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IPBA Journal



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No **86**

NEWS & LEGAL UPDATE



INTER-PACIFIC BAR ASSOCIATION





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The President's Message

Denis McNamara
President



Kia Ora Colleagues,

When this is published in the IPBA Journal, the Auckland conference will be nearly two months past. As I write it however, it is only a matter of several weeks and the dust is still settling.

I note that Dhinesh in his first President's message after the Kuala Lumpur conference commented on having mixed feelings at the conclusion of the conference and the completion of his term as President elect. I well sympathise with that comment and likewise also confirm that I found my time spent over the past 12 months in organising the Conference very busy but extremely rewarding.

In fact, my involvement with the IPBA Conference commenced several years ago when the Auckland team successfully bid for the opportunity to host the Annual Conference in 2017.

At the outset, we recognised that one of the major problems we would have was the 'tyranny of travel' that delegates faced with the prospect of travel to New Zealand. In the event, however, we were delighted that some 100 delegates came from pre-Brexit Europe, as did nearly 100 lawyers from Japan. The total roll call of delegates was just under 800.

In recent times it has become 'de rigueur' for Presidents-Elect to travel extensively to promote the upcoming IPBA conference. My travel arrangements were assisted by the location of the Mid-Year Council Meeting in Brussels. This enabled me to meet IPBA members in Zurich, Paris, London and Hong Kong (where I experienced a Black Rain warning and a number 8 Typhoon Flag). I also travelled to Latin America stopping in Argentina, Brazil, Peru and Chile. The Deputy Chair of the Organising Committee, Neil Russ, assisted by visiting Taiwan and Korea.

In January (New Zealand's summer) I left my holiday home at Omaha Beach to attend the annual meetings of both the Osaka and Tokyo IPBA chapters (Japan's winter).

A feature of the IPBA that has always appealed to me personally has been that of conviviality, camaraderie and considerable pleasure in meeting old friends. This was very much evident in these meetings.

In overviewing the Auckland conference I noticed that around one half of the attendees were 'regulars'. We do not have statistics on how many delegates have in fact attended our conferences regularly but the pleasure of meeting old friends is always enjoyed.

I was privileged to be an original IPBA member attending the first conference in Tokyo in 1991.

Since 1991 the world has changed considerably, as has the complexity and pace of legal work, particularly with modern cheaper travel, new technology, the use of the internet and the impact of social media.

The conference theme of 'Connectivity and Convergence' was selected because of these changes and also because of likely future changes, particularly with the conclusion of TPP.

Consequently, it was a cause of some consternation to the organising committee that the new administration in the US changed the scenery as far as TPP was concerned.

Notwithstanding that sudden change, committees still managed presentations of high quality and considerable

relevance to issues of doing business in the Asia Pacific region.

I must mention the IPBA Scholarship Programme. The Scholarship Programme for young lawyers and lawyers from developing countries is an important part of the IPBA. The family of the late President M.S. Lin made a substantial donation to the Scholarship Programme in his memory at the time of his passing. Over time, the funds diminished and the programme was maintained by generous contributions of Japanese IPBA members (the Japan Fund), and by funds earmarked from the Vancouver 2014 Conference surplus. Late last year, Mr Lin's son, J.K. Lin, indicated that his family would like to top up the fund with a further donation of US\$200,000. This is a tremendous donation and very gratefully received.

During the Auckland conference, the IPBA officers and the Scholarship Committee had the opportunity to meet and thank both M.S. Lin's widow and J.K. Lin in person. Our thanks also were extended to the generosity of the IPBA members who contributed to the Japan Fund and the Vancouver 2014 host committee.

A regular feature of past conferences has been the unofficial events that occur at the time of an IPBA meeting. Japan Night has been a feature of the conference for some time and it was with pleasure that we also saw the first Latin American Night and third Arbitration Drinks events following the conclusion of the Welcome Event Function.

The support of local firms in targeting guests for their own entertainment but doing so outside of formal IPBA events was much appreciated.

As President, my principal task will be representing IPBA at various law association conferences over the next 11 months. I very much look forward to doing this and also to meeting IPBA members in various jurisdictions on my travels.

Kia Ora

Denis McNamara
President





The Secretary-General's Message

Caroline Berube
Secretary-General



Dear IPBA Members,

It is with great honour that I address to all IPBA members my first welcome message after being appointed Secretary-General.

I extend my sincere thanks and best wishes to Ms Miyuki Ishiguro, who did a wonderful job during the last term (2015-2017), and it is with great excitement that I am taking over the responsibilities and challenges of the position from Miyuki for the new term from 2017 to 2019.

Among the numerous IPBA international conferences and events organised in 2017 so far, I would like to share with you the fruitful and enriching experiences I have had by reflecting on some of the major conferences attended, which I hope will be of interest, especially for those who didn't have the opportunity to join us.

The 27th Annual General Meeting and Conference was held at the beautiful avant-garde SkyCity Convention Centre in Auckland, a beautiful place known as 'the sail city', in New Zealand, from 6 to 9 April 2017. The conference, based on the theme 'Connectivity and Convergence', was a great success and was very well attended by members locally and from various international jurisdictions—notwithstanding the challenge of the geographical distance. Thanks to the efforts of the fantastic and dedicated organising committee, the Chair Denis McNamara and his team, as well as local IPBA members, the conference was very successful and much enjoyed and appreciated by those who attended.

We had very well-attended sessions with full rooms each day—even on the last day of the Conference, which was a beautiful sunny Saturday! Sessions were well organised and informative ... the Artificial Intelligence session was such a success that it will be re-run at the AIJA annual conference in Tokyo in August 2017 in line with our efforts to collaborate with other international organisations and

continue to attract new members, create awareness of the IPBA, and profile our talented members.

The Auckland Conference had extremely productive results, with effective brainstorming sessions, discussions and developments from different committees. Well done to all Chairs and Co-Chairs of our diverse IPBA committees!

As you all know, the Scholarship Programme for young lawyers and lawyers from developing countries is a key aspect of what IPBA does. The IPBA was fortunate indeed in the past to receive a substantial donation from the family of the late President M.S. Lin to the Scholarship Programme in his memory after he passed away. The late Mr Lin's son, Mr J.K. Lin, has made a further donation of US\$200,000. This is an extremely generous donation and I would like to express here the immense gratitude of the IPBA. I would also like to record the gratitude of the IPBA to the members who contributed to the Japan Fund, and the Vancouver 2014 host committee for allocating a percentage of the surplus of the conference for the Scholarship Programme.

The IPBA Annual General Meeting took place on Sunday, 9 April 2017 and the following nominations were confirmed and approved by the IPBA members in attendance.

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I am also very happy to share with you some of my plans for the fulfilment of my new duties and responsibilities in the upcoming year 2017-2018.

I, along with the other officers, will continue to work on and finalise the corporate and compliance aspects of the IPBA Singapore entity. I look forward to working as a team with other Council members on an update to the IPBA Manual, which must be amended to reflect the new corporate entity and be rewritten to consolidate the numerous additions over the years in a user-friendly manner. The new Manual will be an easy-to-use and practical guide for current and future officers.

Please keep note of the IPBA events calendar for 2017-2018:

- Investment Controls in Europe, the US, and in Asia, 12 June 2017, Düsseldorf, Germany
- Asian-European M&A and Dispute Resolution Day: Corporate Acquisitions and Resulting Disputes, 14 September 2017, Geneva, Switzerland
- 3rd IPBA Asia-PAC Arbitration Day, 25 September 2017, Kuala Lumpur, Malaysia
- Investment in the Emerging Markets—The APEC Perspective, 6 November 2017, Da Nang, Vietnam
- IPBA Mid-Year Council Meeting in London, 10-13 November 2017, London, England
- Forces of Change: Modernisation and a Shifting International Landscape (English and Asian Perspectives on How Legal Systems Adapt), 13 November 2017 London, England

- 3rd IPBA East Asia Regional Forum, 16-17 November 2017, Seoul, Korea
- IPBA Annual Meeting and Conference, 14-16 March 2018, Manila, Philippines

activities. For my part, I will work very hard and look forward to keeping you all informed by regular communications throughout the years 2017 and 2018 to come!

I look forward to two exciting years ahead, and to the continued dedication, enthusiasm and excitement of the members, Council and officers for the IPBA and its

Caroline Berube
Secretary-General

IPBA Upcoming Events		
Event	Location	Date
IPBA Annual Meeting and Conferences		
28th Annual Meeting and Conference "Fostering Seamless Cooperation in ASEAN and Beyond"	Manila, Philippines	March 1, 2018
29th Annual Meeting and Conference	Singapore	Spring 2019
IPBA Mid-Year Council Meeting & Regional Conferences		
2017 Mid-Year Council Meeting (IPBA Council Members Only)	London, England	November 10-12, 2017
Regional Conference "Forces of Change: Modernisation and a Shifting International Landscape (English and Asian Perspectives on How Legal Systems Adapt)" (Open to the Public)	London, England	November 13, 2017
IPBA Events		
Investment Controls in Europe, The US, and Asia—a Comparative View	Düsseldorf, Germany	June 12, 2017
IPBA/Swiss Arbitration Association's "Corporate Acquisitions and Resulting Disputes"	Geneva, Switzerland	September 14, 2017
IPBA/KLRCA's "3rd Asia-PAC Arbitration Day"	Kuala Lumpur, Malaysia	September 25, 2017
Investment in the Emerging Markets—the APEC Perspective	Da Nang, Vietnam	November 6, 2017
IPBA-supported Events		
3rd ICC Asia Conference on International Arbitration	Singapore	June 27-29, 2017
ICC-FIDIC Conference on International Construction Contracts & Dispute Resolution	New Delhi, India	June 29-30, 2017
2017 Colloquium on International Law: Common Future in Asia	Hong Kong	July 7-8, 2017
AJIA Annual Congress	Tokyo, Japan	August 28-September 1, 2017
<p>More details can be found on our web site: http://www.ipba.org, or contact the IPBA Secretariat at ipba@ipba.org</p>		

Notes for the Address on the Occasion of The Annual Inter-Pacific Bar Association Conference

The Rt Hon Dame Sian Elias GNZM, Chief Justice of New Zealand

- NZ Legal system. Privy Council.
- Connectivity and convergence.
- Indigenous property rights.
- Legal connections.
- Although seem young, in fact not in terms of development of law.
- Time of great change.

It is a very great pleasure to have the opportunity to add some words of welcome as you gather for your annual conference here in New Zealand. I know that the opportunity to host the conference is one local members of the Association have very much looked forward to. It is an honour for the New Zealand legal profession and for the judiciary of which I am the head.

Those who have travelled from across the Pacific Ocean or the Tasman sea to be here now know that New Zealand is, indeed, a very long way from anywhere. It is nearly 300 years since Abel Tasman put these islands on the European maps. In fact he did not chart the islands of New Zealand at all. We remained a short wavy line in European charts for another 100 years, until Captain James Cook came this way again. One of our major poets, Alan Curnow, speaking of the daring voyage undertaken by Tasman, said of those days that 'simply by sailing in a new direction, you could enlarge the world'.

Well, of course that was European conceit. Because the world remained as it was. The indigenous Maori of New Zealand would have been justifiably surprised to find out that they had been 'discovered'.

Even if the physical world was not enlarged, the arrival on these shores of the European explorers expanded knowledge and the human spirit as the ideas of the old world were enlarged by the new. It was also the end of a period of isolation.



Dame Sian Elias GNZM

In New Zealand, perhaps because we are so remote, we have never slipped back into isolationism. In law, as in all other endeavours, we have always looked for connections and shared ideas. So the themes of your conference—connectivity and convergence—are ones in which we take great interest. The objects of your Association—in the promotion of the rule of law and in the support of the legal profession within our region—are objects dear to the hearts of lawyers in New Zealand.

So you can be sure of a very warm welcome here, and much fruitful exchange of ideas.

You also come at a time of great change for our region and for this country. Your own work as lawyers within the region mean that you have first-hand experience of the

opportunities and the challenges we face. But, within the region, New Zealand too is experiencing considerable change. Much of that change we share in common with other jurisdictions: the challenge of technology, new uncertainties in political direction with the rise of populism and the questions it raises for globalisation, the changing interface between national and international legal orders. These matters commercial lawyers working in the Asia-Pacific region will understand in their impact on regional convergence. Change also brings questions for domestic legal orders and their institutions and in the time I have (and under instructions not to add to your jet lag by being long-winded or too serious), I have thought it might be helpful to give you some context for understanding this jurisdiction.

New Zealand is a relatively young country. Although, as one of our distinguished historians once said impatiently, we are as old as the civilisations and traditions we draw on. Indeed it is sometimes too easy to forget that many aspects of modern law and legal method were developed in New Zealand at the same time or even earlier than some of the doctrine was established in English law. An example of such an area of law I recently had occasion to consider in some lectures was criminal procedure where New Zealand and other jurisdictions adopted principles and procedures often ahead of their acceptance in the 'Mother Country'. It is worth thinking about that for a moment.

Periods of divergence are followed by convergence. Why? Because the problems societies confront tend to be similar and over time to prompt similar solutions until new problems present themselves and the whole cycle starts over again. Learning from each other about how to confront new issues and willingness to adapt has always been the best policy.

It is true that in the past—the relatively recent past—for our ideas of law in New Zealand we tended to look almost exclusively to the British legal tradition. That tradition was neither frozen nor monolithic. In New Zealand our early law was influenced by American legal sources, perhaps picked up on the trade routes to the South Seas and having the advantage of being captured in excellent digests which were easily transportable. So, the first New Zealand judges carried in their saddlebags *Kent's Commentaries and Story*. We also had an indigenous people to accommodate and that has also influenced the development of our law. Our legal order

was set up under the power of government given to the Crown under the Treaty of Waitangi on the condition of protection of Maori land and custom. It is true that after the First World War innovation and the willingness to look for new ideas in unlikely places retreated under the new consciousness of Empire. But that wave too retreated over time particularly under the influences of international conventions and agreements which, today, are the major source of domestic law.

That is particularly the case in terms of our domestic commercial law. Since the human rights and economic rights conventions following the Second World War, it is also the case that much of our domestic public law is also taken from or heavily influenced by international agreements. It may be expected that in other areas where interdependence is inescapable (as in protection of the environment) further convergence can be expected. That is not to say that we should look for complete convergence in law. Jerome Frank, distinguished academic as well as a member of the United States Court of Appeals, Second Circuit, expressed the view that harmonisation ought to be always 'an unfinished symphony'. The end to be served was not 'a stifling regimented unity' which would 'efface desirable differences in cultural values and monopolistically obstruct local originalities, initiatives, inventive creations.'¹ He was writing at the time of the Cold War. We live in an age that is more optimistic about harmonisation of law. Even so, there is truth in the view that singing from the same song-sheet has its risks. If we are to continue to learn from each other we don't want to finish the symphony.

The impact on our institutions of government and law may not yet be sufficiently appreciated. The High Court of Australia was surprised to discover a couple of years ago that one of its decisions was the basis of claim under an Investor Dispute Agreement. Decisions of domestic courts giving effect to international obligations by reading down incompatible legislation still seems startling to lawyers in a Westminster system brought up on the doctrines of Albert Venn Dicey. So domestic constitutional law is not immune from international influences.

The movement of people which has been a feature of recent years also affects the make-up of our societies and the institutions of law under which they operate. New Zealand society, for example, has changed dramatically in the past 20 years. New Zealanders of European descent are likely to be a minority within 15 years. Our

society is now extremely diverse and contains a high proportion of immigrants, many of them of Chinese or Indian ethnicity.

This has, I think, implications for our law. It may always have been a bit optimistic to think that a shared tradition of Magna Carta, the 1689 Bill of Rights, and the 18th century Act of Settlement, together with a scattering of more modern texts, the principles of the common law, and some 19th century dogma, together with a Treaty acknowledged to be a 'foundational document' makes a constitution which can provide social glue and shared values. Today, I wonder whether the obscurity of our constitution (an obscurity we share with Britain and almost no other jurisdiction) is something we can continue to afford. So far there has been no appetite in New Zealand to have a constitutional conversation. But in its absence, quite a lot of pressure comes on the courts and the legal profession to mediate social conflict through discovery and explanation of shared values. We are not always very good at looking behind the rules for the principles. But it seems to me that any healthy system of law needs to pay close attention to the principles which are foundational.

Most of you come from jurisdictions with less fluid constitutional arrangements than ours. The courts and the profession nevertheless still take the strain at times of social stress. It falls on the profession to stand up for the constitution and the rule of law. That is why Sir Owen Dixon, a former Chief Justice of Australia, thought that the independent legal profession was more important to the rule of law even than independent judges.

It is why it is a personal pleasure for me to spend time with leaders of the legal profession from our region. I am conscious of the obligation I and all who work in the system and live under the security of law owe to the profession. That is not only to those who practise in the courts (a very small portion of the profession). It would be a mistake to see courts as centre stage in a working legal order. There is a whole world of law, as John Baker said, that never sees the inside of a courtroom. He was referring to the habit of law-mindedness by which citizens observe law even if they never litigate. It is the profession that carries the burden of spreading the culture of law-mindedness without which no society lives under the security of the rule of law. It is the profession that resolves disputes through alternative methods of dispute resolution and through good lawyering. Such peaceful resolutions

occur, however, because legal principle is developed by the domestic courts and by international legal institutions through processes that are open, demonstrably fair and supported by reasons that convince because they are grounded in legal rules and in values which the various communities—international, regional and domestic—accept. That is the role of the profession.

It is good to have the opportunity to say so to your faces and to wish you a stimulating and happy conference.

Note:

- 1 Jerome Frank 'Civil Law Influences on the Common Law—Some Reflections on 'Comparative' and 'Contrastive' Law' (1956) 104 University of Pennsylvania Law Review 887 at 924.



Leonard Yeoh
Partner of 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.



John Wilson
Managing Proprietor of John Wilson Partners

John Wilson has practised in all areas of Sri Lankan civil law and has authored on a wide variety of subjects and contributed to numerous publications. He also advises in regard to tax and trust issues and employment law; reciprocal enforcement of foreign judgment applications and arbitration matters including enforcement of foreign arbitral awards. He is fluent in French, at university, he followed a double degree programme of King's College, University of London and l'Université de Paris I, Panthéon-Sorbonne. He graduated in 1995 with an LL.B (Hons.) degree as well as a *Maîtrise en droit privé mention droit français et anglais*, was called to the Bar of England and Wales in 1996 and was admitted as an Attorney-at-Law and Notary Public, Colombo in 2000. John has also, since 2010, functioned as In House Legal Adviser/Counsel at The European Chamber of Commerce of Sri Lanka (ECCSL) and in May 2017 became a director of ECCSL.

IPBA 27th Annual Meeting and Conference Auckland, New Zealand



The IPBA Council conducts business over several meetings the day before the start of the conference. Here, the Committee Chairs discuss upcoming programs.



The Membership Leaders discuss IPBA membership issues in their respective jurisdictions and regions of responsibility.



Opening Speaker Sir Anand Satyand, GNZM, QSO, addresses the delegates.



Plenary Session Speaker Phil O'Reilly spoke on the Current International Business Environment.



IPBA President Dhinesh Bhaskaran accepts a challenge from the Maori leader as IPBA President-Elect Denis McNamara looks on.



This group represents the spirit of the IPBA, with different backgrounds and jurisdictions coming together.



The IPBA Scholars hailed from seven different jurisdictions, and were chosen from more than 60 applicants. Jay LeMoine, Chair of the Scholarship Committee, stands at right.



Lunch time was utilised for networking and meetings of committee members.



The coveted golf trophy went to tournament winner Huen Wong, Immediate Past President.



Delegates enjoyed the Gala Dinner food and entertainment.



Committee sessions were very well attended, with some sessions standing room only.



The roundtable discussion format introduced in Kuala Lumpur last year was used again this year to even more success.



The Annual General Meeting had over 130 attendees, a good turnout for the final day of the conference.



The IPBA Officers who led the Council during 2016-2017.



The new IPBA President, Denis McNamara, presents the Immediate Past President, Dhinesh Bhaskaran, with a plaque of appreciation for his leadership.



Delegates from Manila welcome you with open arms to the next Annual Meeting and Conference in 2018.

IPBA Moderators' Highlights from the Conference

'Artificial Intelligence at Work—How AI is and will be used in the Workplace and the Legal Issues that Arise', sponsored by the Corporate Counsel, Employment and Immigration Law and Technology, Media & Telecommunications Committees

Steven Howard (*Sony Mobile Communications Inc., Japan*)

7 April 2017, 2-3:30 PM, Parnell Room, SkyCity Convention Centre, Auckland New Zealand

Even with extra chairs brought in, we still had a standing-room-only crowd for this session on a topic that seems to be on many legal practitioners' minds now. Three esteemed presenters gave updates on where we are now with AI in legal practice and where we may be going. Overall, it was a positive message—while there will be disruption and changes, new opportunities and efficiencies will arise that haven't even been thought of yet. These should be embraced and embedded into the practice of law.

Richard Hogg, Global GDPR & Governance Offerings Evangelist with IBM, set the stage with a brief history of AI, bringing us up to the present day. He showed us how Watson, IBM's AI platform, is being used with great effectiveness in the e-discovery process and then explained how it is being used to alleviate other legal pain points such as litigation costs, expert identification, contract analysis and comparison, among others.

Sandra McCandless, a Partner with Dentons in San Francisco, then showed us how NextLaw Labs, an innovation arm of Dentons created in 2015, is looking



to push forward the development of AI solutions and products that can benefit practitioners and their clients. This is done through co-development with others, self-development of tools to be used within the firm, as well as investment in early-stage legal tech companies. A couple of the solutions in use so far are ROSS, which leverages Watson for legal research, and Beagle, a contract review solution that becomes smarter with each use.

Fabian Horton, Lecturer at The College of Law, Melbourne, provided an optimistic view on how AI will change the way we work in general and specific to the legal field. As many fear the rise of robots and perceived disruption, Fabian provided a solid counter-argument which focused on the efficiencies that will arise. No doubt, there will be disruption, but there are also significant opportunities for those who embrace the change. Lawyers should start now to work on this paradigm shift in the practice of law.

After the presentations we had several questions from the audience which showed a high level of interest in where we are going with AI. One focused on the role of new and junior lawyers, as many of the AI solutions discussed would handle roles they currently perform, some of which are considered essential for development of their lawyerly skills—not everyone can start a legal career as a knowledgeable senior partner!

During the rest of the conference the speakers and I had been approached by many—both those who attended and those who could not—about this topic. The discussion will continue and we hope there will be a further session (or two) in Manila next year.



Tax Law and International Trade Committee joint session (Friday, 15 April 2016), entitled 'Connecting & Converging Transfer Pricing, Customs Duty and BEPS—It's Not Getting Any Easier'

Michael Butler (*Finlaysons, Australia*)
Jeff Snyder (*Crowell & Moring LLP, USA*)

To open, Michael Butler drew the connection to the past IPBA sessions on this topic and the ongoing challenge facing global business in the light of Base Erosion and Profit Shifting ('BEPS'), the OECD initiative aimed at certain tax planning practices. Michael then discussed two recent competing trends: on one hand, the desire and willingness of a large number of countries to negotiate Free Trade Agreements, and on the other, the use of tax, customs and tariff measures as 'weapons of mass tax destruction' against free trade. Jeff Snyder addressed customs law, after highlighting the Trump Administration's 'disruption' of the global economy with radical tax and trade proposals. The panel then analysed these issues from the perspective of important jurisdictions. Peter Ni, Zhong Lun, addressed China and its approach to transfer pricing issues. Neil Russ, Buddle Findlay, of the Host Committee, Auckland, addressed the issue of information exchange and the impact on business with multi-country operations. Yushi Hegawa, Nagashima, Ohno & Tsunematsu, presented on the different treatment of tax and customs issues arising in Japan under BEPS. Jessica Pengelly, Finlaysons, presented on the seminal Chevron case in Australia, addressing arm's length issues in the case of debt instruments. Conchi Bargallo, Cuatrecasas, provided a perspective from Spain on the EU, BEPS, and the new Uniform Customs Code, or UCC in Europe. David

Blair, Crowell, Washington, expanded on the discussion of possible US tax reform changes, including the WTO consistency (or not), as well as issues related to transfer pricing valuation and documentation in the wake of BEPS. Monchai Vachirayonstien, Dherakupt International Law Office, Thailand, provided an overview of the tax and customs value issues under Thai law.

The joint session was very well attended with a robust Q&A session, reflecting the strong interest in BEPS and trade law. Building on the success of the joint session, the Tax and International Trade Committees are proposing a session next year in Manila on the implications of BEPS for tax and customs duty-efficient supply chain management.

Differences between Financial Investors and Strategic Investors

Jan Bogaert (*Stibbe, Hong Kong*)

Our session on the differences between financial and strategic investors was a conversational, interactive and well-attended session which was modelled along the timeline of a typical investment process.

Rohit Prasad kicked off the proceedings by laying out the land and introducing the topic. Francisco Martinez discussed fundraising and deal sourcing, always contrasting the differences as well as similarities between PE and industrial bidders. Forrest Alogna did the same for valuation, deal financing and structuring.

Moving on to the more legal topics, Richard Smith spoke about due diligence requirements, which led to a great conversation between the panelists that could have gone on for much longer, as did the subsequent topics on negotiations, target integration and exit, which were introduced by Tomohiro Tsuchiya and quickly joined in upon by the other panelists. Of particular interest was the Panel's finding that the dichotomy between financial and industrial investors is increasingly blurring as both archetypes are learning from each other, adopting best practices, and, at least in the West Coast and the technology sphere, strategic investors are creating in-house agile investing squads that are mimicking PE behavior.

Under the firm hand of its moderator, Jan Bogaert, the session ended in time to answer for some final questions from the floor that continued on the theme of contrasting the various jurisdictions represented.

Corporate Criminal Liability and Investigations Gerold W Libby (*Zuber Lawler & Del Duca LLP, USA*)

This program was sponsored by the IPBA's Ad Hoc Committee on Anti-Corruption and the Rule of Law, which became a full standing committee of the IPBA as of the conclusion of the Auckland Conference. Gerold W Libby, of Zuber Lawler & Del Duca LLP in Los Angeles, moderated the program, which addressed a number of related subjects.

Patrick Norton, an independent arbitrator based in New York City, provided an overview of worldwide trends in corporate criminal liability. This included recently increased international cooperation among government prosecution agencies and new trends in settlements and sentencing. Norton also addressed challenges in cross-border investigations, including conflicting national disclosure requirements and jurisdictional and cultural conflicts among jurisdictions.

The Honourable Justice Margaret Beazley AO, President of the New South Wales Court of Appeal in Sydney, spoke on prosecution of corporate executives in different jurisdictions and the relationship of those prosecutions to corporate prosecutions. She discussed, in particular, the US Department of Justice's recent 'Yates Memo,' which addresses the reasons for focusing on individual defendants rather than corporate defendants.

Manas Kumar Chaudhuri, of Khaitan & Co., LLP in New Delhi, spoke on self-reporting and cooperation with regulators and law enforcement authorities. He discussed the manner in which Indian authorities enforce anti-competition laws and lessons these procedures may have for anti-corruption investigations.

The Funding of Insolvency

Jan Peeters (*Stibbe, Belgium*)

Isabelle Smith Monnerville (*Smith d'Oria, France*)

The joint working session of the Banking and of the Insolvency Committees on 'The Funding of Insolvency' highlighted the worldwide convergence in what is now a distinctive sector of the financing industry.

Dr Shinjiro Takagi of Morgan, Lewis & Bockius, first provided a multi-jurisdictional update on the development of pre-insolvency remedies and the worldwide convergence for the preference of the maintenance of the insolvent

but otherwise economically sound business as an on-going entity as a means of improving the outcome for all stakeholders. This requires funding and incentives for funders by way of new money privilege.

Mr Oliver Gayner of IMF Bentham, presented third party litigation funding, particularly for insolvent businesses, which has now spread worldwide and gained recognition in arbitration proceedings.

Mr Chul Man Kim of Yulchon, presented the very recent changes to rehabilitation procedures in Korea, reflecting the convergence of legal systems around the techniques of Debtor In Possession funding as well as the promotion of prepackaged solutions by governments and legislators.

Isabelle Smith Monnerville of Smith d'Oria, closed the session with a presentation of non-bank funding for insolvent businesses in particular by customers (continuation agreements) or creditors (debt-equity swaps) which are also found in many jurisdictions.

Asian Competition Law Policy and Practice Roundtable

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

Shawn Neylan (*Stikeman Elliott LLP, Canada*)

The Competition Law Committee's program at the Auckland conference used our roundtable format. Discussion leaders prepared and circulated in advance of the Roundtable a brief note on their assigned topic. The note included a few suggested questions for discussion. Discussion leaders had no more than eight minutes to introduce their topic before the floor was opened to discussion by all attendees. The moderators ensured the time limit for the topic introduction was respected, encouraged participation from all attendees, asked questions to keep the discussion moving and generally ensured that there was a lively discussion that also involved the discussion leader. The key objective was audience participation: we encouraged all Roundtable attendees to fully participate in the IPBA spirit of inclusiveness and collegiality.

There were five topics of discussion: (1) cooperation between competition law enforcement agencies (led by Janet Hui of JunHe (also the incoming Co-Chair of the Competition Law Committee); (2) the application of competition law to IP rights assertions (led by Atsushi Yamada of Anderson Mori & Tomotsune); (3) national

benefit considerations in merger reviews (led by Vincent Wang of Tsar & Tsai); (4) practicalities of engaging with recently established competition agencies (led by Anand Raj of Shearn Delamore) and (5) sensitive sectors in different jurisdictions (led by Kala Anandarajah of Rajah & Tann). We also had a discussion of current hot topics raised by roundtable attendees. Each topic generated thoughtful and insightful discussion by session attendees. Steve Harris of Winston & Strawn (also Co-Chair of the Competition Law Committee) and Shawn Neylan of Stikeman Elliott (also outgoing Co-Chair of the Competition Law Committee) acted as moderators.

Free Trade in Services, or Not?: Efforts and Difficulties to Liberalise Tin Services (International Trade)

Ngosong Fonkem (*Alta Resources Corp, USA*)

Speakers: Raj Bhala (University of Kansas, School of Law), Jesse Goldman (Bennett Jones LLP), Shigehiko Ishimoto (Mori Hamada & Matsumoto), Sarah Schmidt (MBC FZ LLC) and Jeffrey Snyder (Crowell & Moring LLP)

Trade in services is considerably more complex than in goods. Barriers are broad, deep, and sometimes non-transparent, and sensitive issues of regulatory standards and cultural protection are implicated. In the panel session discussion on free trade in services, panel speakers addressed the current status of trade liberalisation in services, highlighting successes and challenges to GATS Plus outcome.

Specifically, Professor Raj Bhala provided an overview of services trade liberalisation in the TISA ('Trade In Services Agreement') and TPP ('Trans Pacific Partnership'). Then, Jesse Goldman addressed issues related to the complexities of rules of origin determination in services agreements, with particular focus on a number of salient characteristics of trade in services that limit the usefulness of concepts and approaches to origin developed in the context of trade in goods.

Sarah Schmidt highlighted some challenges to trade in media and entertainment services in Dubai. Finally, Jeff Snyder addressed issues related to how poorly developing countries have fared in the failed negotiations to liberalise trade in services; he highlighted the important role that services play in accelerating growth in developing countries, and hence the lost opportunities in the wake of even recent disappointing multilateral and sectorial liberalisation efforts.

Shareholder Agreements

Roger Saxton (*Connor & Co., Australia*)
Florian S Jörg (*Bratschi, Wiederkehr & Buob Ltd., Switzerland*)

Panellists: André Brunschweiler (Switzerland), Benjamin Smith (Australia), Ngoc Hong Bui (Vietnam) and Stewart Germann (New Zealand)

This session was designed as a workshop on how to draft and use shareholder agreements. The Panel, together with the audience, first examined the essential nature of shareholder agreements. It then focused on the question of when shareholder agreements can or should be used in the context of cross-border transactions. There followed a discussion regarding the parties to shareholder agreements in which the audience participated with great interest. The Panel then switched to the question of the essential elements of such agreements, such as what are the preliminary issues to consider when contemplating using a shareholder agreement and how their provisions may be enforced. It was notable that some participants voiced a preference to use escrow agreements and/or liquidated damage clauses. As to the recommended duration of such agreements, that was found to vary from jurisdiction to jurisdiction.

The lively discussion between the Panel and audience limited coverage to approximately half of the originally planned issues. As a result, and subject to the conference planning of the Cross-Border Investment Committee leadership, it is hoped to revisit the subject at the next annual conference.

'Emergency Arbitrator—A Useful Tool or Useless Phenomenon?'

Bernhard F Meyer (*MME Legal AG, Switzerland*)
Neerav Merchant (*Majmudar & Partners, India*)

Speakers/Panellists: David Bateson, Steven Lim, Kevin Kwek, Ravi Aswani, Kevin Nash, Datuk Sundra Rajoo and Maeda Yoko

The session was structured in a unique way, having two distinct parts:

- (1) a mock arbitration, based on a real case scenario; and
- (2) a roundtable discussion, addressing practical aspects and experiences of speakers and participants in connection with the appointment of Emergency Arbitrators ('EA').

The mock arbitration pertained to the construction of an airport in Middle Earth by a building consortium, composed of a European consulting company ('ConsultCo') and a Middle Earth building enterprise ('BuildCo'). The consortium agreement was governed by Swiss law with an arbitration clause (SIAC). The construction agreement and two performance bonds ('PB') issued thereunder by (a) BuildCo's bank to the owner ('Project PB') and by (b) ConsultCo's bank to BuildCo, for ConsultCo's internal share of 10 percent of the contract value ('Consortium PB'), were subject to Middle Earth law, conferring jurisdiction upon disputes to the state courts of Middle Earth.

When the construction contract was prematurely terminated by the owner, a dispute arose between the consortium members about internal responsibilities. BuildCo called on the Consortium PB to collect ConsultCo's share. ConsultCo thereupon submitted a Notice of Arbitration to the SIAC together with a Request for Emergency Interim Relief.

The Emergency Arbitrator (David Bateson) scheduled a hearing for the parties to make oral submissions on 7 April 2017 (the Session day). ConsultCo's counsel (Steven Lim) sought an order restraining BuildCo from calling on the Consortium PB. Alternatively, if the Consortium PB should already have been paid, ConsultCo sought an order against BuildCo for reimbursement of the amount received under the Consortium PB. BuildCo's counsel (Kevin Kwek) objected to the EA's jurisdiction, amongst others on the ground that the Consortium PB did not provide for arbitration. But, ConsultCo argued that BuildCo was solely responsible under the consortium contract which did contain an arbitration clause. A fascinating debate was carried out by the mock players, which showed many aspects of an emergency procedure in 'real-time'. The proceeding ended with a dismissal of the emergency application, and set the ground for the follow-up part of the session.

The roundtable discussion was moderated by Neerav Merchant and Bernhard Meyer. Four excellent speakers, Ravi Aswani, Kevin Nash, Datuk Sundra Rajoo and Maeda Yoko discussed a number of practical issues, including (i) the relationship between EA and national courts; (ii) the relationship between EA and the follow-up arbitration tribunal; (iii) cost and effectiveness of EA; (iv) the abuse of

an EA process; (v) EA proceedings based on documents only; (vi) 'ex parte' EA proceedings and relief; and (vii) the general powers of EA.

The debate triggered also a fair amount of audience participation. It showed that EA has earned its place in international arbitration and is a valuable option to be considered under the circumstances. The impressive numbers of EA proceedings that have already been carried out by the SIAC, HKIAC, KLRAC and others since inception, are also clear evidence that the arbitration world sees a benefit in these proceedings. Thus, and in conclusion, emergency arbitrators are a useful tool and not a useless phenomenon—*quod erat demonstrandum*.

Ladies, Let's do it

Olivia Kung (*Wellington Legal, Hong Kong*)

Speakers: Anne Durez (TOTAL S.A., France), Sylvette Tankiang (Villaraza & Angangco, Philippines), Hiroko Yamamoto (Mori Hamada & Matsumoto, Japan) and Barunesh Chandra (August Legal, India)

Information Technology ('IT') is no doubt one of the fastest growing industries in the past 10 years. Since the birth of the internet, computers are no longer glorified typewriters but devices that allow users to communicate and share knowledge and trade with the rest of the world. Nowadays, IT covers not only PC but a wide range of devices, for example, smartphones, tablets, laptops, smart watches, etc.

As the pace of the modern world becomes much faster and clients expect everything to be done now rather than later, and as competition between law firms becomes more intense, it is important to take advantage of IT to enhance productivity, efficiency, marketing and competitiveness.

The session was conducted in an informal and interactive manner between the panelists and the audience and it mainly addressed the following:

- (1) How their countries could use IT to enhance their respective legal sectors;
- (2) How firms could use IT to enhance productivity, efficiency, marketing and competitiveness; and
- (3) How lawyers could use IT to improve their professional lives in terms of marketing, efficiency and time management.

The panelists not only provided informative and interesting answers to the questions posed but also their personal experience on the topic. In particular, Hiroko demonstrated how firms could benefit from the use of IT by sharing with the audience snapshots of her firm's advanced internal computer system and how it functioned.

In addition, the session also addressed a current hot topic—artificial intelligence and the impact on the legal industry generally.

The session was well received and both the panelists and the audience had a great discussion.

Connectivity and Convergence in Employment: Representing the Multinational Companies Across Borders

Björn Otto (*CMS Hasche Sagle, Germany*)

Panelists: Carl Blake (Simpson Grierson, New Zealand), Kay Hodge (Stoneman, Chandler & Miller LLP, USA), Linda Liang (King & Wood Mallesons, China), Sandra McCandless (Dentons US LLP, USA), Jenny Tsin (WongPartnership LLP, Singapore), Vijayan Venugopal (Shearn Delamore & Co., Malaysia)

The Panel covered the various opportunities and advantages as well as the legal risks and organisational challenges connected to cross border matrix structures.

In a first step, the panelists tried to pinpoint a sharp and comprehensive definition of the 'matrix structure' concept. Sounding like an easy task at first glance this turned out to be quite challenging due to the complexity of the matter. Nevertheless the panelists did excellent preparatory work paving the way for deeper and more special employment law related issues:

- 'Who is the employer?' might be the most obvious question arising. But talking about multinationals, also the applicable law and social security law issues are topics of high importance that have been addressed in the discussion. Even more relevant in an everyday working world might be the recruitment of employees in matrix structures, the dos and don'ts when posting employees abroad, the termination of employment relationships and employee representatives or codetermination issues—topics the panelists were eager to provide valuable advice on as well.

Closing the discussion with an outlook on the potential impact of the Trump administration on employers doing business in the US, the Panel allowed a broader understanding of the system of matrix structures, provided valuable advice and may have triggered further thoughts on the topic.

Employment Relationships 2.0: Protection of IP, Programs, Systems and Documents

Frédérique David (*Lex2B, France*)

Speakers: Kathryn Beck (SBM Legal, New Zealand), Ajay Raghavan (Trilegal, India), Roland Falder (EmpLawyers, Germany), Kumar Kanagasabai (Skrine, Malaysia) and Carolyn Knox (Ogletree & Deakins, USA)

The panelists discussed a matter that we will all be facing soon on a day-to-day basis due to the development of the geek economy: how to protect work products and especially IP when the work is done, not through a classic employer/employee relationship, but through a crowdsourcing media.

How does a company address its need to protect its ownership and confidentiality of intellectual property in the context of different rules in each jurisdiction? What is the impact of the use of independent contractors and how is intellectual property protected when service providers are not treated as employees? How to secure enforcement of property and confidentiality provisions or Court's decisions in this respect?

The panelists all gave examples of how companies can resort to crowdsourcing in their jurisdictions; that is, how companies can make a public call to the world to have the entirety or bits and pieces of a work done for them (software code development, creating a logo, preparing technical documentation, etc.).

The discussion was very lively and the audience also shared their experiences and thoughts in this matter.

Distressed Assets M&A

Sara Marchetta (*Chiomenti, China*)

Ajinderpal Singh (*Dentons Rodyk & Davidson LLP, Singapore*)

This session was jointly hosted by the Cross-Border Investment Committee and the Insolvency Committee and co-moderated by Sara Marchetta from Italy and

Ajinderpal Singh from Singapore. Speakers also were Matt Komatsu from Japan/Singapore, Helen Zhang from China and Binh Tran, from Vietnam.

When proposing this topic, we were considering that due to the struggle to recover in many of the world's economies, there are more and more opportunities arising for mergers and acquisitions of distressed companies or assets. Therefore, it was interesting to explore the different legal frameworks and practical issues in various jurisdictions in relation to distressed M&A conducted through both out-of-court and in-court proceedings.

Interesting topics of discussion with the attendees also emerged during the session, such as the new bankruptcy law in Singapore and cross-border bankruptcy procedures—especially from jurisdictions where regional or global holding companies are located—approvals and registrations in the Chinese systems when executing transactions with NPLs, together with the basic features of the Vietnamese system and current trends in creditors' composition in Japan.

Attendees also contributed in connection with due diligence, court proceedings and cross-border bankruptcy with their experience in India and Korea.

Fintech: Key Legal Challenges Fintech Companies are Facing in Different Jurisdictions **Dr Thomas Zwissler** (*ZIRNGIBL, Germany*)

Panellists: Vivek Kathpalia (Nishit Desai, India), John Kettle (McCulloch Robertson, Australia), Jeffrey Lai (Andersen Creagh Lai, New Zealand), Rajesh Sreenivasan (Rajah & Tann Singapore LLP, Singapore) and Yuri Suzuki (Atsumi & Sakai, Japan)

The objective of this session was to identify and to discuss key challenges financial technology ('Fintech') companies are facing in different jurisdictions. Dr Thomas Zwissler introduced the topic and gave a brief overview of the Fintech industry and its typical segmentation into different verticals (for example, lending, payment solutions, personal finance, etc).

The discussion focused on three major challenges: (1) regulatory issues (financial regulations, cybersecurity and data protection regulations etc); (2) contractual and liability issues; and (3) challenges with regard to scaling-up,

going international and providing cross border services. It became clear, that regulatory issues are crucial for Fintech companies in all jurisdictions and while regulators are willing to facilitate the development of a Fintech industry in their respective country (for example, by setting up dedicated working groups and/or implementing sandboxing policies) there is still a clear trend to keep Fintech companies under the close control of the financial sector supervisors. It was also highlighted that many regulators have entered into cross border cooperation agreements with other regulators which could be interpreted as an answer to the need of a level playing field for Fintech companies across the globe. The surge of the 'API-Economy' was another aspect of the discussion and interpreted as a potential game-changer for the financial industry. Finally, all panelists reported that in their respective jurisdictions Fintech companies and established banking and financial services companies mostly approach each other in a spirit of cooperation rather than in a spirit of disruption and competitive elimination.

Challenges in Developing a Power Project in a Developing Country—A Case Scenario **Kirindeep Singh** (*Dentons Rodky & Davidson LLP, Singapore*) **Peter Chow** (*Squire Patton Boggs, Hong Kong*)

Speakers: Tony Dymond (Debevoise and Plimpton, UK) and Alfred Wu (Norton Rose, Hong Kong)

The Energy & Natural Resources Committee and the International Construction Projects Committee recently held a joint session at the IPBA Annual Conference in Auckland, New Zealand, on the topic 'Challenges in Developing a Power Project in a Developing Country—A Case Scenario'.

Developing an energy infrastructure project in an emerging economy undoubtedly has its challenges. It requires an understanding of legal, financing and social issues. This session brought together a panel of experts with experience in international projects, with lively comments and questions from the participants. The session discussed various aspects of developing a power project based on a fictitious scenario of China Power Company seeking a joint venture hydro-electric project in Danubia, a fictitious country in Africa.

The session included a discussion on general concepts, structuring the deal, and how the project could be

financed and structured to make it bankable. The session also dealt with documenting one important aspect of the deal—the Construction Contract and how some of the risks can be mitigated. One cannot discuss investing in a major project in an emerging economy without also discussing the dispute resolution risks and how these risks can be mitigated.

Banking, Finance & Securities Committee
Presentation: 'Prospectus Liability'
William Scott (*Stikeman Elliott LLP, Canada*)

Speakers: Barry Brown (Chapman Tripp, New Zealand), Cindy Moxley (Aon, New Zealand), Kenneth Stuart (Becker, Glynn, Muffly, Chassin & Hosinski LLP, USA), Huen Wong (Fried, Frank, Harris, Shriver & Jacobson, Hong Kong), Yap Wai Ming (Morgan Lewis Stamford LLC, Singapore)

The presentation focused on the risk of liability for misrepresentations in prospectuses and other offering documents and the measures which may be taken to mitigate that risk. The presentation was given by a panel of senior practitioners consisting of Cindy Moxley of AON New Zealand, Barry Brown of Chapman Tripp, New Zealand, Ken Stuart of Becker Glynn, New York, Huen Wong of Fried Frank, Hong Kong and Yap Wai Ming of Morgan Lewis, Singapore. The discussion was moderated by William Scott of Stikeman Elliott, Toronto.

The presentation kicked off with Mr Scott providing an overview of the sources of liability in the jurisdictions in question, including securities laws, criminal codes and the common law, the circumstances which may lead to liability to investors and the potential targets at risk, such as issuers, selling security holders, directors, officers, promoters, certain experts and advisors as well as underwriters and selling broker-dealers.

The Panel then reviewed, with reference to their home jurisdictions, the various ways in which such liability can be mitigated, including through due diligence/verification reviews, reliance on appropriately qualified executives/experts/professional advisors/underwriters and robust disclosure of risk factors and (where permitted) disclaimers. The Panel also reviewed the various statutory defences to liability that might be available and the use of indemnity and contribution arrangements. Finally, Ms Moxley provided a comprehensive and informative review of how insurance products can address such risks.

The discussion finished off with several panelists recounting 'war stories' of how they had dealt with challenging situations encountered in this area in the course of their careers.

Overcoming Conflicts with regards to Privilege: is a Universal Approach Desirable or even Attainable?

Eckart Brödermann (*Brödermann Jahn Ra GmbH, Germany*)
Robert Rhoda (*Bird & Bird, Hong Kong*)

Speakers: Michael Cartier (Walder Wyss Ltd., Switzerland), Paul Hayes (39 Essex Chambers, Malaysia), Aoi Inoue (Anderson Mori & Tomotsune, Japan), Asya Jamaludin (Nabarro LLP, Singapore), Sae Youn Kim (Yulchon LLC, Korea), Stephen Nathan (Blackstone Chambers, UK), Laura O'Gorman (Buddle Findlay, New Zealand), Prof Dr Gerhard Wegen (Gleiss Lutz Rechtsanwaelte, Germany) and Francis Xavier (Rajah & Tann Singapore LLP, Singapore)

During the Annual Conference in Auckland, close to 70 lawyers from the Dispute Resolution & Arbitration Committee of the IPBA split into six groups to discuss privilege and its impact on discovery/documents production. One of the focuses of discussion was whether there is an effective way to overcome the different perceptions of privilege and confidentiality between common law and civil law jurisdictions. Common law jurisdictions are well versed in the concept of discovery or mandatory document production, which gives rise in certain circumstances to categories of protection or 'shield' known, collectively, as privilege. In contrast, civil law lawyers, who do not have discovery rules in their own jurisdictions, tend to regard the topics discussed in common law countries under the heading 'privilege' by reference to concepts of confidentiality and professional secrecy, breach of which is punished by criminal law.

As readers may be aware, Francis Xavier SC (Singapore) is leading a working group responsible for producing the IPBA's own guidelines on privilege in international arbitration. This Dispute Resolution & Arbitration Committee session in Auckland was used as an opportunity to stimulate debate in order to provide feedback to help inform the contents of the guidelines. To help achieve this, Francis Xavier SC distilled his working group's briefing paper into six discrete topics (one for each table) for debate during this session.

Where possible, each table was 'captained' by a lawyer from a civil and common law jurisdiction in order to achieve balance. Lively debate ensued and summaries of the preliminary views reached by the six groups, as well as the questions themselves which they were asked to consider, are set out below.

First Panel

What is the best solution that we can offer a tribunal which has to deal with the question of privilege in international arbitration? Should the proposed guidelines take the form of:

- (i) A transnational set of privileges;
- (ii) A conflict of law test; or
- (iii) A recommendation as to whether privilege is characterised as a matter of substance or procedure? If privilege is a procedural matter, it would presumably be governed by the seat law. If substantive, by the proper law of the contract.

Sae Youn Kim (Korea) and Stephen Nathan (United Kingdom) chaired the first panel which discussed in depth how privilege worked in the different jurisdictions. A few excerpts:

- What emerged very clearly is that every system has a version of privilege to protect from disclosure to the other side (i) advice from lawyers (and the documents created for getting that advice) and (ii) the documents created in an arbitration passing between lawyer and his client, irrespective of whether the situs of the arbitration is a common law country or a civil law country.
- There emerged a great difference in approach between common law jurisdictions, which consider privilege to be both a matter of substantive law and procedure, compared with the approaches of civil law jurisdictions, which differed between themselves. In civil law jurisdictions, the clients have an enforceable substantive right and also the lawyers have a set of rights and professional responsibilities, enforceable both professionally and also under the criminal code, which are quite separate from the right of privilege of their clients.
- It also emerged quite clearly that clients in the different jurisdictions had different expectations.

- Generally, although everyone could see pitfalls in adopting a guideline with general rules, there was a consensus of opinion that it would be a step forward to have an overarching agreed set of principles. Some people, however, expressed doubts if that would really work when a client/lawyer wanted to protect confidential documents. No one (client or lawyer) would be prepared, in practice, to give up what he/she regarded as his/her 'right to privilege' which needed to be at least as protective as his/her home jurisdiction. In other words, there always has to be a minimum norm or set of rules which everyone could accept. In practice, the parties would want to have the protection of the 'highest level of protection' given by the home jurisdiction and the law of the situs of the arbitration, and any guidelines offered by the IPBA.
- There was general agreement that a conflict of law test could end up being very complex and costly in some cases, and that was an outcome to be avoided if at all possible.
- The table agreed that privilege could not just be considered a set of procedural rules.

Second Panel

What would a transnational set of privileges look like? Is it possible for these transnational privileges to be equally amenable to both the common and civil law traditions?

Michael Cartier (Switzerland) and Mohan Pillay (Singapore) chaired the second panel. They summarised the impressions of their group as follows:

- The entry point into the discussion was understanding the different concepts out of which common law jurisdictions and civil law jurisdictions derive 'privilege'. Civil law lawyers derive their 'privilege' primarily out of the concept of attorney-client secrecy, while privilege under common law is driven by rules of evidence and the like. This distinction became apparent when turning to discuss various types of privilege and in particular whether non-lawyers would also benefit from privilege.
- Looking first at 'litigation privilege' and 'legal advice privilege' there was a consensus around the table

that these were broadly similar under common law and civil law. The main difference being, however, whether work done by non-lawyers would benefit or not. In civil law systems generally only communication with a lawyer or work done by a lawyer would engender privilege, while that done by experts directly for a client would not. However, the civil lawyers on the table noted that there were work-arounds by having experts hired by the lawyers instead, and that thus there was ultimately an interest in having also non-lawyers who provide advice or support in litigation situations covered by privilege.

- Turning to 'without prejudice privilege' which was taken as given by the common law lawyers, there was some differences amongst the civil law lawyers around the table with some jurisdictions recognizing such a privilege (at least with regard to without prejudice communications between lawyers) and others that did not recognize such a privilege at all. Accordingly, no united position could be found within the civil law jurisdictions.
- Finally, the discussion turned to the 'common interest privilege' which was alien to the civil law lawyers around the table. Upon the explanation by the common law lawyers, the civil law lawyers certainly saw the benefit and usefulness of such a privilege but struggled to see how such a privilege would fit into their respective jurisdictions, apart from each party with a common interest relying on the respective attorney-client secrecy.
- In summary, the participants of table 2 saw that each jurisdiction ultimately sought to provide similar protections for clients albeit on the basis of a different legal basis and with some key distinctions in particular with respect to who (beyond lawyers) would be covered by privilege. So while table 2 did not end up defining a set of transnational privileges there was certainly a better understanding where various concepts overlap and where they do not.

Third Panel

- (1) What would a transnational/universal conflict of law test look like?
- (2) Should these transnational guidelines on privilege protect the work of in-house counsel?

Laura O'Gorman (New Zealand) and Gerhard Wegen (Germany) chaired the third panel. The interdisciplinary discussion revealed the complexity of any conflict of law approach with connecting factors which may point, for different issues, into the direction of different laws. The strong initial reaction of some participants was that a conflict of law test may not be the answer. For example, the table felt that the substantive law of the contract did not necessarily have any relationship with the secrecy/privilege obligations that properly arise (e.g., if a neutral law is selected to govern contractual obligations). The table submitted detailed comments to the IPBA Working Group on the issue of privileges regarding the feasibility of developing a conflict of law test. Inter alia, it was considered, as an alternative, whether any joint future rules would need to make a distinction by providing various opt-in choices, from which the parties could select one to suit the particular case:

- **Option A:** A simpler regime based on civil law, expressly agreeing no disclosure/discovery;
- **Option B:** A potentially more complex regime, designed to deal with parties from both civil and common law jurisdictions; and
- **Option C:** A simpler regime based on common law, specifying the extent to which disclosure/discovery obligations arise.

Further the table discussion revealed:

- There was a general consensus that these issues are very difficult ones, and the reality is that parties do not give sufficient thought to the problems when entering into commercial contracts. The participants endorsed the IPBA continuing to develop an IPBA proposal to address these issues, even if the ultimate proposal cannot be designed to suit all cases. The regime will be valuable if parties would select it reasonably often on an opt-in basis. The danger is that the proposal might not achieve this if the provisions are unnecessarily complex and costly to apply, and/or do not address issues of document production/discovery.

On the issue of In-house counsel, the group concluded:

- that IPBA guidelines should protect the privileged work of in-house counsel. A large number of (predominantly common law) jurisdictions recognise such a privilege. To undermine those rights would unfairly defeat party expectations and potentially cause liability issues as a matter of domestic law.

Fourth Panel

- (1) How should the tribunal handle a party's claim that he is bound by national law to apply a mandatory privilege?
- (2) Will denying a party a mandatory privilege lead to enforcement issues? (i.e., if it would be against public policy to refuse to apply that privilege)

The fourth Panel discussion was chaired by Aoi Inoue (Japan). Here is a summary of his observations.

- (1) The attendees were of the view that it would be difficult for the guidelines as soft law to provide specific guidance as to how to handle such claims.

... If a party makes such a claim, the tribunal must analyse the issue and render a certain decision. Some attendees suggested the following way to deal with this issue:

- The tribunal may appoint a third-party expert to examine the mandatory privilege issue.
 - Such expert will review the relevant documents and provide his/her view on whether the mandatory privilege is applicable or not.
 - Although it depends, this approach may work in some cases.
- (2) The attendees were of the view that theoretically, denying a party a mandatory privilege would lead to enforcement issues. However, the attendees mentioned that in general national courts would be unlikely to refuse recognition and enforcement of an arbitral award on the grounds of denying a party a mandatory privilege (although it depends on the grounds of refusal stipulated in the relevant laws in the country of the enforcement court).

For instance, since Japan is a civil law country ... Japan does not have any relevant court precedents as to this issue. The other attendees, who were from US, UK, Germany, Switzerland, Singapore, Hong Kong and Malaysia, also said that they did not

hear any court cases dealing with this issue in their countries.

Fifth Panel

Should the tribunal have the ultimate discretion in granting privileges, and if so, how should this discretion be fettered? Should this discretion operate at all three steps of the proposed Guidelines?

Asya Jamaludin (Singapore) and Zhengzhi Wang (China) summarised the discussion of their table as follows:

(1) *The Tribunal's Discretion*

- (1.1) There was no clear agreement among the participant members as to whether the tribunal ought to be given the ultimate discretion in granting privilege.
- (1.2) Some participant members tended towards not granting any discretion to the tribunal at all when it came to the question of granting privilege.
- (1.3) However, it was evident from the discussion that ensued that this strict approach will cause practical issues in situations where parties come from different legal traditions and jurisdictions.
- (1.4) While [a] set of transnational privileges that are available to the parties may be fixed by the [IPBA] Guidelines, the way in which the tribunal decides whether a particular document or communication falls within the set of transnational privileges was open to interpretation and debate.
- (1.5) In view of the various issues and concerns that would face the tribunal when faced with the question of privilege, it was suggested by the participant members that a set of guidance notes for the tribunal in exercising its discretion would be of assistance.

(2) *The Question of Privilege*

- (2.1) The first part of the discussion was in respect of the question of privilege itself, and the basic difference in approach between the common law and civil law traditions. What was accepted as privileged in one jurisdiction was not necessarily privileged in another.
- (2.2) The discussion concentrated mainly on ... the

'without prejudice privilege' category, and in the context of settlement negotiations.

- (2.3) It was pointed out that in civil law jurisdictions (we had representation from Japan and Taipei) that no settlement negotiation or offer would take place unless there was prior agreement between the parties that such discussions or offers were to be confidential.
- (2.4) As such, parties from such jurisdictions would not use a without prejudice offer as a method to manage costs of the arbitration.
- (2.5) It became apparent from the discussions by participant members that this was a fundamental difference in approach and philosophy between the lawyers from civil law and common law jurisdictions. The ability to make 'without prejudice save as to costs' offers was an important tactical tool available to common lawyers. This is not so for civil lawyers.
- (2.6) Members also discussed parties' obligations to disclose documents under the civil and common law jurisdictions. There is no general obligation to disclose documents under the civil law jurisdiction. As disclosure in arbitrations are mainly now reliance based, in that parties only disclose documents that they are relying on, the difference between the 2 legal traditions may be more in form than in substance.
- (2.7) However, a tribunal when faced with a request for disclosure against a civil law litigant or lawyer who claims that he has no obligation to disclose any document it does not want to, will have to address the question of whether that particular document is privileged.

(3) Some Issues Facing the Tribunal

- (3.1) The discussion between participant members then moved on to some of the issues facing a tribunal when presented with a claim for privilege.

The Parties' Expectations

- (3.2) In deciding whether a document or communication is privileged, a tribunal would have to consider (a) the parties' legitimate expectations, (b) the parties' reliance interest and (c) procedural fairness.

- (3.3) A party will expect that a communication that was privileged when first made would continue to be privileged at the time of the arbitration.
- (3.4) The tribunal would have to balance the different inherent expectations of a common law and civil law litigant at the time the document or communication was made.
- (3.5) At the same time, the tribunal would also have to ensure procedural fairness—while one party may not have expected a particular type of document to be privileged, but the other party does, it may not be procedurally fair to allow one party to claim privilege over that type of document just because he had expected it but not grant it to the other party. In such an event, a party may find itself receiving 'more' than it had expected.

The Tribunal's Approach

- (3.6) The tribunal would also have to decide on the methods it would use in deciding whether to grant privilege.
- (3.7) The tribunal could use the 'choice of law' approach in order to determine the proper law governing the privilege question. However, the fact that there is no consensus as to whether privilege is a substantive or procedural matter presents other challenges for the tribunal—that is whether privilege is determined by the governing law of the contract or the procedural law of the arbitral seat.
- (3.8) Further, as observed by the participant members of the discussion, a potential problem issue that could arise is when one party to the contract is from a different legal tradition from the governing law of the contract or the arbitral seat. For example, when a party to the contract is a French company based in Paris, executing a contract governed by English law, with a London seated arbitration clause.
- (3.9) In such a situation, it is unlikely that the French party's legitimate expectations would be aligned to the common law approach of privilege.
- (3.10) Another approach that could be used by the tribunal is the 'closest connection' test, which is to ascertain the law that has the closest connection to

the documents or communication in question. This is still not straightforward as the closest connection of a document could be determined on different factors such as where the document is created, or where it is located. Some members were of the view that the closest connection test should be determined based on where the parties or their lawyers reside.

Certainty of Arbitral Process

(3.11) The tribunal would also have to ensure that the exercise of its discretion in deciding whether to grant privilege would lead to more, rather than less certainty in the arbitral process.

(3.12) As highlighted above, the different issues and approaches that could arise in deciding on the question of privilege is potential problem to the tribunal. Certainty in the arbitral process is an important aspect in order to ensure that the tribunal is able to keep its proceedings and award safe.

(4) Summary

(4.1) The participant members agreed that the Guidelines would be useful in providing certainty to parties, particularly given the difference in the way the question of privilege is treated between the common and civil law jurisdictions.

(4.2) However, given the number of issues and points of contention that may arise at the time the question is raised, a tribunal may find itself dealing with issues of interpretation and application as opposed to considering the substantive question of whether privilege should be granted.

(4.3) It was thought that a proper set of guidance notes on how to interpret and apply the Guidelines would be useful.

(4.4) It was not possible to address the second limb of the question, i.e., whether the tribunal's discretion should operate on all 3 Steps of the proposed guidelines, within the time available.

Sixth Panel

- (1) What would a transnational test for waiver of privilege look like?
- (2) Is the test for waiver dependent on whether a

transnational privilege was waived? Which laws apply to waiver if the privilege stems from (i) Stage 1 (i.e., transnational privilege); (ii) Stage 2 (i.e., choice of law analysis or mandatory privilege); or (iii) Stage 3 (i.e., by virtue of equality of arms)?

The Sixth Panel was chaired by Paul Hayes (Kuala Lumpur) who summarised the following observations of his group:

The workings of the Sixth Panel

- (1) In the course of its discussion, there was a range of views derived from a relatively even contribution from most members of the Sixth Panel. Although the views presented at the conference were not unanimous, the summary as best as it is able seeks to capture the prevailing view.

The positive attributes of a uniform approach to 'privilege'

- (2) It was universally agreed that a uniform approach to 'privilege' in international commercial arbitration (in light of the different means of addressing privilege by civil and common law jurisdictions) was a 'good thing' and a desirable outcome which was worthy of the current initiatives being undertaken by the IPBA in the development of a uniform set of guidelines (or protocol).
- (3) However, the central issue here is what would comprise the content of the proposed guidelines (or protocol), what would be the format and how might such an instrument be created.

What would a transnational set of rules/guidelines relating to 'privilege' look like?

- (4) Maintenance of individual/entity's entitlement to maintain confidentiality/privacy (being legal concepts which are substantive in character) over [documentary] information is at the heart of any uniform approach to the 'privilege' issue. As such it is important to fully understand the nature/character of the privilege, so that precisely what it is which is being waived can be properly understood.
- (5) Despite different approaches between civil and common law jurisdictions as to the legal

characterization of 'privilege' in its different forms (i.e., litigation/arbitration privilege; legal advice; common interest; self-incrimination; 'without-prejudice' settlement discussions; public interest immunity; etc), given the irreversible consequences facing a party once confidentiality/privacy in documents is lost, 'privilege' is better characterised as a substantive legal issue, rather than a procedural one (i.e., a substantive legal issue arising in a procedural context).

- (6) Therefore, if 'privilege' is best considered to be an issue of substantive law (and not procedural law), then the law of the arbitration agreement (i.e., the *lex arbitri*), (or possibly the governing law of the principal contract), would prescribe an applicable substantive law to appropriately address any issue relating to 'privilege' in the conduct of the arbitration (depending of course on the nature of the 'privilege' claimed).¹
- (7) Accordingly, a simple solution is offered in respect of the 'privilege' issue, in that any IPBA guideline (or protocol) on 'privilege' would of necessity be short and to the effect: that 'privilege' issues are best determined as substantive legal issues in accordance with the applicable law of the arbitration agreement (or possibly the governing law of the principal contract). This way, accepting that the parties had agreed to the 'arbitration agreement' and 'governing law' provisions already contained within the principal contract, party autonomy is respected (i.e., relying on the applicable substantive law [already agreed to by the parties] to determine questions of 'privilege').
- (8) The proposed IPBA Guidelines are a commendable ideal, however rather than proposing guidelines as such, given the views expressed above that 'privilege' is better characterised as substantive law rather than procedural law, a desirable uniform set of principles addressing 'privilege' is better accommodated by:
- (a) A uniform protocol on 'privilege' being incorporated into various arbitral institutional rules (so that the application of such principles has specific contractual force between the parties); and/or

- (b) UNCITRAL amending the Model Law to provide for any such uniform protocol on 'privilege'.

What should a transnational test [or uniform protocol] for waiver of 'privilege' look like?

- (9) [In this regard the sixth table submitted a number of detailed drafting comments].

Conclusion

- (10) The Sixth Panel thanks the Principal Panel for the opportunity to participate in this discussion and wishes the Principal Panel well in its further consideration and development of this most worthwhile and admirable project.

All members of the IPBA and, in particular, members of the Dispute Resolution and Arbitration Committee are cordially invited to join the next round of discussions at the IPBA Annual Meeting in 2018 in Manila. If you are not yet a member of the IPBA but wish to contribute to this important debate, now is the perfect opportunity to join! The Working Group led by Francis Xavier SC tasked with producing guidelines on privilege strongly believes that only through multi-jurisdictional discussions can the IPBA create a proper internationally accepted solution to address one of the most difficult and serious concerns in international arbitration.

Note:

- ¹ See for example: *Channel Tunnel Group Ltd v Balfour Beatty Ltd.* (1993) AC 334, 357-58 (Lord Mustill); *Naviera Amazonia Peruana SA v Compania Internacional de Seguros del Peru* [1988] 1 Lloyd's LR 116; *Black Clawson v Papierwerke* (1981) 2 LLR 446, 453 (Lord Mustill).

'Developing the International Lawyer' sponsored by the Legal Development and Training Committee

James Jung (*The College of Law Australia & NZ, New Zealand*)

Speakers: Yong-Jae Chang (Lee & Ko, Korea), Raphael Choon Tien Tay (Chooi & Company, Malaysia), Peter Tritt (The College of Law Australia & NZ, New Zealand) and Dr Thuy Huong Nguyen Thi (Nguyen Van Hau & Associates, Vietnam)

Business has become increasingly globalised over time and the legal profession has followed suit, both in terms of lawyers working on cross-border deals and some firms setting up global networks of offices. Many

lawyers around the world now regard themselves as 'international lawyers' but what does that mean? They have to be experts in the laws and practice of their 'home' jurisdiction but they also need to be able to handle complex cross-border matters, often for clients and with other advisers from other jurisdictions. This session considered what being an 'international lawyer' involves and what legal expertise, practical knowledge and skills need to be developed for a lawyer to merit that title. It also examined how lawyers (particularly junior lawyers) who advise international clients should be trained to ensure they do so effectively.

This was a special session for the LDTC as we had not for many years hosted a session amongst the other committee sessions during the IPBA annual conference. This stand-alone session was delivered by four experienced senior lawyers from Malaysia, Vietnam, Korea and New Zealand.

Raphael Tay, Partner at Chooi & Company, Kuala Lumpur shared his views on the importance of practising as an international lawyer and the influence of the globalisation of the business world which has changed the nature of legal services. He also discussed that technology has given us the ability to bypass the geographical barriers to provide cross-border legal services and that the liberalisation of the legal profession's laws across the world has allowed lawyers to practice as foreign lawyers in other jurisdictions (such as the US, UK, Singapore and Malaysia)—which has led to the opportunity and the necessity for lawyers to provide their services across borders. Furthermore, Raphael emphasised that legal knowledge, understanding businesses and creating interpersonal skills for cross-border connections are the three key components in developing a successful international lawyer in today's world.

Yong-Jae (YJ) Chang, Partner at Lee & Ko, Seoul delivered an interesting presentation on developing the international lawyer from a Korean perspective. YJ discussed the common perception of an international lawyer in Korea and some practical issues and how we can effectively develop and train international lawyers. YJ emphasised that cross-cultural awareness with good communication skills are essential in becoming a competent international lawyer in today's world.

Dr Nguyen Thi Thuy Huong, Partner at Nguyen Van Hau & Associates, Ho Chi Minh City, explained the Vietnamese

perspective on developing the international lawyer. Dr Huong discussed that possessing good English language skills, having good knowledge of both local and international laws, and having the opportunity/experience to practice in lawsuits with foreign elements are the three key factors of a competent international lawyer. In order for the Vietnamese legal profession to develop competent international lawyers in the future, Dr Huong emphasised the need for specialised training and educational courses—namely courses in legal English and communication/soft skills when dealing with foreign clients and lawyers.

Peter Tritt, Director Asia-Pacific at the College of Law Australia & NZ, shared his views on the topic from a New Zealand and Australian perspective. Firstly, Peter noted that there is no set definition of a 'international lawyer' in New Zealand and Australia and merely it is a concept developed over time to describe a legal practitioner who is working with clients with business interests in more than one jurisdiction and working on cases or transactions that involve parties, laws or assets in more than one jurisdiction, or outside your home jurisdiction. In regards to training and developing international lawyers, Peter discussed training lawyers based on four fundamental factors: (1) which language; (2) which laws; (3) which courts; and (4) which dispute resolution process—all of which need to be considered carefully when practising as an international lawyers.

After the presentations we had several questions from the audience which showed a high level of interest in this topic. It was discussed that with the rise of international trade and modernisation of business practices have an inevitable impact of the legal profession as clients need lawyers who understand multi-jurisdictional sphere when dealing with their businesses abroad, negotiating transactions on their behalf or drafting commercial contracts that involve multi-national parties, laws and businesses in more than one jurisdiction.

We hope that the discussions will continue and that we will be a further session in Manila next year.

'Base Erosion and Profit Sharing ('BEPS') Recent Developments and Implementation'
William Maclagan (Blake, Cassels & Graydon LLP, Canada)

At the 2017 Annual IPBA conference in Auckland, the

Tax Committee held a number of sessions, including a session on the developments of the BEPS Action Plans in various countries. The proposed BEPS Action Plans have been developed by the Organisation of Economic Co-operation and Development ('OECD') and member countries to combat perceived international tax abuse purportedly resulting in some income of multinational corporations never being taxed. This session had presenters from the Philippines, Thailand, New Zealand, Korea, Europe, India, Malaysia and China.

The country reports were very well presented and gave rise to lively discussion of the Apple/Irish state aid case and the implementation of BEPS action plans. The Apple/Irish state aid case very much highlights the push and pull between countries such as Ireland who desire to offer tax incentives to grow their economy and other countries and organisations such as the OECD and European Union that wish to limit the practice.

Most of the countries discussed were very supportive of the BEPS action plans and as a result have adopted stronger enforcement and audit procedures, country by country reporting of revenue and related tax information, stronger transfer pricing rules and other measures designed to protect their tax base.

Countries are also broadening their definition of 'permanent establishments' to capture income from sales activities (whether online or otherwise) which currently escapes taxation in the country. General anti-avoidance rules and anti-treaty abuse measures are also being broadened and strengthened. The countries are also increasing cooperation and information exchange in order to combat perceived tax abuse.

All of these measures are intended to result in greater transparency and increased revenue recognition and taxation. At this stage, it is not completely clear which countries will ultimately be the beneficiaries of these stronger rules and action plans and whether or not the developing nations may seek even tougher rules to protect their tax base. In many ways, these responses are a continuing progression that has gone on for years of countries strengthening their tax base to increase much needed revenue. Unfortunately, lost in all of this rush to implement BEPS Action Plans may be a much needed review of first principles to determine if the proposals are indeed appropriate.

'Cross Border Transactions and Environmental Law Compliances and Concerns'

Ang Hean Leng (*Lee Hishammuddin Allen & Gledhill, Malaysia*)

Trinh Nguyen (*Trinh Nguyen & Partners, Vietnam*)

Speakers: Santiago Gatica (Guyer & Regules, Uruguay), Sergio Guzman (Grupo Vial Serrano Abogados, Chile), Junichi Ikeda (Nagashima Ohno & Tsunematsu, Japan), Hermann Knott (Luther Rechtsanwaltsgesellschaft mbH, Germany) and Stephen Tromans QC (39 Essex Chambers, UK)

The Environmental Law Committee jointly conducted this session on Cross-Border Transactions and Environmental Law Compliances and Concerns with the Cross-Border Investment Committee. The aim was to provide an overview of the compliances and concerns that arise from cross border transactions as well as to share and discuss the legal tools that have been used by the panel members in compliance, and in addressing such concerns.

The panel highlighted the increased breadth of environmental issues arising in transactions, by reason of domestic laws as well as investment treaties. The shapes and forms in which environmental issues arise are no longer limited to those that are purely environmental. Many of the issues arising may protract, or break deals.

From a company perspective, different expectations as to how the law operates shape the approach of companies to the various different legal obligations. For instance, an American company would view EU directives differently than an EU company would. From the perspective of governments, new and different approaches are also being introduced to ensure compliance such as an 'agreement-based' approach. There was also a discussion on the appropriate timing of conducting environmental due diligence.

Risks had to be identified from various perspectives and allocated accordingly by reference not only to domestic obligations, but also liabilities under investment treaties. Not only must investors appreciate and access domestic compliances and concerns, but also be mindful of the dispute resolution mechanisms provided under the treaties in respect of assessing risks that may arise from environmental matters. Environmental claims may be brought against investor companies for environmental transgressions.

Green Finance and its Development in China

‘Green finance’ can be understood as financing of investments that provide environmental benefits in the broader context. Green finance covers a wide range of financial institutions and asset classes and includes both public and private finance. China will continuously spare no effort in contributing more and having a world leading and multi-function green financing system.



Green Finance

'Green finance' can be understood as financing of investments that provide environmental benefits in the broader context of environmentally sustainable development. These environmental benefits include, for example, reductions in air, water and land pollution, reductions in greenhouse gas ('GHG') emissions, improved energy efficiency while utilising existing natural resources, as well as mitigation of and adaptation to climate change and their co-benefits. Green finance involves efforts to internalise environmental externalities and adjust risk perceptions in order to boost environmentally friendly investments and reduce environmentally harmful ones. Green finance covers a wide range of financial institutions and asset classes and includes both public and private finance. Green finance involves the effective management of environmental risks across the financial system.

Pollution, natural resource depletion and effects from climate change impose significant economic stresses and costs. As a result of human pressure on Earth's resources, natural capital has declined in 116 out of 140 countries, including the deterioration of natural resources such as fresh water and arable land. Approximately four million people die prematurely every year due to air pollution exposure and natural disasters displace tens of millions of people annually.

Financing environmentally sustainable growth requires substantial amounts of investment. Currently there is neither a systematic estimate of global financing needs for environmentally sustainable growth nor indicators of actual green finance flows on the global level (a subject to be explored later in this article). However, numerous studies from the International Energy Agency ('IEA'), World Bank, Organisation for Economic Co-operation and Development ('OECD') and World Economic Forum ('WEF') provide directionally similar indications of what is required, pointing to the need to deploy tens of trillions of dollars over the coming decade to finance green projects in key areas such as construction, energy, infrastructure, water and waste.

Green finance may provide growth opportunities in addition to delivering environmental benefits. Enhancing green finance could facilitate the growth of high-potential green industries, promote technological innovation and create business opportunities for the

financial industry. For example, renewables represented approximately 62.5 percent of net additions to global power capacity in 2015 and the market size of electric vehicles expanded 60 percent in 2014. Providing adequate financing to such green sectors with high market potential could therefore be growth enhancing.

Green finance may alter the way in which environmental factors impact financial institutions. Inadequate recognition of financial risks due to environmental factors may pose a challenge to the soundness and safety of financial institutions. There is also a growing recognition that traditional approaches to incorporating environmental factors into risk management systems by financial institutions may be insufficient as environmental risks reach new levels of scale, likelihood and interconnectedness. As the greening of the financial system will likely accelerate the re-allocation of resources, it may impact the risk-return profiles (both positively and negatively) of some economic activities and financial assets, as well as the credit and market risks faced by financial institutions. It is therefore important for policy makers and financial institutions to better understand and respond effectively to both the opportunities and risks associated with green finance.

Green finance now faces a range of challenges. For instance: (1) inadequate internalisation of environmental externalities; (2) maturity mismatches; (3) lack of clarity of green finance definitions; (4) information asymmetries (for example, between investors and recipients); and (5) capacity constraints. While some progress has been made in green finance, only a small fraction of bank lending is explicitly classified as green according to national definitions. Less than 1 percent of global bonds are labelled green and less than 1 percent of the holdings by global institutional investors are green infrastructure assets.

In fact, we also have some options to address these challenges are emerging. Many countries have adopted measures such as taxes, subsidies and regulations to deal with environmental challenges. These actions make significant contributions to enhancing green investment, but overall the mobilisation of private capital remains insufficient. Over the past decade, various complementary financial sector options have emerged in many G20 countries, from both private and public actors, to support the development of green finance.



China is one of the three countries in the world to establish a 'green credit index system'.

These include, among others, voluntary principles for sustainable lending and investment, enhanced environmental disclosure and governance requirements and financial products such as green loans, green bonds, green infrastructure investment trusts and green index products. International collaboration among central banks, finance ministries, regulators and market participants is also growing, focused in large part on knowledge sharing of country experiences and capacity building.

Green Finance in China

Global financial warming, the environment tends to deteriorate in the context of green finance as an innovative financial model to promote sustainable economic development. More and more, governments, financial institutions, enterprises pay close attention to promoting green finance development. In particular, China's positive initiative is very commendable.

In January 2016 China initiated the establishment of the G20 Green Finance Research Group, co-chaired by the People's Bank of China and the Bank of England, to study the development of green finance, to explore the establishment of a global green finance system, to promote green transformation of the global economy, as well as financial international cooperation and other issues. China's 13th Five-Year-Plan puts forward the

concept of green development and the construction of green financial system strategy. China's central bank and another seven ministries issued the 'the guidance regarding to the construction of green financial system', which puts forward the development of green credit, the establishment of green development funds and the development of green insurance and many other measures. China has also launched international cooperation in green finance through the 'One Belt One Road' initiative, the Shanghai Cooperation Organisation, the China-ASEAN Regional Cooperation Mechanism, the South-South Cooperation Mechanism and the Asian Infrastructure Investment Bank and the BRICS New Development Bank. In addition to discussing concepts, principles and guidance, China also took steps in actively practising green finance. Data shows that China is one of the three countries in the world to establish a 'green credit index system', which has accounted for 10 percent of all domestic loans balance during the first seven months of the year 2016. China also issued green bonds, which have reached 120 billion RMB, accounting for about 40 percent of the global issuance of green bonds over the same period. Nevertheless, China has become the world's largest green bond market.

Sean Kidney, chief executive of the United Kingdom Climate Bond Initiative, points out that China has achieved remarkable results in promoting green finance.

It is expected that by 2020 China will issue 300 billion RMB of green bonds each year, which will provide an important opportunity for green project investors.

Last year, the G20 summit on the contents of green finance was based on a lot of experience. Among them, China's successful experience and development proposals accounted for a considerable achievement. In particular, China's green financial development experience has provided a very good example for many countries in terms of the positive role of financial supervision departments, the construction of a green financial system, the investment of resources and the promotion of international cooperation. China will also become the world's first to establish a comparison complete green financial policy system of the economy.

Therefore, the aim, achievements, as well as the endeavour of comprehensively establishing a green financing system for China, has given the country a leading role in the world's green financing system contribution. However, China will continuously spare no effort in contributing more and having a world leading and multi-function green financing system.



Jack Li (Li Zhiqiang)
Founding Partner, Jin Mao Partners

Jack commenced practicing law in 1990 and is the Founding Partner of Jin Mao Partners, a first-grade lawyer and international arbitrator. He is the Jurisdictional Council Member of Inter-Pacific Bar Association (IPBA), arbitrator of Asia International Centre for Arbitration, Shanghai International Arbitration Center and Shanghai Arbitration Commission. Jack is one of the members of Administrative Reconsideration Committee of Shanghai Municipal Government, legal advisor of MOFCOM in Shanghai, the executive director of "One Belt One Road" Legal Research and Service Center. Jack specialises in the areas of banking and finance, capital market, international investment and dispute resolution. Jack was responsible for many famous cross-border transactions, domestic and overseas IPOs, large financing projects including Shanghai Disney Land's syndicated loans. Jack was honoured as an "Asian Leading Lawyer" by an internationally prestigious legal rating magazine. He was appraised as a model foreign legal advisor of Shanghai in 1993, outstanding young lawyer of Shanghai in 1996, outstanding lawyer of Shanghai in 2001, Top 10 Youth of Shanghai in 2001, core legal expert of China insurance industry in both 2015 and 2016, and top financing and banking lawyer of China by LEGALBAND in 2017 .



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IPBA New Members

March – May 2017

We are pleased to introduce our new IPBA members who joined our association from March – May 2017. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

Australia , Beazley Margaret <i>NSW Court of Appeal</i>	Korea , Chul Man Kim <i>Yulchon LLC</i>
Brazil , Bruno Dario Werneck <i>Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogado</i>	Korea , Soyi Kim <i>Law Office of Soyi Kim</i>
China , Yiping Chen <i>Jinagsu Ruilai Law Firm</i>	Korea , Hankyul Lee <i>Sijoong</i>
China , Erchan Liu <i>Luckysign Corp</i>	Malaysia , Paul Hayes <i>39 Essex Chambers</i>
China , Jason Lu <i>River Delta Law Firm</i>	Mexico , Carlos Berdeja-Prieto <i>Berdeja y Butler Consultores, S.C.</i>
China , Yi (David) Zhang <i>Allbright Law Offices</i>	New Zealand , Erich Bachmann <i>Hesketh Henry</i>
Cambodia , Oscar Tutasaura <i>Posse Herrera Ruiz</i>	New Zealand , Campbell Izzardj <i>Anderson Creagh Lai</i>
Hong Kong , Maggie Yim <i>Law Society of Hong Kong</i>	New Zealand , Steve Won Cheol Shin <i>Meredith Connell</i>
India , Dalgeet Dabas <i>S.S. Rana & Co</i>	New Zealand , Murray Tingey
India , Joseph Eldridge <i>XENON Law Offices</i>	Philippines , Jalika Mae Buenaventura <i>AR Law Davao</i>
Indonesia , Lina Amran <i>Makarim & Taira S.</i>	Russia , Andrey Gorlenko <i>The Arbitration Center at the ANO (ISA)</i>
Indonesia , Vincent Ariesta Lie <i>Makarim & Taira S.</i>	Singapore , Kee Loon Chua <i>Allen & Gledhill LLP</i>
Indonesia , James Booker <i>PT JBCS Indonesia</i>	Singapore , Adriana Uson <i>Singapore International Arbitration Centre</i>
Indonesia , Noverina Saurma Swasty <i>Bahar & Partners</i>	Singapore , Laurence Wong <i>Singapore International Commercial Court</i>
Indonesia , Anggi Yusari <i>Kandar & Partners</i>	Spain , Rosa Isabel Peña Sastre <i>ROCA JUNYENT SLP</i>
Japan , Naoki Ishikawa <i>Mori Hamada & Matsumoto</i>	Taiwan , Kent Chong <i>PricewaterhouseCoopers Legal</i>
Japan , Koichi Kitada <i>Kitahama Partners</i>	Taiwan , Miranda Liu <i>Formosan Brothers Attorneys-at-Law</i>
Japan , Koji Tomimoto <i>Kitahama Partners</i>	Thailand , Aaron Le Marquer <i>Tilleke & Gibbins International Ltd</i>
Japan , Hiroko Yamamoto <i>Mori Hamada & Matsumoto</i>	USA , Sandra Boyer <i>LEGUS International Network of Law Firms</i>
Japan , Kazuhiro Yoshii <i>Anderson Mori & Tomotsune</i>	USA , Yukiko Tomimatsu <i>Hughes Hubbard & Reed LLP</i>
Korea , Jae Seong Choi <i>Barun Law</i>	Vietnam , Mark Anthony Fraser <i>Fraser's Law Company</i>
Korea , Junghun Choi <i>Charles Partners</i>	Vietnam , Huong Nguyen <i>Nguyen Van Hau & Associates Law Firm</i>

Discover Some of Our New Officers and Council Members



Tunku Farik

IPBA Leadership Position:
JCM, MALAYSIA

What was your motivation to become a lawyer?

My father. He said that he would send me to England if I read law. No other option was given, so it was a 'no brainer' for me to become a lawyer. In the end, I have thoroughly enjoyed the law and have him to thank for the motivation.

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

Having to spend months with petro-chemical experts from both the US and the UK on the intricacies of the workings of a naphtha cracking plant in Johor to defend a very large insurance claim. A funny episode happened in the court complex in Kuala Lumpur when the expert from the UK told all of us to evacuate the building immediately as he had smelled leaking gas. It turned out that the smell was from a fruit, namely the durian, which some court staff had brought to court to eat for lunch and so the expert's fears of a gas leak were unfounded.

What are your interests and/or hobbies?

I play golf and I like cars. I look after a couple of old cars that I inherited from my father, namely a 1964 Triumph Spitfire and a 1985 Porsche. I am also a Chelsea fan, but have ended up going to watch matches at Old Trafford to keep my wife happy as she supports the other team.

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

I am a member of the Kedah royal family, which has lasted over a millennium of unbroken succession and pre-dates the coming of Islam to Malaysia. The first Prime Minister of Malaysia, Tunku Abdul Rahman is my grand uncle.

Do you have any special messages for IPBA members?

I have thoroughly enjoyed being a member of the IPBA and making good and long lasting friends, and I hope that the close-knit membership of the IPBA will be an encouragement for continued support of IPBA membership by members. Apart from great friends, we also must not forget the primary objective of the IPBA as a great forum for business networking.



Francis Xavier

IPBA Leadership Position:
Vice President

What was your motivation to become a lawyer?

Actually was planning to become a doctor. I fractured my lumbar vertebrae shortly before sitting for the A

level exams, and spent a 'fruitful' month immobile, strapped to a hospital bed in the ICU department of a local hospital. I had plenty of time to have endless conversations with all sorts of medical staff and realised that I would not be fulfilled as a doctor. As I knew that I had a 'loose jaw', I delved into law books and found legal thinking to be strangely attractive and so took up law instead.

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

I am writing this from Islamabad. My work takes me to far flung places such as Rio, Puerto Rico and small hamlets in Switzerland. It also brings me face to face with iconic, maverick-like and incredibly gifted individuals. And the content of disputes can range from the ordinary to the surreal. Once, I had to obtain and give effect to a court order permitting the exhumation of a body that had lain buried for several months in a shallow grave. In another case, a bomoh (a Malay shaman) renowned regionally for capturing and immobilizing sundry demons and evil spirits, pursued defamation relief against a television network in a neighbouring country. The case was (fortunately) settled. Otherwise, he was planning to 'demobilise' a toyo (a small gremlin-like creature) in court to prove the reality of his prowess.

What are your interests and/or hobbies?

One needs to be fully alive. It is exhilarating to explore remote peoples and culture, to stand immersed in

the midst of the raw beauty of a mountain range or to witness the fury of the earth's belly in an erupting volcano or to absorb the power of a predator at close range, in its element.

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

With the help of a stellar team, I am working on conserving tracts of the oldest rainforest in the world (in Malaya) and its magnificent but vanishing wildlife, including the tapir, pangolin, crab eating macaque, rhinoceros and tiger.

Do you have any special messages for IPBA members?

The IPBA offers a global platform for lawyers aspiring to develop an international network of legal contacts. This is especially crucial for younger lawyers who need to look beyond their domestic practices, in a world where the relevance of borders continues to vanish bit by bit. Beyond work, one forges many deep and lasting friendships at the IPBA.



Michael Burian

IPBA Leadership Position:
Deputy Secretary-General

What was your motivation to become a lawyer?

When the time had come for me to start thinking about my future career, my main desire was to find a job that would allow me to work in an international environment with people from other countries and to have the opportunity to study and work abroad. This is why I decided to become a lawyer and to join a large law firm.

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

As a young associate, I worked on a large M&A transaction as lead associate. The transaction kept me very busy for almost eight months, which included an extensive due diligence and intense negotiations, and ended exactly two days before a family holiday I had planned for more than half a year.

What are your interests and/or hobbies?

My hobbies are travelling, learning foreign languages and spending time with my family.

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

I never really wanted to study law but did not have any idea what else to study so my sister, who was already studying at that time, told me to study law and I simply followed.

Do you have any special messages for IPBA members?

Make use of the platform the IPBA offers you, build relationships and try to give something back to the IPBA by contributing to its success.

Members' Notes

Stephan Wilske, Germany

Stephan Wilske's lecture (together with Lars Markert) on 22 February 2017 on the occasion of the 21st SIDRC Lecture at the Seoul International Dispute Resolution Center on *BREXIT, Trump and Other Political*

Earthquakes – Any Effects on Asian Business and Business Dispute Resolution? was nominated for 'Best Speech or Lecture by Global Arbitration Review 2017'.

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.



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

The Inter-Pacific Bar Association (IPBA) is pleased to announce that it is accepting applications for the IPBA Scholarship Programme to enable practicing lawyers to attend the IPBA's 28th Annual General Meeting and Conference to be held in Manila, The Philippines, 14-16 March, 2018.

What is the Inter-Pacific Bar Association?

The Inter-Pacific Bar Association is an international association of business and commercial lawyers with a focus on the Asia-Pacific region. Members are either Asia-Pacific residents or have a strong interest in this part of the world. The IPBA was founded in April 1991 at an organising conference held in Tokyo attended by more than 500 lawyers from throughout Asia and the Pacific. Since then, it has grown to become the pre-eminent organisation in respect of law and business within Asia with a membership of over 1300 lawyers from 65 jurisdictions around the world. IPBA members include a large number of lawyers practising in the Asia-Pacific region and throughout the world that have a cross-border practice involving the Asia-Pacific region.

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

The highlight of the year for the IPBA is its annual multi-topic four-day conference. The conference has become the 'most attend event' for international lawyers practicing in the Asia-Pacific region. In addition to plenary sessions of interest to all lawyers, programs are presented by the IPBA's 23 specialist committees. The IPBA Annual Meeting and Conference provides an opportunity for lawyers to meet their colleagues from around the world and to share the latest developments in cross-border practice and professional development in the Asia-Pacific region. Previous annual conferences have been held in Tokyo, Sydney, Taipei, Singapore, San Francisco, Manila, Kuala Lumpur, Auckland, Bangkok, Vancouver, Hong Kong, New Delhi, Seoul, Bali, Beijing, 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 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. The scholarships are funded by The Japan Fund, established and supported by lawyers in Japan to honour IPBA's accomplishments since its founding; surplus funds earmarked by the Vancouver 2014 Annual Meeting and Conference Host Committee; and a donation by J.K. Lin of Taipei, the son of M.S. Lin.

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 program aims to provide the Scholars with substantial tools and cross-border knowledge to assist them in building their careers in their home country. Following the conference, the Scholars will enjoy 3 years of IPBA membership and will be invited to join a dedicated social networking forum to remain in contact with each other while developing a network with other past and future Scholars.

Who is eligible to be an IPBA Scholar?

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

1. Lawyers from Developing Countries
To be eligible, the applicants must:
 - a. be a citizen of and be admitted to practice in 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.

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 **30 September, 2017**. Application forms are available either through the IPBA website (ipba.org) or by contacting the IPBA Secretariat in Tokyo (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: ipbascholarships@ipba.org

What happens once a candidate is selected?

The following procedure will apply after selection:

1. IPBA will notify each successful applicant that he or she has been awarded an IPBA Scholarship. The notification will be provided at least two months prior to the start of the IPBA Annual Conference. Unsuccessful candidates will also be notified.
2. Airfare will be agreed upon, reimbursed or paid for by, and accommodation will be arranged and paid for by the IPBA Secretariat after consultation with the successful applicants.
3. A liaison appointed by the IPBA will introduce each Scholar to the IPBA and help the Scholar obtain the utmost benefit from the IPBA Annual Conference.
4. Each selected scholar will be responsible to attend all of the Conference, to make a very brief presentation at the Conference on a designated topic and to provide a report of his/her experience to the IPBA after the Conference. (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: 23. Each committee focuses on different aspects of business law, indicating the scope of expertise and experience among our membership as well as the variety of topics at our seminars and conferences. All IPBA members are welcome to join up to three committees, with the chance to become a committee leader and have a hand in driving the programs put on by the IPBA.

The highlight of the year is our Annual Meeting and Conference, a four-day event held each spring. Past conferences have been held at least once, sometimes twice, in Tokyo, Osaka, Sydney, Taipei, Singapore, San Francisco, Los Angeles, Manila, Kuala Lumpur, Auckland, Bangkok, Vancouver, Hong Kong, New Delhi, Seoul, Bali, and Beijing. Conferences in recent years have attracted over 1,000 delegates and accompanying guests. In addition to the Annual Conference, the IPBA holds in various jurisdictions seminars and conferences on issues such as Arbitration, Dispute Resolution, M&A, and Cross-Border Investment. Check the IPBA web site (ipba@ipba.org) for the latest information on events in your area.

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

APEC

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

Membership

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

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

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

Membership renewals will be accepted until 31 March.

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

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

Corporate Associate

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

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

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

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

- Annual Dues for Corporate Associates ¥50,000

Payment of Dues

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

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

IPBA Secretariat

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

See overleaf for membership
registration form





IPBA SECRETARIAT

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

IPBA MEMBERSHIP REGISTRATION FORM

MEMBERSHIP CATEGORY AND ANNUAL DUES:

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

Name: _____ Last Name _____ First Name / Middle Name _____

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

Firm Name: _____

Jurisdiction: _____

Correspondence Address: _____

Telephone: _____ Facsimile: _____

Email: _____

CHOICE OF COMMITTEES (PLEASE CHOOSE UP TO THREE):

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

I AGREE TO SHOWING MY CONTACT INFORMATION TO INTERESTED PARTIES THROUGH THE APEC WEB SITE. YES NO METHOD OF PAYMENT (PLEASE READ EACH NOTE CAREFULLY AND CHOOSE ONE OF THE FOLLOWING METHODS):

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

- Bank Wire Transfer – Bank charges of any kind should be paid by the sender.
 - to DBS Bank Limited, MBFC Branch (SWIFT Code: DBSSGSG)
 - Bank Address: 12 Marina Boulevard, DBS Asia Central, Marina Bay Financial Centre Tower 3, Singapore 018982
 - Account Number: 0003-027922-01-0 Account Name: INTER-PACIFIC BAR ASSOCIATION
 - Account Holder Address: 10 Collyer Quay #27-00 Ocean Financial Centre, Singapore 049315

Signature: _____ Date: _____

PLEASE RETURN THIS FORM TO:

The 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

**Plan your business trips
around IPBA events in the
next 12 months**

SEIZE THE OPPORTUNITY

**to meet and greet
your IPBA colleagues.**



INTER-PACIFIC BAR ASSOCIATION

✓ **INVESTMENT CONTROLS IN EUROPE,
THE US AND IN ASIA**

Jointly organized by IPBA Germany and IPBA France.

12 June 2017, 15:00 - 18:00

Dusseldorf, Germany

For inquiries please email:

Jeffrey Holt (France) : jeffreyholt@yahoo.com

Sebastian Kuhl (Germany) : kuehwi@tdn.net

Gerhard Wegen (Europe) : gerhard.wegen@gleisslutz.com

✓ **CORPORATE ACQUISITIONS AND
RESULTING DISPUTES**

*Jointly organized by the Inter-Pacific Bar Association (IPBA)
and the Swiss Arbitration Association (ASA)*

14 September 2017, 09:00 – 16:45

Geneva, Switzerland

For inquiries please email:

Bernhard Meyer : bernhard.meyer@mme.ch

✓ **3RD IPBA ASIA PAC ARBITRATION DAY**

25 September 2017

Kuala Lumpur, Malaysia

For inquiries please email:

Mohanadass Kanagasabai : mohan@mohanadass.com

✓ **INVESTMENT IN THE EMERGING
MARKETS – THE APEC PERSPECTIVE**

*to coincide with the APEC CEO Summit & the APEC Economic
Leader's Week in Da Nang.*

Organized by the IPBA APEC Committee

Hosted by IPBA Vietnam & the Vietnam Bar Federation

6 November 2017

Da Nang, Vietnam

For inquiries please email:

Le Net : net.le@inpartners.com

Shigehiko Ishimoto : shigehiko.ishimoto@mhmjapan.com

✓ **FORCES OF CHANGE:
MODERNISATION AND A SHIFTING
INTERNATIONAL LANDSCAPE
(ENGLISH AND ASIAN
PERSPECTIVES ON HOW LEGAL
SYSTEMS ADAPT)**

13 November 2017

London, England, UK

For inquiries please email:

Jonathan Warne : j.warne@nabarro.com

Byron Phillips : b.phillips@nabarro.com

✓ **3RD IPBA EAST ASIA
REGIONAL FORUM**

16 - 17 November 2017

Seoul, Korea

For inquiries please email:

Yong-Jae Chang : yongjae.chang@leeko.com

✓ **INTER-PACIFIC BAR ASSOCIATION
28TH ANNUAL MEETING
AND CONFERENCE**

**"FOSTERING SEAMLESS
COOPERATION IN ASEAN"**

14 - 16 March 2018

Bonifacio Global City;

Metro Manila, Philippines

**Please visit the IPBA website for more information and click the tab for "Event Calendars",
then go to "IPBA Joint Events" for the joint event in Geneva or
go to "IPBA Local & Regional Events" for the other regional events.**

For the 28th Annual IPBA Meeting please visit www.ipba2018.com

Want to manage your disputes efficiently and effectively? Why not advance your knowledge in the area of conflict resolution by enrolling in the LLMArbDR at City University of Hong Kong!

Nowadays, dispute resolution is not only carried out in the courtroom through litigation, but also by arbitration and mediation, which are increasingly popular and well-respected alternative dispute resolution (ADR) techniques. Given ADR's obvious advantages, CityU launched the Master of Laws in Arbitration and Dispute Resolution (LLMArbDR) in 1991. The programme provides an understanding of the theoretical, practical and ethical problems relating to arbitration, mediation and other forms of dispute resolution.



The pioneer programme has now achieved worldwide acceptance as a programme of the highest reputation and quality. It provides a stepping stone for professionals to become more involved in arbitration, mediation and other forms of alternative dispute resolution (ADR). Many graduates are now prominent figures in the international arbitration and mediation community.

The programme has achieved recognition from a variety of professional bodies, allowing graduates to practice in the fields. For further details about the requirements, eligibility for professional recognition and accreditation, please visit http://www6.cityu.edu.hk/sl/academic/postgraduate/llmarbdr.html#LLMArbDR_03 for further details.

Apart from the professional recognitions, LLMArbDR students with law background may also obtain an additional degree from our partner institution at the University of Paris 1, Panthéon-Sorbonne in France upon satisfying the programme requirements.

The programme is offered in both full-time and combined modes, thus allowing students to have the flexibility of planning their studies as they deem fit. As of 2017, the School of Law is offering admission scholarships to potential students based on their merits.

The programme welcomes applications from both law and non-law degree holders. We are now inviting applications for 2017 entry.

Apply now at

<http://www.sgs.cityu.edu.hk/programme/P41>

Application deadline

Local applications: **30 June 2017**

