awarded her its Lifetime Achievement Award in 2007. *Euromoney* honoured Mrs Lee with its Asia Women Business Law Award for mergers and acquisitions and private equity in 2012 and 2013, and *Best Lawyers Mergers & Acquisitions* named her Lawyer of the Year in those years. In addition, she has been shortlisted for *Euromoney* Legal Media Group's Asia Business in Law Awards for the past three consecutive years. In June 2015, she was named a finalist for the *Financial Times*' Innovative Lawyer of the Year Award (Asia-Pacific), with the publication noting her status as one of Singapore's top M&A lawyers and referring to her as a 'true agent of change'.

As a contributor to the community, Mrs Lee has taken a leadership role in a number of organisations, including as a member of the board of the World Justice Project, an independent multidisciplinary organisation working to advance the rule of law around the world. She is a member of the executive committee of the Singapore Academy of Law, where she also chairs the committees on Convergence and Harmonisation of Laws in Asia as well as on Legal Education and Studies. Mrs Lee is a member of the advisory board of the Law School at Singapore Management University, where she also chairs the Centre of Cross-Border Commercial Law in Asia's Expert Panel and is a trustee for Nanyang Technological University in Singapore. She is a former president of the Inter-Pacific Bar Association.

Mrs Lee also served as a member of the board of directors of various publicly listed companies in Singapore and internationally. She currently serves as director on the boards of global Fortune 100 companies AXA and Sanofi.

See more at: <https://www.morganlewis.com/news/morgan-lewis-singapore-office-managing-partner-receives-lifetime-achievement-award#sthash.wTVHcDm.dpuf>.





# 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 practising lawyers to attend the IPBA's 27th Annual General Meeting and Conference to be held in Auckland, New Zealand, 6-9 April 2017.

## What is the IPBA?

The IPBA is an international association of business and commercial lawyers with a focus on the Asia-Pacific region. Members are either Asia-Pacific residents or have a strong interest in this part of the world. The IPBA was founded in April 1991 at an 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 1500 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 IPBA Annual Meeting and Conference?

The highlight of the year for the IPBA is its annual multi-topic four-day conference. The conference has become the 'must attend event' for international lawyers practising in the Asia-Pacific region. In addition to plenary sessions of interest to all lawyers, programmes are presented by the IPBA's 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 honour IPBA's accomplishments since its founding, and the Host Committee of the Annual Meeting and Conference in Vancouver, Canada, 2014.

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 topic and to provide a report of his/her experience to the IPBA after the conference. The programme 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 three 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 (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.
  - f. 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 2016**. 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. The 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, 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 (subject to later decision by the IPBA).





# 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](mailto:ipba@ipba.org) Website: [ipba.org](http://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):**

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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**



Every minute counts  
Be prepared with the right tool



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# BIAC

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Hearing Room

## BAC/BIAC Growth

- From 7 cases filings in 1995 to over 27,000 case in total by 2015
- 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 17.6 billion RMB (approx. 2.68 billion USD or 2.46 billion EUR) per year on average since 2011 with a highest claim amount of 10 billion RMB (Approx. 1.52 billion USD or 1.4 billion EUR) in 2015

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