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Technology, Business and Law – Global Perspectives

INTER-PACIFIC BAR ASSOCIATION

The 29th Inter-Pacific Bar Association Annual Meeting and Conference in Singapore will bring together thought-leaders to examine broad-ranging legal issues concerning developments in global and regional trade, new technology and emerging trends.

Themed “Technology, Business and Law – Global Perspectives”, the conference will examine the legal challenges arising from global regulatory and technological developments. Different concurrent sessions will tackle a broad range of contemporary legal issues.

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The President's Message

Perry Pe
President



Mabuhay!

By all indications, our Manila 28th Annual Conference was a resounding success! A real 'Thrilla in Manila!' Thank you very much to all those who made this possible, most especially to my Manila Host Committee.

As I have declared during our Annual General Meeting, my underlying leadership policy is to 'follow my predecessors and support my successors'! While I embrace innovations, I also value and respect our traditions. As such, and with the support of Past Presidents Huen Wong, Dhinesh Bhaskaran and Denis McNamara, we thought of organising an IPBA Past Presidents Club to launch during our Singapore Annual Conference next year. It will not do anything except preserve our cherished IPBA traditions and perhaps act as an advisory to the incumbent leadership. Each year it will be chaired by the Immediate Past President, starting with Denis. But more importantly, it is just a simple way of honouring all past presidents of the IPBA, underscoring the fact that the IPBA has not forgotten them. Therefore, through this Journal, may I call on all past presidents of the IPBA to rise and to all meet in Singapore and reminisce about our treasured memories. The IPBA Secretariat will make an announcement to this effect.

I also intend to strengthen our Membership Leaders, which comprise the JCMs, At-Large Council Members, and Regional Coordinators. With the help of our Membership Committee Chair and Vice-Chair, I hope to get in at least one telephone conference among Membership Leaders before our mid-year conference. It will only have one agenda: to check how our IPBA membership is doing in their respective jurisdictions and regions. And it will only have one goal: to develop networking opportunities for our members.

As for the IPBA Officers, with the help of our Webmaster, I have requested that we form a WhatsApp chat group named '2018 IPBA Officers', to enable fast and efficient communication among ourselves. Hopefully, with this setup, any decisions affecting our organisation are properly discussed and coordinated before they will be disseminated or circulated to the membership. Our IPBA is not a one-man show, and neither is it a one-conference association. We have evolved. We have made noise. We have become important. As we look forward to our 30th anniversary in Tokyo, we should feel proud of what we have achieved.

There is no denying that our organisation's prestige and standing before the world legal community is growing. The respect being accorded to us by the various legal organisations all over the world has been quite humbling. As your current steward, I cannot fail. Therefore, rest assured of my passion and commitment.

Mabuhay!

Perry Pe
President



The Secretary-General's Message

Caroline Berube
Secretary-General



Manila was another great IPBA Conference ... very memorable for many reasons! The warm welcome of our Filipino members from the organising committee was, as always, exceptional, together with the lively welcome reception on the first night. Filipino hospitality and warmth is always incredible and this time I also experienced first hand the caring and kind nature of Filipino people after my very elegant face diving on my way to a dinner on the night of the opening of the conference! After having a great start to my stay in Manila with all the Council and Officers' meetings, a few runs to discover the trendy Bonifacio area around the hotel, a dynamic plenary session and a real tasting of local delicacies of the cuisine of the Philippines at the opening ceremony, as a typical busy lawyer I had the smart idea to walk to the dinner venue and check my phone. This led to me missing a step, two fainting spells, being in a wheelchair and experiencing St Luke's hospital. This was definitely not an experience I want to remember but the excellent care of the nurses and amazing hospital staff, the assistance of the staff of the hotel, and the friendship, support and visits from my friends at the IPBA helped me through it all, for which I am truly grateful, and made my conference and my return home memorable. Luckily, I had no broken bones and 'only' a concussion and intermittent blackouts during a period of six weeks. I am glad to report that I have a scar for life (or a natural tattoo!) from our IPBA Manila Conference—every morning I remember the IPBA when looking at myself in the mirror—all good memories notwithstanding the misadventure, and I consider myself lucky that there were not any worse consequences from my fall! I wish to thank Rhonda, Denis, Perry and Michael who stepped in during my absence at the AGM.

As I noted already, prior to my face-diving adventure, I had the pleasure to attend and be part of our Council meeting. We had interesting debates and discussions and reached conclusions. Some of the topics discussed are as follows:

1. **Format of Singapore Annual Conference:** The ideal format of the conference for our Singapore Annual Conference was discussed with the organising committee to make it exceptional. The host Singapore organising committee has many ideas to make our conference unique in style and duration. We all agreed, as council members, that a three-to four-day conference was a must to allow us to deepen our legal knowledge during various and diversified sessions and also to mingle with our peers over social activities. We are in a service industry and personal interaction and bonding are important to create the unique relationships that IPBA members have which helps us when referring a matter to another IPBA member.
2. **Mid-Year Council Meeting 2019:** our Mid-Year Conference 2019 will be held in Milan—another warm and lively city, renowned also as a fashion city. This will be perfect for some of our IPBA members to indulge in a great program and amazing shopping pre- and post-conference! I have no doubt that the organising committee members will provide us with great destinations.
3. **Accounts:** We are now splitting the holding of funds and opening a second bank account with DBS in Singapore. This will facilitate the process of identifying funds for the operational expenses and for the scholarship fund.
4. **Generous donation from the Lin family and application for scholarship:** We were lucky as an organisation to receive a really generous sum from the Lin family for the IPBA scholarship. If you or other members would like to apply for the Scholarship Program to attend IPBA 2019 in Singapore, the process has begun and you can contact the Secretariat.

5. Statistics from the Scholarship committee: In Manila there were seven Scholars from Myanmar, Japan (the first time!), Iran (also the first time!), Singapore, India, Thailand and Nepal. They visited the Regional Trial Court and were escorted by the Executive Judge, Hon. Elmo Alameda. After that, they visited the law firm of Romulo Mabanta Buenaventura Sayoc & De Los Angeles. You can find information about each Scholar on the IPBA web site.
6. Open Positions on the Council: We are also looking at Council appointments for the term starting in April 2019. There are quite a few positions open. If you are interested to nominate yourself or someone else, please liaise with the Secretariat. We are in the midst of reviewing applications and appointments will be finalised at the Mid-Year Council Meeting in Bangkok in early November.

After one and a half busy days of Council and Officers' meetings, the IPBA Annual Conference finally started! The welcome speech was dynamic with very interesting key note speakers like the Secretary of

Finance Hon. Carlos Dominguez III and Mr Michael Toledo, Senior Vice President of Corporate Affairs at Philex Mining Corp., representing Manuel V Pangilinan. We had plenty of interactive sessions (eight three-hour sessions and 42 90-minute sessions) over two and a half days, with very knowledgeable speakers on current legal topics and the challenges we face as lawyers in Asia and across the Pacific Ocean.

This IPBA Journal June issue, as always, commemorates the sessions we had in Manila—for those who couldn't attend (or had a concussion like me!), this is a good opportunity to have a glance at the topics covered and the speakers/moderators.

I look forward to seeing some of you in Chiang Mai and Bangkok in early November 2018 for our Mid-Year Council Meeting and arbitration event after. If you are not attending it, I hope to see you in Singapore at the end of April 2019.

Caroline Berube
Secretary-General





Message to the Reader

John Wilson

Chair – Publications Committee, IPBA



Priti Suri

Dear reader,

It is with great pleasure that I welcome you to the June 2018 issue of the IPBA Journal.

I took over as Publications Committee Chair from the AGM which took place at the Annual Meeting and Conference in Manila and I would like to thank my predecessor Leonard Yeoh and his assistant Yap Yee Teng for the pleasant and smooth working relationship which we enjoyed during the two years that I was Vice-Chair of the Publications Committee. Priti Suri is the new Vice-Chair of the Publications Committee.

It occurred to me that I should, this being my 'maiden' issue as Chair, write a brief message to the members of the IPBA—our readership—and provide you with some information about my immediate plans during my two-year term.

During the first year of my tenure as Publications Chair, I intend to return to the practice of having, where possible, a specific focus for each issue of the Journal.

Therefore, this June issue has a focus on taxation and contains taxation-related articles. The Publications Committee has been fortunate to secure two very interesting and topical articles on measures taken by two western jurisdictions, Canada and Australia, to tax property transactions involving non-residents/non-nationals with a view to cooling what are considered to be overheated property markets in those jurisdictions. The articles provide the reader with a very comprehensive overview of the types of measures, some very creative, which authorities in those jurisdictions are adopting, including special taxation of vacant properties and tightening of rules relating to taxation of capital gains. Personally, I found these articles very relevant to a part of my practice in Sri Lanka, which, at one time, actively discouraged foreigners

from purchasing land through an imposition of a hundred percent tax. That prohibition has now been replaced by an even more restrictive prohibition pursuant to which there is an outright bar on purchase of land by foreigners. The issue raises a very interesting debate in regard to the role of accessibility to land and its place in the quest to attract foreign direct investment on the one hand, and the policy imperative to protect nationals of the receiving state from huge increases in property prices, sometimes speculative, due to soaring levels of purchases of real estate by non-nationals, on the other hand.

The September issue of the IPBA Journal will have a special focus on arbitration. I thought that this would be an appropriate area of focus having regard to the fact that there will be a one-and-a-half day arbitration programme immediately after the Mid-Year Council Meeting in Chiang Mai in early November.

The special focus for the December issue is yet to be finalised. Given the increasing (daily) importance of employment law issues in cross-border practices, we may have a focus on employment law or, having regard to the highly topical developments in the field of international trade law, we may consider having a focus on that area.

I hope that you will enjoy reading the June issue of the Journal, the remainder of which is comprised of descriptions of the sessions at the Annual Meeting and Conference in Manila, with photographs which will surely bring back memories of a great conference!

As always, the Publications Committee encourages you to submit high quality articles for publication in the Journal. Without your enthusiasm and contributions, a Journal is not possible, let alone any area of special focus!

Happy reading!

John Wilson
Chair – Publications Committee, IPBA

IPBA Upcoming Events		
Event	Location	Date
IPBA Annual Meeting and Conferences		
29th Annual Meeting and Conference: Technology, Business & Law - Global Perspectives	Singapore	April 25-27, 2019
30th Annual Meeting and Conference	Shanghai, China	Spring 2020
IPBA Mid-Year Council Meeting & Regional Conferences		
2018 Mid-Year Council Meeting (IPBA Council Members Only)	Chiang Mai, Thailand	November 2-4, 2018
Regional Conference: 4th IPBA Arbitration Day	Bangkok, Thailand	November 5-6, 2018
IPBA Events		
The World at Your Doorstep: IPBA Australian-New Zealand Regional Forum	Sydney, Australia	July 19, 2018
IPBA 2nd Mekong Regional Forum	Yangon, Myanmar	August 24, 2018
Doing Business with Asia: Developments in Trade, IP, Investment and Dispute Settlement	Los Angeles, USA	September 20, 2018
LatAm Legal Views on Investment, Trade, Compliance & International Dispute Resolution	Santiago, Chile	September 28, 2018
IPBA 4th East Asia Regional Forum	Seoul, Korea	November 7, 2018
IPBA European Regional Conference: International Commercial Courts in Various European Jurisdictions & in Singapore	Brussels, Belgium	November 22, 2018
IPBA Mid-East Regional Forum	Dubai, UAE	January 24, 2019
IFLR/IPBA Asia M&A Forum	Hong Kong	February 28-March 1, 2019

IPBA Upcoming Events

Event	Location	Date
IPBA-supported Events		
ALB's Japan Project Finance Forum	Tokyo, Japan	June 12, 2018
ALB's Japan Law Awards	Tokyo, Japan	June 13, 2018
Wolters Kluwer's Hong Kong: 7th Annual Global Competition Law Forum	Hong Kong	July 5, 2018
Wolters Kluwer's Singapore: Annual International Arbitration, Compliance and Competition Law Summit	Singapore	August 2, 2018
ALB's Japan IP Forum	Tokyo, Japan	August 22, 2018
Wolters Kluwer's Japan: 5th Annual International Arbitration, Compliance and Competition Law Summit	Tokyo, Japan	September 6, 2018
Wolters Kluwer's: Turkey & ME: 5th Annual International Arbitration Summit	TBA	September 27, 2018
Wolters Kluwer's South Korea - 7th Annual International Arbitration, Compliance and Competition Law Summit	Seoul, Korea	October 24, 2018
ALB's Japan Corporate Compliance Forum	Tokyo, Japan	October 25, 2018
Wolters Kluwer's China: 4th Annual International Arbitration, Compliance and Competition Law Summit - Beijing	Beijing, China	November 15, 2018
Wolters Kluwer's Indonesia and SE Asia: 6th Annual International Arbitration, Compliance and Competition Law Summit - Beijing	TBA	December 6, 2018

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

IPBA Annual Conference Manila, 2018



The IPBA Council met in the days prior to the Conference to discuss Association business.



The Regala Cup and the Glazebrook Cup golf tournaments were brought back this year.



The Plenary Sessions were well attended, due to the respected speakers.



Stretching and quizzing between Plenary Sessions.



IPBA's female presence could not be stronger!



Delegates had many opportunities to network between sessions and during lunch.



Women were the driving force of the WBLC Reception; many men attended, too!



The IPBA Scholars hailed from seven different jurisdictions.



Even the MC, James Elliott, enjoyed some dancing during the receptions.



Participatory committee sessions were very popular again this year.



Delegates crowd the exhibition area.



The Middle East, represented here by delegates from Dubai, is a growing region for the IPBA.



Panels of experts in various fields discussed the latest legal issues in various jurisdictions.



The seats at many of the sessions were full.



Past, current, and future IPBA Council Members are always happy to see each other.



Another crowded session.



Standing room only!



Delegates had more than 50 sessions to choose from.



The Annual General (AGM) meeting drew around 200 delegates; a good turnout for the final day.



The IPBA Officers reported on IPBA activities at the AGM.



IPBA celebrities filled the front row at the AGM.



Unfortunately we had to bid farewell to Council members whose terms ended, but we hope that the plaques they received elicit good memories for them.



The IPBA has a long-term great relationship with AIJA and met with its past, present, and future leaders in Manila.

Joint IPBA/AIJA Session

The first ever joint IPBA/AIJA session at an IPBA annual conference took place during the IPBA's Annual Conference held in Manila in 2018. AIJA is the International Association of Young Lawyers (AIJA) and the IPBA has had a Memorandum of Understanding with the AIJA for cooperation since 2013.

The topic of the session was 'Business and Human Rights Due Diligence' and took place on Thursday 15 March from 11:00 am to 12:30 pm during the Manila conference.

A lively panel was moderated by John Wilson, an officer of the IPBA (Vice-Chair of the Publications Committee at that time) and Mr. Xavier Arnau Costa, the First Vice President of the AIJA. John Wilson, also a member of the AIJA, opened the session, noting its significance and recognising the presence of the President of the AIJA, Mr. Wiebe de Vries, former President of the AIJA, Mr. Dirk Nuyts and other AIJA members.

The panel comprised members from Asian and European jurisdictions and the discussion therefore included interesting comparisons between the position in Europe and the position in Asia in regard to the implementation of the United Nations Guiding Principles on Business and Human Rights ('UNGP' or 'the Guidelines').

Mr. Roy Umetsu (IPBA member) kicked off the discussion and spoke regarding the situation in Japan. While noting that Japan has not yet adopted specific legislation, Mr. Umetsu brought to the attention of the audience the Guidelines of the Japanese Federation Bar Association. He also spoke about aspects of implementation of the Guidelines by Japanese companies.

The speaker from Vietnam, Ms. Nguyen Trinh (IPBA - a Vice Chair of the Cross Border Investment Committee), described the situation in Vietnam where it is also the case that there is no specific legislation for the implementation of the UN guiding principles. Ms. Trinh expressed the view that many aspects of Vietnamese law are sufficiently robust and comprehensive, particularly in the fields of labour law and environmental law, such that the positive effects of the guidelines are deemed to be in place. However, loopholes in the enforcement of the laws



Session description contributed by John Wilson, Chair, Publications Committee and Co-Moderator of the session

and the mentality of investors towards corporate social responsibility still result in the position that there is a lot of room to improve to avoid environmental disaster and adverse impacts on the fundamental rights of workers and communities in the surrounding areas.

Mr. Costa moderated the remarks of the panelists from Europe: Mr. Louis-Bernard Buchman and Mr. Stefan Müller.

Mr. Buchman described how the UNGP were inserted into the French legal system by three successive laws adopted in 2015, 2017 and 2018, explained which companies were compelled to draw up a Human Rights Due Diligence plan, and mentioned the National Action Plan in place for companies tendering for public procurement contracts. He also stressed that the French National Bar Council (of which he chairs the International Commission) has raised the awareness of lawyers by publishing a guide, downloadable from its website, and has encouraged lawyers to promote human rights standards within the companies they advise.

Mr. Stefan Müller mentioned that Switzerland has already adopted a National Action Plan in accordance with the UNGP which, however, did not impose any new obligations on corporations in Switzerland. As a result of the lack of direct obligations, an initiative was launched which calls for the introduction of corporate liability norms for violations of human rights and environmental standards. Based on these standards, corporations could be held accountable in front of Swiss civil courts for violations of internationally recognised human rights and international environmental standards. Therefore, should the initiative be approved by the Swiss public, it would result in a shift from soft law to hard law provisions on corporate responsibility.

Mr. Agustin Montilla, a speaker from the Philippines, after noting how topical the discussion is having regard to current developments in his country, went on to discuss the topic from the perspective of the Philippines.

A lively question and answer session followed.

28th IPBA Annual Conference Manila

Report on the Legal Development and Training Committee session

Date: 15 March 2018

Venue: Shangri-La the Fort, Manila

Speakers: Jack Li (Jin Mao Partners, Shanghai), Sae Youn Kim (Yulchon, Seoul), Michael Chu (McDermott Will & Emery, Chicago) and Hak Jun Lee (Hesketh Henry, Auckland)

Co-Moderators: Raphael Tay (Chooi & Company, Kuala Lumpur) and James Jung (The College of Law, Sydney)

Session topic: Training and Mentoring Junior Lawyers in the Legal Profession

Summary:

This year's Legal Development and Training Committee ('LDTC') session discussed why it is important to invest time and effort to train and mentor our junior lawyers in the legal profession. The panel discussed a number of interesting topics including:

- Why should we train/mentor our junior lawyers?
- What types of training and mentoring should we provide to junior lawyers?
- Who is an ideal mentor/trainer for junior lawyers?
- How should we train and mentor our junior lawyers?
- What needs to change? Recommendations?

James Jung, the Chair of the LDTC, opened the session by introducing the topic and the panelists. The session comprised of a round-the-table discussion where the moderator and panelists were interactively engaged throughout the entire session. This enabled the panelists to openly discuss their views on the topic and also gave

an opportunity for the audience to freely ask questions. Raphael Tay, Vice-Chair of the LDTC, moderated the session and did a fantastic job leading the discussions.

In response to the first discussion question, 'Why train?', the panelists gave some very interesting views. Ms Sae-Youn Kim, Senior Partner of Yulchon (Seoul), emphasised that training and mentoring is imperative in building a long-lasting foundation for a law firm. Taking the long view, Ms Kim believed that law firms need to invest in the training of its junior lawyers to help build internal talent and to create the next generation of leaders (as part of a strong succession plan). Furthermore, Ms Kim added that her firm puts a lot of emphasis on this and thus for years has been operating Yulchon Academy, an internal training centre, which supports ongoing education and training for all lawyers.

Michael Chu, Senior Partner of McDermott (Chicago), echoed Ms Kim's comments and said his firm also highly valued training for its staff. The junior lawyers are assigned supervisors/mentors internally and are provided ongoing personal and professional support from their supervisors.

Mr Jack Li, Senior Partner of Jin Mao Partners (Shanghai), commented that junior lawyers are the future of the legal profession and that firms these days do not place enough emphasis on this. Jack believes that to enable young lawyers to grow and develop into competent practitioners, they need to be exposed to the real outside world as opposed to being stuck behind a computer screen in the office for the first 5-10 years of their career. Therefore, Jin Mao Partners actively encourages and supports its young lawyers to attend international law conferences such as those of the IPBA which provides them with real-life experience to develop and grow which in turn provides the firm with a more talented and stronger team of lawyers from top to bottom. Also,

Jack mentioned that younger lawyers are often happier in their jobs if they are treated well (which does not necessarily translate into paying them a higher salary but making them feel as if they are being looked after as an individual), which in turn is reflected in staff retention.

Hak Jun Lee, Special Counsel of Hesketh Henry (Auckland), agreed that training is important for junior lawyers but law firms are often reluctant to invest in this as junior lawyers are likely to leave the firm within the first three years. Nonetheless, Hak Jun emphasised that it was the firm's responsibility to help young lawyers to grow into competent practitioners through effective internal and external training/mentoring as the consequence of not doing so would be far more disastrous in the event that their staff remains with the firm. Further to Hak Jun's comment, Ms Kim added that even if there is a high chance of its young lawyers leaving her firm (after receiving years of training and mentoring), she did not see this as a waste of time and money as it is only natural for a young practitioner to explore other opportunities in the legal market. Ms Kim believes in the importance of long-lasting relationships and that lawyers who move on will continue to be ambassadors for the firm and, given our small legal community, they may even eventually become the firm's clients or a great source of client referrals.

In response to the second discussion question, 'What types of training should be provided?', Raphael opened the discussion by asking the panelists the types of skills that are needed for young lawyers. Michael responded by saying that soft skills are essential to being a good lawyer in today's world. Therefore, young lawyers should try to improve their networking and people skills. Hak Jun added to this by commenting that basic legal skills are also important such as writing and drafting, client interviewing, etc., which are not taught at law school. Having the ability to speak a second or multiple language(s) and being aware of cultural differences are also important in dealing with clients from different backgrounds. Jack and Ms Kim also emphasised the importance of helping young lawyers to develop their soft skills which will in turn help foster better lawyer-client relationships.

In response to the next discussion question, 'Who is an ideal mentor/trainer?' and 'how should we train?', Ms Kim explained that her firm has been trying to promote a mentorship program for its young lawyers.

From her experience, an ideal mentor should not be the young lawyers' direct supervisor as they may not feel comfortable in sharing all of their personal and professional issues (as it could impact their performance ratings). An ideal mentor should be someone with whom he/she can openly discuss their problems and seek advice on both personal and professional issues. Michael added that despite peoples' busy schedules, a specific time needs to be put aside regularly for mentoring meetings for mentoring programs to be successful. He has witnessed many occasions where lawyers are distracted by their daily busy schedules and forget about the importance of the well being of their young staff. Hak Jun added that his firm often appoints external trainers to run its professional training and mentoring programs for their staff, however he emphasised that there are some aspects of training and mentoring that are better done by internal staff as he believes an ongoing personal relationship needs to exist between junior and senior lawyers. Jack commented that, from his experience, on-the-job training is the most effective way to train and mentor a young lawyer. Law school studies provide the theoretical knowledge but practical knowledge can only be obtained from real life experiences. Therefore, he stressed the importance of putting junior lawyers out into the real world to attend client meetings, appear in court, present a paper at an international law conference and make friends throughout the world.

Raphael summarised the session by saying that there is no doubt that we need to focus more on investing in our junior lawyers by providing them with the necessary training and mentoring to help them grow into competent practitioners—after all, they will be our next generation of leaders in our legal profession.

We hope that the discussions will continue in Singapore next year.

Summaries of Sessions at IPBA Annual Conference Manila, 2018

1. Beyond limited liabilities: Potential exposure of parent companies, subsidiaries, and directors arising out of environmental and insolvency situations [Joint session with Environmental and Insolvency Committees]

The Insolvency, Environmental Law and Cross-Border Investment Committees jointly hosted an engaging and well-attended panel that explored current issues at the intersection of the insolvency and environmental law disciplines. Panelists from Brazil, Canada, India, Malaysia and Vietnam discussed legal developments and best practices on a range of issues having to do with how best to balance public policy goals of protecting the environment and facilitating the reorganisation of business enterprises. The presentation benefited from a high level of audience participation and debate around such hot topics as director and officer liability, clean-up cost priorities in liquidation and the appropriate role of

environmental regulators and governmental authorities. While not all issues were resolved, progress was made in narrowing issues and identifying topics for continued discussion and progressive thought.

2. Management incentive panel

Committees involved: Tax Law Committee, Cross-Border Investment Committee, Employment & Immigration Law Committee

Panelists: Marivic Sarmiento (Castillo Laman, Philippines), Emerico de Guzman (Accralaw, Philippines), Pieter de Ridder (Meyer Brown, Singapore), Frédéric Ruppert (FR Law, France), Frédérique David (Smith d'Oria, France), Alexis Katchourine (France)

This session visited resources available to let managers share in the value they create, to improve managers' loyalty or to reward them. The Panel defined whether

incentives should be limited to key managers or not. It discussed various tools available: fringe benefits, sweet equity, phantom shares, stock options, free shares (French AGA) and French BSPCE.

In the Philippines, stock options are uncommon. Shareholders would rather grant tax-exempt fringe benefits. Concerning the taxability of management incentives, off-shore source gains are already not taxable in some countries due to their own domestic tax system (Singapore, Hong Kong, Malaysia, the Philippines).

Gains made by managers are generally taxable where they have carried out the work for which they are being rewarded. In many countries, gains generated by management incentives receive favourable tax treatment: in the Philippines (fringe benefits are not taxable), Hong Kong, France, Spain, Belgium, subject to requalification into salaries under certain circumstances.

The Panel also discussed various HR issues of management incentives: it may affect the hierarchical relationships, it is not per se discriminatory in many countries, including France, the Philippines, Hong Kong, Singapore.

The Panel stated that Good leaver/Bad leaver provisions are to be provided for.

3. Venture capital in Asia—key differences compared to the Silicon Valley model of venture capital [stand-alone session]

Venture capital practitioners gathered to share their perspectives on venture capital trends and practice in China, Hong Kong, Singapore, South Korea and the United States. The Panel's chair, Eric Marcks, of the Southgate firm in Tokyo, began by highlighting VC trends globally and in Asia. The data revealed that while the global market share of VC funding in Asia still trails North America and Europe, the growth rate of VC investments in Asia has been keeping pace with, and in some cases eclipsing, the growth rate in the rest of the world.

The panelists, Christian Chin of Allen & Gledhill in Singapore, Vanessa Cheung of Fangda Partners in Hong Kong and Steve Ahn of SEUM in Seoul, then explored differences between important deal terms across Asia

and Silicon Valley. In discussing liquidation preferences and participation rights, conversion price adjustments, minority protections and investor remedies against founders, the Panel concluded that financing terms are generally much more favourable to VCs in Asia than in the United States, which means that founders in Asia end up assuming significant legal risk, in addition to the business risk inherent in any new venture. The Panel also found that convertible equity, which has become a standard means for raising early-stage capital in the United States, has not caught on in Asia.

4. Preventing and dealing with workplace harassment, discrimination and bullying in companies operating across ASEAN and beyond

The Employment and Immigration Law Committee led an animated discussion on preventing and dealing with workplace harassment, discrimination and bullying in companies operating across ASEAN and beyond.

Moderated by Jenny Tsin of WongPartnership, Singapore, the Panel of very experienced employment practitioners across various jurisdictions discussed thorny practical and legal issues many of us face in this area of practice. Winston Esguerra of Bello Valdez Caluya & Fernandez from the host country explained how Philippines culture influenced the way such issues are dealt with in the Philippines; Linda Liang of King & Wood Mallesons, Beijing shared experiences from China; Indrani Lahiri of Kochhar & Co, India passionately examined the issues she encountered in her practice; Siva Kumar Kanagasabai of Skrine, Malaysia, shared courtroom war stories from the Malaysian perspective and Carolyn Knox of Ogletree, Deakins, Nash, Smoak & Steward, P.C. in San Francisco discussed lessons from recent US experiences.

Together with the audience who actively contributed to the discussion, the panelists came up with a set of 'best practices' which may be adopted by companies to prevent and deal with workplace harassment, discrimination and bullying. These included: having properly crafted policies to deal with the issues, training for employees and the correct tone being set from the top.

5. Open Interactive Discussion on Employment Law and Employment Litigation Issues

Moderator: John Wilson (Colombo, Sri Lanka)

Speakers: All members of the E&ILC

During the IPBA Annual Meeting in Manila, the Philippines, employment lawyers from across Asia, North America and Europe joined a lively discussion on employment matters in their jurisdictions. The format for the session was a novel one and involved all participants being speakers and there being an interactive discussion led by the moderator. It was a great way to build relationships and gain insights into employment law matters around the world.

Of primary concern was a discussion of the main vulnerabilities and difficulties which multinational companies face as they operate in a highly connected and globalised economy. These companies face complex and frequently changing labour environments and what most attendees wanted to discuss in particular were issues related to foreign professional workers (expats).

As an example, if there is a dispute with a foreign professional that leads to litigation, whose responsibility is it to arrange for interpretation support? Is the employee responsible or the employer? Most present agreed that it would likely be up to the third party (either the court or the local labour authority) in order to retain impartiality.

Some topics under discussion were more fundamental, such as whether written contracts are required to hire foreign workers. In many countries, including Taiwan, a written contract is necessary to apply for a work permit. Another problematic area discussed was the scenario of dismissals—can employers be obligated by law to reinstate employees? And is there a statute of limitations for reinstatement? In South Korea, for example, there is none and in France, the employee is only permitted to claim damages and no reinstatement without the employer's agreement is possible for unfair dismissals.

Summarised by Christine Chen, Partner, Winkler Partners (Taiwan).

6. Employment and Insolvency

Moderator: Shinichiro Abe (Kasumigaseki International Law Office, Japan)

Panelists: Soumitra Banerjee (India), Jingbo Lu (River

Delta Law Firm, China), Hiroe Toyoshima (Nakamoto & Partners, Japan), Gregory Vijayendran (Rajah & Tann Asia, Singapore), Björn Otto (CMS, Germany)

This lively joint session of the Insolvency Committee and the Employment and Immigration Law Committee gave a broad overview on how labour and employment laws of various jurisdictions are shaped during the insolvency of a company.

A major topic in the discussion was the consequences of insolvency for the termination of employment contracts. While, for instance, in China and Japan a termination can under certain circumstances be justified due to a company being declared bankrupt, in Germany, insolvency as such does not constitute a fair reason for terminating the employment contract. German law only allows for certain insolvency-specific facilitations related, primarily, to procedural aspects of dismissal and the notice period.

Further, the role of employees' representatives and labour unions was discussed. In Japan the representatives can be involved but—unlike Germany—don't have a statutory right to claim such an involvement.

Finally the panel looked at employees' wage claims under insolvency procedures. The panelists came to the conclusion that in all considered jurisdictions wage claims generally enjoy a prioritised status upon the opening of insolvency proceedings.

The panel session closed with the audience taking part in the discussion and sharing their views. Overall this session showed how two—at first sight completely independent—fields of law are influenced by one another in the course of an insolvency.

Summarised by Björn Otto, Partner, CMS Germany.

7. China's Belt & Road Initiative—'Seeing is Believing': The Need for Tailor-Made Dispute Resolution Mechanisms

The Dispute Resolution & Arbitration Committee's programme kicked off at 9:00 am on Thursday with a session focusing on China's Belt and Road initiative and specifically on the need for tailor-made dispute resolution mechanisms. The session was moderated by Robert Rhoda (Bird & Bird, Hong Kong) and Sundra Rajoo (Asian

International Arbitration Centre). The expert panel were drawn from a variety of backgrounds and jurisdictions: Vyapak Desai (Nishith Desai, India); Tom Glasgow (IMF Bentham, Singapore); Robert Pe (Arbitration Chambers, Myanmar and Hong Kong); Kiran Sanghera (HKIAC, Hong Kong) and Huang Tao (King & Wood Mallesons, China).

Following a general recap of China's Belt and Road initiative, the Panel discussed the nature of the projects associated with this vast development strategy, as well as the type of disputes we can expect to see. While there will be certain features unique to Belt and Road-related disputes, there seemed to be broad consensus that a 'one-size-fits-all' approach to dispute resolution is likely to be of only limited benefit. It was considered that more important is the need for expert arbitrators, tried and tested rules and seats of arbitration which offer the rule of law, supportive and independent judiciaries and experienced professionals. There are a number of jurisdictions jostling for position in the race to be the 'go to venue' for Belt and Road disputes and they include Hong Kong, Singapore, Malaysia and, of course, China itself.

8. Billing structures in cross-border matters

The Cross-Border Investment Committee and Legal Practice Committee jointly hosted a session at the IPBA 2018 Conference in Manila. The panel session entitled 'Billing structures in cross-border matters' was moderated by Myles Seto of Deacons (Hong Kong and China) and Charandeep Kaur of Trilegal (India), Chairs of the two respective committees, and had five speakers, including Maxim Alekseyev of ALRUD (Russia); Eriko Hayashi of Oh-Ebashi LPC & Partners (Japan); Hermann Knott of Andersen Legal & Tax (Germany); Stefano Micheli of Bonelli Erede (Italy); and Fausto Romero-Miura of Perez-Llorca (Spain). It was captivating to listen to different perspectives on the topic from specialists covering a wide range of jurisdictions. Maxim from ALRUD made a pertinent point about the need for transparency of the fee arrangement with the client and setting up controlling procedures. Talking about the conundrum we all face irrespective of jurisdiction we operate within, Eriko of Oh-Ebashi highlighted the importance of understanding cultural differences between your jurisdiction and that of the client while setting the fee-structure in a cross-border matter. As we continue to tailor legal solutions to best meet the needs of our clients, it is increasingly becoming important to devise innovative

billing structures that provide more transparency to the client and at the same time drive profitability.

9. Bridging the cultural gap in cross-border M&A transactions

Cross-border M&A is even more challenging in a culture difference context. This session had its focus on the lawyer's role in multi-culture M&A transactions. The panelists from various cultural backgrounds discussed the basic dos and don'ts in certain cultural environments. Furthermore, the panelists, who have rich experience in cross-culture business, shared their thoughts on how to see the 'invisible players' and how to hear the 'silent languages' in an unfamiliar culture. The panelists and the active audience jointly identified certain approaches for lawyers to unveil the mask of culture's ambiguity, and to translate colourful cultural expressions into precise legal language.

10. Post-merger integration, in particular when Asian companies acquire European (or US) companies

The purpose of the session was to analyse the legal issues that companies face when starting integration after the closing of an acquisition, in order to reach the business synergies expected pre-deal by the parties. Such issues arise not only in cross-border transactions, but also in domestic transactions, between companies with global reach.

All the speakers agreed on one basic approach to integration: the legal advisers are to be involved at an early stage when the integration plan is created, as this will give them the opportunity to anticipate the issues and try to find solutions which will be time and cost efficient during the integration process.

Rather than speaking about their jurisdictions of origin, each of the professionals involved dealt with one single topic, with other panelists—or attendees—adding a few comments each time.

The main topics discussed were structure of the deal and governance post deal, the need for local rationalisation, how to deal with ongoing material contracts, the risks and the bridging of cultural gaps and the global

compliance issue with a focus on FCPA. Specific discussion and questions were also raised in connection with labour issues, data protection and privacy rules and shareholders' disputes.

11. A survey of the rules on cross-border legal practice in the Asia-Pacific region

Speakers: Ramakant Rai (India) (substitute to Sampath Kumar), Hiroyuki Ishizukam (Japan), Michael Shanahan, (New Zealand), Mark Lowndes (New Zealand), Victor P Lazatin (Philippines), Abraham Vergis (Singapore)

The substantial increase of cross-border practice in the legal profession is primarily caused by globalisation accompanied by the rapid development of major technological and telecommunications advancements. With drastic changes to their clients' business needs, lawyers and legal practitioners alike have augmented their understanding of foreign laws, other than those of their home or host states, to better facilitate inbound and outbound transactions in relation to cross-border deals or transactions.

To address the growing need for expansion of cross-border legal practice, the Legal Practice Committee conducted a session to provide a better understanding on the rules governing the practice of foreign lawyers in the Asia-Pacific region, particularly in Japan, South Korea, India, Singapore, Philippines, Australia and New Zealand. Notably, regulations regarding foreign lawyers differ from one state to another, as some jurisdictions, like the Philippines, India, and Japan, involve stricter requirements than others. In the case of the Philippines and Japan on one hand, lawyers who are otherwise qualified in foreign jurisdictions other than their home states are generally not allowed to engage in legal practice. On the other hand, as to New Zealand and Singapore, persons admitted to the practice of law in overseas jurisdictions may provide certain legal services under specified conditions provided by state law or regulations.

With the expansion of cross-border practice, and its penetration in various jurisdictions across the globe, the capabilities of each country to accommodate foreign lawyers and outbound transactions in relation to cross-border deals were also discussed during the session, to the end that lawyers may expand their proficiencies on cross-border legal practice, and thus respond

successfully to client demands and expectations brought about by globalisation.

12. Crisis management session (Non-confidential Version)

The crisis management session saw a huge turnout. It was organised as a Joint Session with the Corporate Counsel, Dispute Resolution & Arbitration, Environmental Law, Legal Practice and the Technology, Media & Telecommunication Committees. It was attended by participants from across the spectrum including in-house lawyers, practitioners and observers of various legal systems.

The format of the session was very interesting. The participants were divided into various teams each with representation from law firms, company representatives and independent observers. Before the teams got into scoping out the problem and laying out the framework to handle the crisis, a very engaging introduction on the overall internal perspective of crisis management was given by Anne Durez. This was followed by a presentation by Damian Coory on the media strategy companies should follow in a crisis situation to address the concerns of multiple stakeholders—employees, vendors, customers, investors, regulators, etc.

The key takeaway was that if a crisis is handled well by a company, the value of the company (as a function of its stock price) can be kept intact and perhaps even grow over the long term; on the other hand, if the crisis is not handled well by the company, data was presented to show how the company could lose its value quickly. Key ingredients of what goes into managing a crisis well and the framework in which to consider the problem were very ably put forward for the audience.

All the teams were presented with an evolving hypothetical crisis that hit a company with worldwide operations, virtually paralysing its operations and compromising its data security systems. The teams deliberated upon the crisis and each team put in place a response mechanism (both internal and external) to manage the crisis. Various issues including compliance, media outreach, internal communication and documentation, internal investigation were discussed in the context of the crisis. Each group selected a representative to hold a mock press conference and

face searching questions from the press. The team representatives also presented each of their response mechanisms to manage the crisis. The solutions presented by all teams were innovative, mindful of the legal issues and, above all, very engaging.

The session was hugely appreciated by all.

13. Challenges in conducting corruption investigations in the Asia-Pacific region

Moderator: Roger Best (UK)

Panel: Kirindeep Singh (Singapore), Susmit Pushkar (India), Lim Koon Huan (Malaysia), Juan Martin Allende (Argentina), Tatsu Nakayama (Japan)

The Anti-Corruption & Rule of Law Committee had an informative and interactive session on the challenges faced in corruption investigations across the Asia-Pacific region. The session was well attended by the delegates.

The session commenced with Roger Best introducing the panel speakers, who shared information about the relevant anti-bribery legislation/laws in their jurisdiction as well as some recent developments.

In Singapore, a key area of concern is the shipping industry. Kirindeep shared a few recent high-profile cases such as the Keppel Offshore & Marine, ST Marine and PP v Syed Mostofa Romel. The 1MDB case was also highlighted as an example of compliance failures and the role of the CDSA in eradicating bribery in Singapore. As for recent developments, the Minister of Law has also raised the issue of introducing a deferred prosecution agreement ('DPA') regime.

Susmit provided a summary of the Indian anti-bribery statute, the Prevention of Corruption Act ('POCA'), which covers bribery offences of public servants/officials. Commercial or private sector bribery is not an offence in India under the POCA but may amount to fraud under different statutes. There is presently no DPA regime in India and the enforcement of bribery cases is very robust in India. There is presently a proposal to amend the POCA and the Government is considering whether to include 'adequate measures' put in place by a company, as a defence in bribery cases.

In Malaysia, there is generally no requirement or law that companies must conduct internal investigations on any

corruption allegations or put in place a system of internal controls to prevent investigations. According to Koon Huan, most of the corruption cases involve prosecution against individuals caught. While there is talk about the introduction of 'corporate liability', this has not come into fruition.*

Juan led an interesting discussion on the South American position, including the development of the far-reaching bribery and corruption scandal involving the Brazilian state-owned oil company, Petrobras, and its ramifications beyond Brazil.

Tatsu highlighted the low incidences of corruption in Japan. Japanese firms should nonetheless give more priority to audits and investigations of foreign subsidiaries. In this regard, consideration must be given to interviewing local employees in foreign jurisdictions, and not just the Japanese staff. As statistics show that whistleblowing is the most effective/important trigger/threshold to detect wrongdoing in Japanese firms, whistleblowing should be promoted. There appears to be some resistance for Japanese firms to have direct hotlines from foreign subsidiaries.

The session ended with a 10-minute question-and-answer session.

* The Malaysian MACC Act has since been amended on 5 April 2018 to include the offence of corporate liability and the requirement to put in place internal controls to detect and prevent corrupt acts.

14. Fintech: Cryptocurrencies and ICOs

Thursday, 15 March 2018

4:00 PM – 5:30 PM

Moderator: Dr Thomas Zwissler, ZIRNGIBL (Germany)

Panellists: Catrina Luchsinger Gähwiler, Froriep (Switzerland), Leonardo Singson, Villarza & Angangco (Philippines), Kenneth Stuart, Becker Glynn (USA), Yuri Suzuki, Atsumi & Sakai (Japan), Brian Tan, Pinsent Masons (Singapore)

Following the very successful panel discussion on 'Key Legal Challenges Fintech Companies are Facing in Different Jurisdictions' held in Auckland in 2017, this year's Fintech panel focused on Cryptocurrencies and Initial Coin Offerings ('ICOs'). Dr Thomas Zwissler introduced

the topic and highlighted the fact that despite rapid development and success in many countries, both cryptocurrencies and ICOs are in many cases perceived as dubious or even fraudulent.

The Panel started by discussing the legal framework and the approach of the financial supervisory institutions, central banks, governmental bodies and private institutions towards cryptocurrencies. It became clear that today the great majority of regulators and central banks are acting very cautiously and focus on the avoidance of money laundering and the supervision and regulation of cryptocurrency exchanges and market players engaged in converting cryptocurrencies into legal tender (and vice versa). It was also discussed whether lawyers or law firms should accept payments in cryptocurrencies.

The second part of the session was dedicated to ICOs. The Panel analysed different types of ICOs and the meaning of the term 'Token' which is commonly used to describe the subject of an ICO. It was highlighted that in many cases the Token will be considered as being a security and therefore the corresponding obligations (for example, obligation to publish a prospectus) would apply. The differences between a securities prospectus and a 'white paper' were discussed and also the role lawyers should assume in preparing a 'white paper'. The panelists presented their views on best practices for ICOs. This included the use of 'Simple agreements for future tokens ('SAFTs')', an offshoot of a venture capital financing option developed and used in the United States.

The session was very well attended and therefore it is planned to continue with this series of Fintech panels as an integral part of the program presented by the Banking, Finance and Securities Committee at future IPBA conferences.

15. Silent struggles of single parents—the roles of law, employers and societies in supporting them to succeed in their public and private lives

Moderator: Olivia Kung (Hong Kong)

Speakers: Shweta Bharti (India), Frédérique David (France), Alison Foster QC (UK), Lyn Lim (New Zealand), Lory Anne Manuel-McMullin (Philippines)

With the quiet yet significant increase in the number of single parents around the world, the Women Business Lawyers Committee decided to dig into this taboo topic

and held a three-hour session (including group discussions among the audience) to raise and discuss challenges single parents face and provide some practical suggestions to improve and resolve some of the issues.

Speakers and participants delved into an insightful, enlightening and powerful discussion on the topic and openly discussed various issues, for example, difficulties single parents face on personal, social and professional levels; discrimination issues; and impact on children of a single-parent family. As some speakers are single parents or from a single-parent family, they also openly shared their own personal experiences and insights as to what it is like to be a single parent or child from a single-parent family.

Although it transpired that there were great differences on treatment of single parents in terms of law, culture, perceptions and/or acceptance by society from one jurisdiction to another, the most enlightening conclusions came from the shared understanding and appreciation of the silent problems and incomprehensible stigma attached to single-parent families. The session also brought about various points of realisation on how to help single parents, for example, the need for more global awareness; flexibility in the workplace (for such as the, inclusion of childcare facilities within the workplace and flexible working hours) as well as more empathy and acceptance from society as a whole. Further, to change society's perception, education is the key. Discussion of the concept of modern family structures to children and as part of education systems at school could help to slowly break down the barriers.

Our Objectives

It is enlightening to learn that some countries have already established comprehensive legislation on single parents and have accepted single-parent families as one of the modern family structures. We hope by raising this topic, it could spark discussion in other forums worldwide and initiate the lobbying for change in countries that do not currently have effective legislation in place on this issue. We also hope that societies, authorities, schools and employers can give more consideration to single-parent families when they enact their internal policies, procedures and rules.

We hope one day that single parents and their children no longer need to continue to suffer in silence and this topic will no longer be taboo.

16. Renewable energy trends to watch in 2018

By: Gmeleen Tomboc (Singapore)

Moderators: Sean Muggah (Canada) and Gmeleen Tomboc (Singapore)

Today, a fifth of the world's electricity is produced by renewable energy. For more and more countries, renewable energy is becoming the cheapest source of power. Our session provided a brief overview of recent developments around Asia, including substantive renewable energy initiatives that are ongoing, under development, or in some cases, scaled back or withdrawn.

Sadayuki Matsudaira (Tokyo) pointed out that many solar projects have been recently developed in Japan, and that the government is now seeking to facilitate wind projects, especially offshore projects. Monalisa Dimalanta (Manila) also observed that solar and wind power projects have been quite popular in the last few years in the Philippines, so in lieu of extending the Feed-in-Tariff ('FIT') schemes for these, the Government is thinking of implementing an auction system for these forms of renewable energy. It was interesting to see that although some countries are still offering FITs, there are also jurisdictions where FITs and other subsidies seem to be declining as renewable energy markets mature.

Renewable energy can, in some cases, serve as an important way of improving foreign relations. Soong-Ki Yi (Seoul) spoke of a proposed project for Korea, China and Japan to share reserve electricity to resolve power shortage concerns. Finally, Jihong Wang (Beijing) discussed how more and more Chinese companies are developing renewable energy projects overseas pursuant to the One Belt One Road initiative.

17. Is artificial intelligence (AI) going to replace us?

Moderator: Barunesh Chandra, founding partner of August Legal and Chair, Technology, Media and Telecommunications Committee. Barunesh advises many technology start-ups in India.

Speakers: Christopher Ekren, Global Technology Counsel, Sony, Tokyo. Chris focuses on strategic technology, transactional, and legal affairs for Sony and supports its AI and robotics activities, among others.

Richard Hogg, Global GDPR Evangelist, IBM, has global experience in technological services and solutions.

Richard provided the technological framework for the presentations of the IPBA members who served with him on the Panel.

Sandra McCandless, a Partner of the global law firm Dentons, is a past Chair of the IPBA Employment & Immigration Law Committee and a speaker on the interplay between AI and legal ethics.

The session provided an overview of the status of AI today, its common business and legal uses, how it is expected to evolve and its potential benefits and dangers, particularly for the legal profession. The speakers also addressed the interplay between AI and the current moral, regulatory, and ethical issues surrounding it.

18. Institutional innovations – pushing the envelope or churning the pot?

The Institutional Innovations session took a critical look at procedural innovations in international arbitration and examined whether these in fact made arbitration more cost effective, efficient or attractive. Innovations that were examined included emergency arbitrators, expedited formation of tribunals, consolidation (including the SIAC memorandum on institutional cross consolidation), early dismissal, expedited procedure, cost management, witness conferencing, use of tribunal secretaries and codes of conduct for counsel and party representatives. The session also looked at how innovations like these were applied in regional jurisdictions, and in particular, China and Spain.

Some of the specific issues examined in the session included whether emergency arbitrator provisions provided a more effective arbitral process, whether emergency arbitrator relief was more effective compared to courts, whether the expedited formation of tribunals was a more effective solution to early interim relief in arbitration, whether early dismissal was really an innovation given tribunals already had the power to dismiss early (for example as a preliminary issue), whether cross consolidation between institutions was feasible, and whether witness conferencing was a more effective forensic process than traditional cross-examination. The session was moderated by Hiroyuki Tezuka and Steven Lim, with panelists Andrew Pullen, Kevin Nash, Peter Leaver, Abhinav Bhushan, Alec Emmerson, Fei Ning and J Felix de Luis.

19. Faster, higher, stronger—and fairer? The growing impact of the Court of Arbitration for Sport (CAS) on International Sport.

Prompted by a suggestion from committee member Mel Schwing at the 2017 Annual Conference in Auckland, the Dispute Resolution and Arbitration Committee presented a panel in Manila on sports arbitration entitled, 'Faster, Higher, Stronger—and Fairer? The Growing Impact of the Court of Arbitration for Sport (CAS) on International Sport.' The panel, which was moderated by Mr Schwing and Dr Axel Reeg, sought to shed light on the operation of CAS in light of its growing importance to the Pacific region with the 2018, 2020 and 2022 Olympic Games being hosted by Asian cities.

The five speakers were all esteemed experts in sports arbitration. After a short introduction by the moderators, Christopher Singer, a former CAS counsel, spoke first and provided an overview of how CAS operates. He was followed by Susan Rodway QC, who talked about the challenges for an advocate in sports arbitration. Alex McLin, a CAS arbitrator and the former CEO for Fédération Equestre Internationale, then provided his insights on CAS as a former sports federation executive; he focused, in particular, on the ramifications of the recent litigation involving German speed skater Claudia Pechstein. Next, Enrico Ingles, the only Filipino member of CAS, reflected on his experiences as a CAS arbitrator. Finally, Professor Yoshihisa Hayakawa outlined various criticisms of CAS.

After the speakers' presentations and a brief summary by the moderators, there was a lively question-and-answer period, spurred on by the surprise presence in the audience of IPBA member and former CAS arbitrator, Peter Leaver QC.

20. The energy challenge in developing countries—contractual negotiations, operational risks and disputes experience based on a case scenario involving a power project in Africa

Moderators: Christopher Wright (Carney, Badley, Spellman, USA), Peter Chow (Squire Patton Boggs, Hong Kong)

The International Construction Projects and the Energy & Natural Resources Committees conducted a joint session looking at some of the key issues faced in

contractual negotiations, operational risks and disputes risks faced in the construction of a power project in a developing country. It was based on a fictitious case scenario involving a power project in Africa. China Power Company (China Co) is one of China's largest power companies. With China's strategy encouraging Chinese outbound investments, China Co has invested in a number of power projects in Africa, South America, and Central Asia and Southeast Asia. Its investments in Africa have so far not been very successful. However, it has identified a potential project in Danubia which looks promising. What are some of the issues China Co would need to consider to minimise its disputes risk in this project?

The panel of expert speakers, comprising Jimmy Yim SC (Drew & Napier, Singapore), Dr Christopher Boog (Schellenberg Wittmer, Switzerland) and Edmund Wan (King & Wood Mallesons, Hong Kong), gave a lively and interactive session, sharing some of their practical experiences with similar projects.

21. The Hague Convention on choice of court agreements—is it really a game changer? A debate

Moderators: Mr Mohan Pillay and Mr Neerav Merchant

Speakers: Justice Margaret Beazley (President, Court of Appeal, NSW, Australia), Colin Seow, District Judge and a register of the Singapore International Commercial Court (SICC), Chan Leng Sun, SC (Baker & McKenzie, Singapore), Yoshimasa Furuta (Anderson Mori & Tomotsune, Tokyo), Dorothee Ruckteschler (CMS, Germany), Marion Smith QC (39 Essex, London)

This session was designed in a debate format to make it interactive with delegates. As per the format, three speakers from each 'team' (either supporting or opposing the Hague Convention) had to discuss and debate on the effectiveness/impact of the Hague Convention on international cross-border litigation and the challenge posed by the Hague Convention to international commercial arbitration, to be followed by a summary given by the anchor speaker of each team. As per the format, the moderators posed a few questions after discussing each topic and opened the floor for debate. Finally, the moderators had to call for a vote/poll so as to give conclusion on the debate. The Panel received very good feedback from everyone.

22. A better understanding for China: From real Chinese lawyers' perspective

Co-moderator: Dihuang Song, Haiyan Zhang

Panelists: Ms Rong Liu, Dr Hellen Haixiao Zhang, Dr Qian Xu, Mr Xianyue Bai, Mr Lidong Pan

Regarded as the most ambitious geo-economic vision in recent history, the China Belt and Road Initiative is a signal that China is connecting with the world in all aspects. In this session, experienced lawyers from China conducted an in-depth discussion on highlighted legal issues related to 'The Belt and Road'.

Ms Rong Liu focused on the legal issues Chinese companies were mainly concerned with in overseas port investment under the background of 'The Belt and Road'. She introduced major risks that Chinese companies may face during overseas port investment and proposed feasible solutions and advice on risk prevention.

Dr Hellen Haixiao Zhang addressed Chinese enterprise anti-bribery and anti-corruption. She introduced some

of the latest regulations and analysed cases that she has dealt with to further elaborate on the importance of legal compliance when going abroad.

Dr Qian Xu, as the legal director of BGI, communicated with lawyers and the audience on issues such as the legal risks that Chinese enterprises face during cross-border M&A, collaboration between inhouse legal personnel and lawyers, etc. Lastly, Mr Xianyue Bai introduced enforcement of foreign arbitral awards and court judgments in China and commercial arbitration rules in China while Mr Lidong Pan shared his experience on cross-border M&A transactions regarding the latest Chinese regulatory environment.

The 90-minute session proposed several intriguing and controversial legal issues that China is paying attention to and offered the audience a better understanding of legal issues in China.

Publications Committee Guidelines for Publication of Articles in the IPBA Journal

We are pleased to accept articles on interesting legal topics and new legal developments that are happening in your jurisdiction. From time to time, issues of the Journal will be themed. Please send your article to both **John Wilson** at advice@srilankalaw.com and **Priti Suri** at p.suri@psalegal.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 (with British English spelling), 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.
7. Contributors must agree to and abide by the copyright guidelines of the IPBA.

Canada's Attempts to Cool the Housing Market and How this Affects Non-Residents

Over the past two years the Canadian government and the government of the province of British Columbia ('BC') have made several attempts to cool the housing market, increase real estate transaction transparency and combat perceived abuses of certain exemptions from tax. As the federal and BC governments attribute much of the increase in property values to foreign investment, many of the changes target investments in, and dispositions of, real estate by non-residents of Canada. This article focuses on the recent federal and BC tax changes that non-residents should consider before investing in or disposition of Canadian real estate, and in particular, real estate situated in BC.



Recent Federal Changes

Principal Residence Exemption

When a taxpayer sells real estate, the taxpayer will generally receive a capital gain (or loss) equal to the amount by which the proceeds of disposition exceed (or are exceeded by) the cost of the property. If the property qualifies as the taxpayer's 'principal residence' under the Income Tax Act (Canada) ('ITA'), then the capital gain (or a portion thereof) may be exempt from income tax. This is commonly referred to as the 'Principal Residence Exemption'.

For a property to constitute a taxpayer's principal residence for a particular year, the taxpayer must designate it as such. Although the designation must be made in the year the property is sold, an analysis of whether or not the property qualifies as the taxpayer's principal residence for a particular year must be done on a year-by-year basis. A 'principal residence' is generally a housing unit owned by the taxpayer that is ordinarily inhabited by the taxpayer or by the taxpayer's spouse or children. In addition, a taxpayer or a member of the taxpayer's family (with certain exceptions) cannot have designated a different property for the year the taxpayer designates the property as the taxpayer's principal residence.

The Principal Residence Exemption was only intended to apply to residents of Canada. However, by virtue of a 'bonus year' provided in the Principal Residence Exemption formula, non-residents have been able to claim the Principal Residence Exemption for one year of ownership. Consequently, a non-resident could potentially shelter their entire gain from tax if they bought and sold (or flipped) property within a single year. This worked quite nicely in real estate markets, such as Vancouver's, that experienced high levels of capital appreciation each year.

This plan is no longer possible because the Principal Residence Exemption formula has been amended so that the bonus year only applies where the taxpayer is resident in Canada during the year in which the taxpayer acquires the property. Non-residents are no longer able to acquire and dispose of property in a single year and rely on the bonus year element of the Principal Residence Exemption formula to shield the entire gain from tax. If the non-resident subsequently becomes a resident of Canada, they could qualify for the Principal Residence Exemption for some or all of the subsequent years, assuming they satisfy the other conditions.



Mandatory Reporting and Extension of Reassessment Time

Prior to 3 October 2016, the Canada Revenue Agency ('CRA') did not explicitly require taxpayers to report the disposition of a property for which the Principal Residence Exemption was claimed. This made it difficult for the government to determine whether taxpayers disposing of property were eligible to claim the exemption. The perceived abuse was that people were claiming the Principal Residence Exemption when they were either not living in the property or they were buying and flipping the property after a renovation or a sharp increase in the market.

Flipping houses is considered, in tax parlance, an adventure in the nature of trade and gives rise to business income, which is taxed at a higher rate than capital gains. The Principal Residence Exemption only applies to dispositions of capital property (that is, dispositions that give rise to capital gains). People were not reporting their business income on such dispositions because they were erroneously claiming the Principal Residence Exemption. They were therefore paying no tax instead of tax at higher business income rates.

For taxation years that end after 2 October 2016, the CRA now explicitly requires taxpayers to report dispositions of a property for which the Principal Residence Exemption is claimed. This will make it easier for the government to monitor the number of exemptions that are claimed and determine which ones are offside.

Generally, unless a taxpayer filing a return has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed fraud, the reassessment period for an individual is three years. This means that the CRA has three years, from the date of the CRA's initial assessment, to reassess the taxpayer. However, the government has amended the ITA to extend the reassessment deadline indefinitely for dispositions of real estate where the disposition is not reported in the taxpayer's tax return. This could apply in a situation, for example, where a taxpayer disposes of property and does not report the gain because they assume it qualifies for the Principal Residence Exemption.

Recent BC Changes

In 2016 the BC Liberal government introduced new tax policies targeting non-resident investment in BC real estate. More recently, the BC NDP government

strengthened these policies and introduced various new tax regimes.

Foreign Buyers Tax

Purchasers of property in BC must pay a property transfer tax ('PTT') of between 1% and 5%, depending on the value of the property at the time the transaction is registered at a land title office. Effective 2 August 2016, an additional property transfer tax, colloquially known as the 'foreign buyers tax' ('FBT'), was introduced to apply to certain purchases by non-residents.

The FBT is an additional tax of 20% on the fair market value of residential property. It is levied in addition to the regular PTT under the Property Transfer Tax Act (British Columbia) ('PTTA'). The FBT will apply when the following conditions are satisfied:

- the transfer of property occurred on or after 2 August 2016, regardless of when the contract of purchase and sale was entered into;
- the transfer of property is registered at a land title office;
- the property is residential property located in the Greater Vancouver Regional District (the FBT is proposed to be extended to other areas, most notably, the Capital Regional District (that is, Victoria and certain surrounding areas), the Regional District of Central Okanagan, the Fraser Valley Regional District and the Regional District of Nanaimo); and
- the transferee is a 'foreign national', a 'foreign corporation' or a 'taxable trustee'.

A 'foreign national' is a person who is not a Canadian citizen or a permanent resident, including a stateless person. A 'foreign corporation' is a corporation that is not incorporated in Canada or a corporation that is incorporated in Canada and is controlled by a foreign national or a corporation that is not incorporated in Canada. A 'taxable trustee' is a trustee of a trust in respect of which:

- any trustee is a foreign national or foreign corporation; or
- immediately after the registration of the taxable transaction in a land title office, a beneficiary of the



The BC government has hinted at taxing beneficial transfers but has not done so as of yet.

trust, who is a foreign national or a foreign corporation, holds a beneficial interest in the residential property to which that taxable transaction relates.

The intention behind the 'taxable trustee' component of the test is to ensure that a non-resident cannot avoid the FBT by having a Canadian trustee acquire property for his or her benefit.

The BC government also introduced an anti-avoidance rule that may apply to situations where the technical requirements are complied with but the FBT is still avoided. Specifically, where a particular transaction is an 'avoidance transaction' the administrator may deny the 'tax benefit' that, but for the anti-avoidance rule, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

A tax benefit means a reduction, avoidance or deferral of FBT payable. An avoidance transaction generally means a transaction that, but for the anti-avoidance rule, would result, directly or indirectly, in a tax benefit, but does not include a transaction that may reasonably be considered to have been undertaken primarily for bona fide purposes other than for the purpose of obtaining a tax benefit.

Interestingly, unlike the general anti-avoidance rule ('GAAR') in the ITA, the anti-avoidance rule in the PTTA does not contain the additional requirement

that the impugned transaction result in a 'misuse' or 'abuse' of provisions of the PTTA. As most of the case law concerning the GAAR (in the income tax context) focuses on the 'misuse' and 'abuse' component of the test and the tax benefit and avoidance transaction components are at times conceded by the taxpayer, the threshold for the application of the anti-avoidance rule under the PTTA is likely much lower. Consequently, there is a broad scope of transactions involving the FBT that may be caught by the anti-avoidance rule in the PTTA.

If the FBT is applicable to a transaction, the FBT must be paid with the general PTT at the time the transfer is registered at a land title office. An individual who fails to pay the FBT as required is liable to a fine/penalty equal to the amount of the FBT not paid or remitted, with interest, plus an amount not exceeding \$100,000 and/or up to two years in prison.

Transfers of Beneficial Interests and Disclosure of Bare Trusts

In BC, the transfer or sale of beneficial interests in real estate is not subject to PTT. This is because PTT only applies upon the registration of a 'taxable transaction' at a land title office. Even though a beneficial transfer constitutes a 'taxable transaction' under the PTTA, there is no requirement to register the transfer. As a result, many real estate transactions in BC take place by way of sale of beneficial interest and accompanying sale of shares of the nominee corporation that holds legal bare title to the property.

The BC government has hinted at taxing beneficial transfers but has not done so as of yet. In an attempt to gather more information about beneficial transfers, in Budget 2018, it proposed to introduce a publicly accessible registry of the beneficial owners of all property in BC. The information would be reported to a designated provincial office, and would be used to enforce tax compliance and guide future housing and tax policy.

This is in addition to the current requirement that certain information must be disclosed if the transferee is a 'bare trustee' of a trust that pertains to a taxable transaction that is registered at a land title office. Specifically, the parties must disclose whether the settlor or beneficiary is a citizen of a foreign state and provide his or her date of birth and individual tax number. The same disclosure is required for non-resident directors of corporations that are settlors or beneficiaries.

Bare trusts are often used for privacy purposes so that the true owner (i.e. the beneficial owner) is not on title to the property. The above disclosure requirements and the Budget 2018 proposals will make it more difficult for non-residents to accomplish this goal.

Additional Proposed Changes to the PTTA

As part of its stated goals to close information gaps, increase transparency and strengthen enforcement in the real estate sector, the BC government, on 15 March 2018, introduced additional amendments to the PTTA to effect the following changes:

- the limitation period for assessments of PTT is increased to six years;
- the general anti-avoidance rule applicable to the FBT is applicable to all situations involving the application of the PTTA; and
- tax administrators are empowered to access additional information on property transactions, including information in a Multiple Listing Service (MLS) database.

Vacancy Tax

The Vancouver vacancy tax was enacted by the Vancouver City Council on 16 November 2017 pursuant to Vacancy Tax By-Law No. 11674 ('Bylaw'). The Bylaw imposes a 1% tax on the fair market value of residential property located in the City of Vancouver if the property:

1. is not the 'principal residence' of the registered owner for more than 180 days of a tax year (that is, January to December);
2. is not the 'principal residence' of a person who is not a tenant and who occupies the residential property with the permission of the registered owner for more than 180 days of a tax year; and
3. is not occupied by a tenant or subtenant for terms consisting of at least 30 consecutive days and a total of more than 180 days of a tax year.

The Bylaw defines 'principal residence' generally to be the usual place where an individual lives, makes his or her home and conducts his or her daily affairs. A non-resident will almost never be able to satisfy paragraph (1) because their Vancouver property would not be their

principal residence for the simple reason that they are not resident in Canada (that is, it is not the usual place where they live). They could satisfy paragraph (2) if a family member, for example, is a Canadian resident and occupies the property as their principal residence. The final way for a non-resident to avoid the vacancy tax is to rent their property out long term.

The penalties for non-compliance with the Bylaw are severe. Vancouver residential property will be subject to the tax if the registered owner:

- fails to declare the status of his or her property;
- makes a false property status declaration; or
- provides false information or submits false evidence to the Collector of Taxes under the Bylaw.

Every person who commits one of these offences is punishable on conviction by a fine of not less than \$250 and not more than \$10,000 for each offence. The Bylaw also provides that every person who commits an offence of a continuing nature against the Bylaw is punishable upon conviction by a fine of not less than \$250 and not more than \$10,000 for each day such offence continues.

Speculation Tax

On 20 February 2018, the BC government announced that legislation will be introduced in 2018 to impose a speculation tax on residential property in BC. No legislation has been released to date. The new annual tax will target foreign and domestic home owners who leave their homes vacant and do not pay income tax in BC. Finance Minister Carole James stated that '[t]he speculation tax focuses on people who are treating our housing market like a stock market.'

The speculation tax rate for 2018 is 0.5% of the fair market value of the property. For 2019 and subsequent years, the tax rate will vary depending on where the owner of the property lives. Specifically, the tax rate will be:

- 2% for foreign investors and satellite families (these phrases are currently not defined as no legislation has been enacted, however, the BC government has stated that 'satellite families' are households with high worldwide income that pay little income tax in BC);

- 1% for Canadian citizens and permanent residents who do not live in BC; and
- 0.5% for British Columbians who are Canadian citizens or permanent residents (and not members of a satellite family).

The tax will only apply to areas that have experienced high levels of capital appreciation by virtue of, in the BC government's view, speculation and, in particular, non-resident speculation. Consequently, the tax will apply to:

- Metro Vancouver;
- The Capital Regional District (that is, Victoria and certain surrounding areas, excluding the Gulf Islands and Juan de Fuca);
- Kelowna and West Kelowna;
- Nanaimo-Lantzville; and
- Abbotsford, Chilliwack and Mission.

A non-resident will be exempt from the speculation tax if they rent their property out long term. The BC government has stated that it considers a 'long-term' rental to be a property that is rented out for at least six months out of the calendar year in increments of at least 30 days. In 2018, however, the property only needs to be rented out for three months to constitute a 'long-term' rental.

Interestingly, a non-resident who owns residential property in Vancouver can be subject to both the vacancy tax and the speculation tax. This would amount to a combined 3% tax on the value of their property if they do not qualify for an exemption.

Conclusion

It is difficult to predict whether this swathe of new taxes will achieve the BC government's intention to improve housing affordability. The taxes may simply create a brief lull in the market, only to be shrugged off as was the case with the FBT in 2016/2017. What is certain is that purchasing residential property will be more costly for non-residents and compliance with the various new tax regimes more cumbersome. The penalties for non-compliance can be draconian. Non-residents should therefore take care when investing in or disposing of Canadian real estate, and in particular, real estate situated in BC.



Bill Maclagan, QC
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Bill is involved in all aspects of income and commodity taxation, including goods and services tax, transfer pricing, and provincial taxation. He practises in both the taxation planning and tax litigation fields, with an emphasis on corporate taxation, in particular transactional advice, mergers and acquisitions, corporate reorganizations, structuring infrastructure projects, and public-private partnerships.

Bill has extensive experience in providing tax and structuring advice to private and public companies and investment funds in respect of shareholders agreements, partnership and limited partnership agreements, joint venture arrangements, and other complex commercial arrangements.

Bill has also had significant involvement in the mining sector, including acting on mergers and acquisitions, spin-outs, split-up transactions, metal streaming transactions, royalty transactions and financings.

Bill provides legal services through William S. Maclagan Law Corporation



Matthew Weaver
Matthew Weaver of Blake, Cassels & Graydon LLP

Matthew practices in both the tax planning and tax litigation fields. His practice is primarily focused on domestic and international corporate taxation matters, with an emphasis on transactional advice, mergers and acquisitions, corporate reorganizations and debt and equity financings. Matthew also has experience advising not-for-profit organizations and charities.

Prior to and throughout law school, Matthew co-founded and managed several businesses, including a lighted reading glasses distribution company and a landscaping business.

Tax Issues for Foreign Property Investors in Australia — Recent Developments

In recent times, an increasing number of inbound foreign investors have purchased Australian commercial, residential and rural properties. The Australian Federal Government and a number of the State and Territory Governments, have responded by imposing various new taxes and charges. The rules regulating inbound foreign investment have also been strengthened. This article reviews those developments and comments on their potential effect on foreign investment in Australian real property.



Introduction

Australia has for many years been a popular destination for foreign investors and a significant proportion of that investment has been in commercial, residential and rural property.

Foreign investment has long been regulated by the Foreign Investment Review Board ('FIRB'), pursuant to the Foreign Acquisitions and Takeovers Act 1975 (Cth) ('FAT Act'). Foreign residents have also, since 1985, been liable to Australian capital gains tax ('CGT') on gains derived on the disposal of Australian real property under the Income Tax Assessment Act 1997 (Cth) ('ITAA').

However, in recent times it has been suggested that many foreign residents may not have been complying with their FIRB and tax obligations. It has also been suggested that foreign investors may be driving up the price of housing in Australia, at a time when housing affordability (or non-affordability) is a significant political issue.

Commencing in 2015, the FAT Act and the ITAA have been amended to improve FIRB compliance and revenue collection. At the same time, a number of Australian States have introduced transfer duty and land tax surcharges for foreign owners.

The new rules are lengthy and complex and need to be considered carefully by all foreign investors and their advisors.

This article will summarise:

- the recent amendments to the FAT Act;
- agricultural and residential land registers;
- transfer duty surcharges;
- land tax surcharges;
- vacant residential property fees and taxes;
- foreign resident capital gains tax withholding tax ('FRCGTWHT');
- the proposed removal of the CGT 'main residence' exemption for non-residents; and
- the Australian Taxation Office's ('ATO') proposal to match the records of visa holders, foreign students and migration agents with ATO data holdings to identify tax non-compliance.

Foreign Investment Rules

Who Needs FIRB Approval?

Under the FAT Act, acquisitions by foreign persons of certain assets, in certain industries and sectors

and of certain values, are subject to FIRB review and approval.

For the present purposes, purchases of residential real estate by foreign persons are always subject to FIRB notification and approval, unless they are purchasing from a developer of new residential premises that has an exemption certificate.

In recent years, concern has been expressed that a number of foreign purchasers of residential real estate have not been applying to the FIRB and it has not been enforcing sanctions against purchasers who fail to comply with the relevant requirements. However, in March 2015, the Treasurer ordered a Hong Kong billionaire to sell his A\$39 million Sydney harbourside mansion and in the May 2015 Budget, the Federal Government announced a number of changes to the FAT Act and FIRB requirements. In particular:

- the application fees payable to FIRB were increased substantially;
- a new, substantially stricter, penalty regime was introduced; and
- the FIRB's responsibilities in relation to residential real estate were referred to the ATO.

In late 2015, the Treasurer ordered the sale of a mansion owned by a foreign businessman, which was found to have been purchased without foreign investment approval. The Treasurer stated at the time that the property was:

... the first ... to be detected by the newly established ATO foreign investment task force which has sophisticated data matching capabilities.

Between March 2015 and February 2017, the Government issued a total of 61 divestment orders, with a combined value of A\$107 million, as well as penalty notices.

In short, the FIRB has been reinvigorated and foreigners who have breached the rules are being actively pursued.

Explanation of FIRB Rules for Residential Real Estate

The rules for foreign persons who purchase Australian residential property differ for:

- foreign persons who are 'temporary residents'; and
- established (second-hand) dwellings, new dwellings and vacant land.

Table 1

	Temporary Resident	Foreign Person
New dwelling (ND)	Need to apply but normally approved. In addition to one ED (see below).	Need to apply but normally approved. No limit on number of NDs but need to apply for each dwelling.
ND in development	Approval not required if developer holds new dwelling exemption certificate (note: such a certificate allows a developer to sell to foreign purchasers without the purchaser having to obtain their own approval: see further below).	Approval not required if developer holds new dwelling exemption certificate.
Established dwelling (ED)	Can apply for one ED to use as residence. Can't rent or use as holiday house. Must sell within three months of ceasing to be primary residence. Can get auction exemption certificate.	Not allowed except to house Australian-based employees.
ED for redevelopment	Normally allowed provided genuinely increases housing stock.	Normally allowed provided genuinely increases housing stock.
Vacant land for development	Normally allowed provided development completed in four years and provide evidence.	Normally allowed provided development completed in four years and provide evidence.

A **temporary resident** is an individual who: (1) holds a temporary visa permitting them to remain in Australia for more than 12 months; or (2) resides in Australia, and has submitted an application for a permanent visa, while holding a bridging visa.

A **foreign person** is, broadly: (a) an individual not ordinarily resident in Australia; (b) a company or trust in which a foreign person holds a 20% interest; or (3) a foreign government.

Table 1 above summarises the situations in which temporary residents and foreign persons need foreign investment approval for the purchase of residential real estate. As can be seen, there are significant restrictions on foreign persons purchasing existing, as opposed to new, dwellings.

Timing of Approval and Application Fees

FIRB approval must be obtained before purchasing residential property or the purchase must be conditional on the obtaining of such approval.

For residential properties with a value of A\$1 million or less, the application fee is A\$5,500. For properties worth more

than A\$1 million, the fee is approximately 1.1% of the value (basically, the fee increases by A\$10,000 for every A\$1 million of value above A\$1 million).

Penalties and Sanctions

Significant penalties may be incurred for breaching the foreign investment rules, as well as orders to dispose of the property, and orders to pay a fee which, in some circumstances, can be equal to 10% of the value of the property. In some cases, offenders may be criminally prosecuted and imprisoned.

2017 Amendments

From May 2017, an exemption certificate issued by the FIRB to a residential property developer—that is, a certificate to enable the developer to sell to a foreign person, without the foreign person first seeking their own FIRB approval—now includes a condition restricting the developer from selling more than 50% of the dwellings in the development to foreign persons.

FIRB Approval and Non-Residential Property

There are separate rules, outside the scope of this article, for the purchase of:

- vacant commercial land (for any price);
- developed commercial land (where the price exceeds certain thresholds);
- agribusinesses and agricultural land (where the price exceeds certain thresholds); and
- accommodation facilities (depending on the classification of the land).

At the time of lodging an Australian tax return, the foreign owner can credit the withheld amount against their Australian taxation liability.

duty vary between the States and Territories (and in some cases differ depending on whether the property is used for residential or commercial purposes). The maximum rate is generally between 4.5% and 7% of the value the property transferred.

From 2016, New South Wales (NSW), Queensland (QLD) and Victoria (VIC) introduced an additional surcharge duty on foreign residents who purchase residential property in their jurisdictions.

The surcharge is in addition to the duty ordinarily payable.

From 1 January 2018, South Australia (SA) has also imposed a 7% surcharge on purchases of residential property and Western Australia (WA) has indicated it is considering introducing a surcharge from 1 January 2019. Tasmania (TAS) has indicated it will introduce a surcharge but no proposed commencement date has been announced.

The Australian Capital Territory (ACT) and the Northern Territory (NT) have not, at least at this stage, imposed transfer duty surcharges for foreign residents.

The rates are set out in Table 2 below.

Agricultural and Residential Land Registers

Foreign persons must register their interests in agricultural land on the ATO Land Register within 30 days of acquiring those interests, regardless of the value of the land. The Land Register is also used to capture the registration of the interests of foreign persons in residential land. Registration may be a condition of foreign investment approval and is completed via the ATO website.

Transfer Duty Surcharges on Residential Property

All of Australia's eight States and Territories impose duty on the sale or transfer of real property located in their respective jurisdictions. The duty is imposed on the value of the property and the rates increase as the value of the property becomes greater. The rates of

Table 2

Jurisdiction	Current top rate	Residential property value on which top rate payable (A\$)	Surcharge (%)	Max duty rate (%)
NSW	7.0%	A\$3,000,000	8%	15%
VIC	5.5%	A\$960,000	7%	12.5%
QLD	5.75%	A\$1,000,000	3%	8.75%
SA	5.5%	A\$500,000	7%	12.5%
WA	5.15%	A\$725,000	Proposed 4% (from 1 January 2019)	5.15% (current) 9.15% (2019)
ACT	4.91%	A\$1,455,000	N/A	4.91%
TAS	4.5%	A\$725,000	Proposed: 3% (residential land); 0.5% (primary production land) (unknown commencement date)	4.5% (current) 7.5% or 5% (proposed)
NT	5.95%	A\$5,000,000	N/A	5.95%

The surcharges are payable by foreign persons, including foreign individuals, corporations and trusts. Since the specific definitions differ between the states, the legislation in each state needs to be considered carefully.

In broad terms:

- a foreign natural person is an individual who is not an Australian citizen or the holder of an Australian permanent residency visa;
- a foreign corporation is a corporation (1) which has been incorporated outside Australia; or (2) in which foreign persons (in aggregate) hold at least 50%—or at least 20% for NSW—of the voting power or issued shares; and
- a discretionary trust is a foreign trust if a foreign natural person or corporation (including in a capacity as trustee):
 - for NSW and VIC purposes—is a potential beneficiary under the trust;
 - for QLD purposes—is a taker in default (that is, a capital beneficiary of the trust); and
 - for SA purposes—is a trustee, an appointor, an identified object or a taker in default.

In a typical discretionary trust, the classes of potential beneficiaries are defined widely. If any of the Australian beneficiaries has relatives overseas, it is very common for those relatives to be potential beneficiaries and thus for an 'Australian trust' to become a 'foreign trust'.

Importantly, the surcharges currently only apply where foreign persons or residents purchase residential property, and do not apply to commercial or agricultural land. However, if the Tasmanian proposal is introduced, a surcharge will be payable where a foreign person purchases Tasmanian primary production land.

NSW, QLD and VIC require all purchasers (individuals, companies or trusts) to sign declarations, and lodge dutiable transaction statements, when they purchase a property confirming their residency status. Those declarations are used for the purpose of imposing the transfer surcharge and the land tax surcharge (see below).

Therefore, advisers need to consider carefully whether their clients are foreign persons or residents for the purposes of the duty and land tax surcharges. There are significant penalties for incorrect declarations.

Land Tax Surcharges

All of the States and Territories (except the NT) impose an annual land tax on the site value (unimproved value) of real property in their jurisdictions. There are a number of important exceptions. In particular, land tax is not generally payable on an individual's principal place of residence or land used for primary production.

The rates vary between the States and Territories but are generally the top rates are between 1.1% and 3.7%. Recently, NSW and VIC introduced an additional surcharge on foreign persons who own property in their jurisdictions—2% in NSW and 1.5% in VIC. The surcharge is payable in addition to the land tax that is otherwise payable. QLD also imposes a higher rate on 'absentee owners'.

In April 2018, the ACT's Chief Minister introduced draft legislation to Parliament to impose, from 1 July 2018, a surcharge of 0.75% on residential properties in the ACT owned by foreign investors.

The rates are set out in Table 3 below.

The land tax surcharges significantly increase the cost of owning real property in NSW, VIC, QLD and the ACT for foreign owners. In addition, site values of land in those States have significantly increased in the last few years (and are regularly revalued).

NSW Foreign Developer Surcharge Duty and Land Tax Exemptions

In late 2017, NSW introduced a refund mechanism and exemptions from surcharge duty and land tax for Australian-based foreign developers. Refunds and exemptions are available where land is:

- used for construction of new homes that will be sold without being used or occupied (other than display homes); and
- sub-divided and sold for the purpose of construction of new homes after a sub-division certificate has been obtained.

The measures are designed to boost NSW housing supplies by placing foreign-owned residential property developers on an equal footing with Australian-owned developers, from a duties and land tax viewpoint.

Table 3

Jurisdiction	Current top rate	Residential property value on which top rate payable (AU\$)	Surcharge (%)	Max. duty rate (%)
NSW	2%	A\$3,846,000	2%	4%
VIC	2.25%	A\$3,000,000	1.5%	3.75%
QLD	Individuals: 1.75% Companies, trustees and absentees: 2%	A\$5,000,000	1.5%	3.5%
SA	3.7%	A\$1,176,000	N/A	3.7%
WA	2.67%	A\$11,000,000	N/A	2.67%
ACT	1.1%	A\$2,000,000	0.75% (proposed from 1 July 2018)	1.1% (current) 1.85% (July 2018)
TAS	1.5%	A\$350,000	N/A	1.5%
NT	N/A	N/A	N/A	N/A

Annual Vacancy Charges

Federal Vacancy Fee

From 2017, the Federal Government has imposed an annual vacancy fee for any Australian residential property, owned by a foreign person, which is not 'residentially occupied' for 183 days or more in a 12-month period. The purpose of the fee is to increase the number of houses available for rent in Australia (to the extent they are not occupied by the foreign owner or their family members).

The annual vacancy fee is equivalent to the application fee that would be payable by the foreign owner to the FIRB to acquire the property. For example, A\$22,300 for an A\$2 million residential property acquired in December 2017.

Victorian Vacant Residential Land Tax

In addition, VIC has imposed a vacant residential land tax on foreign owners (and local owners) of residential property in certain suburbs of Melbourne (the capital city of VIC), which is unoccupied for six months of a 12 month period. The tax is equal to 1% of the capital improved value of the residential property.

Legislation has also recently (April 2018) been introduced into the ACT to extend ACT land tax to vacant rental properties.

Foreign Resident Capital Gain Withholding Tax ('FRCGTWHT')

Foreign residents are, and always have been, taxable on gains derived from the sale or other disposal of Australian real property. However, voluntary compliance by foreign residents is perceived to be low and, as a practical matter, is difficult for the ATO to enforce. That led to the introduction of a withholding regime for capital gains from 1 July 2016.

From 1 July 2017, where a foreign owner disposes of a residential property for AU\$750,000 or more, the purchaser is required to withhold, and remit to the ATO, 12.5% of the purchase price.

At the time of lodging an Australian tax return, the foreign owner can credit the withheld amount against their Australian taxation liability.

If a purchaser fails to withhold and pay 12.5% of the purchase price to the ATO, the purchaser will be liable to pay an amount equivalent to 12.5% of the purchase price to the ATO (plus interest). That is, the purchaser will end up paying 112.5% of the purchase price, none of which will be recoverable from the vendor or the ATO.

Caution is necessary when purchasing property in Australia where the vendor has not provided the

purchaser with a 'clearance certificate' confirming that 12.5% of the purchase price does not need to be withheld.

Removal of CGT Main Residence Exemption

Exemption from CGT of any gain on the disposal of a taxpayer's main residence is a central feature of the Australian tax system. As a practical matter, this has contributed to Australia's high percentage of individual home ownership. However, in the May 2017 Budget the Federal Government announced it would introduce legislation to remove the exemption for gains on disposals of main residences by foreign owners.

A bill to remove the exemption was introduced into Federal Parliament in February 2018, but has not yet been passed. The bill indicates that if a main residence was owned before 9 May 2017 and disposed of before 30 June 2019, the exemption may still be available to the foreign owner.

Visa Data Matching

In December 2017, the ATO announced it would electronically match the records of more than 20 million international visa holders, foreign students and migration agents against ATO data holdings. This is designed to identify non-compliance with the Australian taxation and superannuation (pension) laws, and improve compliance with Australia's foreign investment regime.

Observations

Once it has been decided to invest in Australian real property, it is strongly recommended that foreign investors and their advisors investigate carefully the obligations to (1) seek FIRB approval for the ownership of the property; and (2) pay tax and stamp duty. Investors may also wish to consider the different rates of taxes and duties in the various States and Territories, as well as any available exemptions or concessions, when deciding in which jurisdiction to invest.

It is not yet clear whether the new duties and taxes are, in themselves, adversely affecting the appetite of foreign purchasers for investing in Australian real estate. However, it has been suggested that the greater than expected decline in new housing approvals in December 2017 was caused by a 'perfect storm' of tight consumer and credit construction finance, higher investor taxes, foreign owner surcharges and the requirement to sell half of the apartments in a development to Australian residents.

Indeed, one commentator believes these factors have 'made it almost impossible for developers to sell a tower now'.¹ Foreign investors will therefore need to watch this space carefully!

Notes:

¹See M Bleby, "'Perfect Storm' Hits Apartment Market", Australian Financial Review (2 February 2018).



Michael Butler Head of the Tax & Revenue Group at Finlaysons

Michael Butler is a past Chair of the IPBA's Tax Law Committee, immediate past Regional Coordinator: Asia-Pacific, and currently the Jurisdictional Council Member (JCM) for Australia. Michael advises domestic and international clients on all aspects of Australian State, Federal and International Tax Law. Michael's special interests include the tax aspects of cross-border business and investment transactions, property development, re-organisations, and estate and succession planning. Michael and Finlaysons also specialise in advising on wine taxation (including the Wine Equalisation Tax producer rebate), an extremely important topic in Australia!



Mary-Anne Sotiropoulos Associate in the Tax & Revenue Group at Finlaysons

Mary-Anne is an Associate Member of The Tax Institute of Australia and a Member of the TIA's South Australian Professional Development Committee. Mary-Anne works predominantly with SMEs and high-net worth individuals. She advises clients with regard to acquisitions of businesses and property and structuring and restructuring using tax-effective strategies to support business operations and growth as well as personal asset protection and succession planning. Other areas of Mary-Anne's practice include the application and consequences of Australian income tax, capital gains tax, GST, stamp duty and land tax, as well as assisting SMEs seeking to expand their operations internationally.



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IPBA New Members

March – May 2018

We are pleased to introduce our new IPBA members who joined our association from March 2018 – May 2018. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

Austria , Thomas Hohenberg <i>Hohenberg Law</i>	India , Kaamya Ramanan <i>Fox Mandal and Associates</i>
Chile , Rodrigo Albagli <i>Albagli Zaliasnik</i>	India , Anish Wadia <i>Chambers of Anish Wadia</i>
China , Yi Qing An <i>A & Z Law Firm</i>	Indonesia , Frederick Bonar Simandjuntak <i>Makarim & Taira S</i>
China , Gregory Wendell Dennis <i>Kangxin Partners PC</i>	Indonesia , Turangga Harlin <i>MacalloHarlin Advocates</i>
China , Jianjun (Charles) Guan <i>Grandall Law Firm</i>	Japan , Simon Barrett <i>Pillsbury Winthrop Shaw Pittman LLP</i>
China , Dekai Meng <i>Jin Mao Partners</i>	Japan , Koichi Kida <i>Oh-Ebashi LPC & Partners</i>
China , Yao Min <i>Jin Mao Partners</i>	Korea , Dongdoo Choi <i>Kim Chang & Lee</i>
China , Meng She <i>Jin Mao Partners</i>	Korea , Sung Man <i>Kim Lee & Ko</i>
China , Yang Shenghuan	Korea , June Yong Lee <i>Kim & Chang</i>
China , Yongmei Zhang <i>Shanghai Rolecan Law Firm</i>	Malaysia , Farah Jaaffar-Crossby <i>Labuan IBFC Inc Sdn bhd</i>
France , Olivier Mandel <i>Mandel & Associes</i>	Netherlands , Wiebe Hendrik De Vries <i>BloomTax B.V.</i>
Germany , Anselm Christiansen <i>Gleiss Lutz</i>	New Zealand , Heida Donegan <i>Kensington Swan</i>
Germany , Maximilian Lentz <i>Görg Partnerschaft von Rechtsanwälten mbB</i>	Nigeria , Femi Sunmonu <i>Aliant Qais Conrad Laureate</i>
Germany , Christopher Vogl <i>Gleiss Lutz</i>	Peru , Eric Franco <i>Engie Energia Peru</i>
India , Anjali Haridas <i>Fox Mandal and Associates</i>	Philippines , Yvette Chua <i>Romulo Mabanta Buenaventura Sayoc & De Los Angeles</i>
India , Manoj Kumar <i>Hammurabi & Solomon Partners</i>	Philippines , Dino De los Angeles <i>Romulo Mabanta Buenaventura Sayoc & De Los Angeles</i>

Philippines , Christiana Andrea Golez <i>Romulo Mabanta Buenaventura Sayoc & De Los Angeles</i>	Singapore , Hui Tsing Tan <i>Gurbani & Co. LLC</i>
Philippines , Stanley Gotohio <i>Broto Cu Gotohio Law Offices</i>	Singapore , Shintaro Uno <i>Nishimura & Asahi</i>
Philippines , Michaela Victoria Laurel <i>Romulo Mabanta Buenaventura Sayoc & De Los Angeles</i>	Sri Lanka , Ruwani Sandamali Dantanarayana <i>John Wilson Partners</i>
Philippines , Joseph Migriño <i>Migriño Law</i>	Switzerland , Niklaus Glatthard <i>Bratschi Ltd.</i>
Philippines , Ferdinand Asejo <i>Nague Nague Malic Magnawa & Associates</i>	Switzerland , Chlo Terrapon <i>Walder Wyss Ltd.</i>
Philippines , John Mark Sunga <i>Dennis P. Manalo Law Office</i>	Thailand , Noppramart Thammateeradaycho <i>Siam Premier International Law Office Limited</i>
Philippines , Carlos Martin Tayag <i>Romulo Mabanta Buenaventura Sayoc & De Los Angeles</i>	United Arab Emirates , Mostafizul Choudhury <i>Prestige Constructions LLC</i>
Russia , Alexander Molotnikov <i>Lomonosov Moscow State University, Law faculty</i>	United Kingdom , Matthew Lavy <i>4 Pump Court</i>
Singapore , Tan Choon <i>Leng JurisAsia LLC</i>	United Kingdom , Robert Scrivener <i>4 Pump Court</i>
Singapore , Ramanathan Govintharasah <i>Gurbani & Co. LLC</i>	USA , Wilson Chu <i>McDermott Will & Emery</i>
Singapore , Chong Kin Lim <i>Drew & Napier LLC</i>	Vietnam , Thanh Binh Le <i>EuroCham</i>
Singapore , Mark Mangan <i>Dechert (Singapore) Pte Ltd</i>	

Members' Notes

Corey L Norton, USA

Corey L Norton has left private practice to join Thai Union Group as its Group Counsel for Responsible Sourcing. Thai Union is one of the world's largest seafood processors with sourcing, manufacturing and sales worldwide. Corey will remain resident in Washington, D.C. and can be reached at coreynorton@hotmail.com. He will remain active in the IPBA as Membership Committee Vice-Chair and as past International Trade Committee Chair.

Tunku Farik, Malaysia

Tunku Farik, JCM for Malaysia, is proud to congratulate Tan Sri Cecil Abraham, Past President of the IPBA, in being conferred the award of Malaysian Arbitrator of the Year 2018 by the Chartered Institute of Arbitrators Malaysia Branch.



Inter-Pacific Bar Association Scholarship Programme

The Inter-Pacific Bar Association (IPBA) is pleased to announce that it is now accepting applications for the IPBA Scholarship Programme to enable practicing lawyers to attend the IPBA's 29th Annual General Meeting and Conference to be held in Singapore, April 25-27, 2019.

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?

One of the highlights of the year for the IPBA is its annual conference, which has become the 'must attend event' for international lawyers practicing in the Asia-Pacific region. In addition to plenary sessions of interest to all lawyers, sessions are presented by the IPBA's 23 specialist committees and one Ad Hoc committee. The IPBA Annual Meeting and Conference provides an opportunity for lawyers to meet 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 Scholarship Programme is also intended to endorse the IPBA's mission to develop the law and its practice in the Asia-Pacific region. Currently, the scholarships are principally funded by The Japan Fund, established and supported by lawyers in Japan to honour IPBA's accomplishments since its founding; the Host Committee of the Annual Meeting and Conference in Vancouver, Canada, 2014; and a generous donation by the family 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, 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 three years of IPBA membership and will be invited to join a dedicated social networking forum to remain in contact with each other while developing a network with other past and future Scholars.

Who is eligible to be an IPBA Scholar?

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

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

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 **October 31, 2018**. Application forms are available either through the IPBA website (ipba.org) or by contacting the IPBA Secretariat in Tokyo (ipbascholarships@ipba.org).

Please forward applications to:
The IPBA Secretariat
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 programmes 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 | <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 | <input type="checkbox"/> NEW! Ad Hoc Next Generation (40 and under) |

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

Put IPBA in your Business Calendar



----- EVENTS -----

➤ **The World at Your Doorstep**

IPBA Australian-New Zealand Regional Forum
19 July 2018
College of Law, Sydney Level 16, St James Centre, 111 Elizabeth Street
Sydney NSW 2000
For inquiries please email:
Michael Butler: Michael.Butler@finlaysons.com.au
Roger Saxton: roger.saxton@connorco.com.au

➤ **IPBA 2nd Indochina Regional Forum**

24 August 2018
Rangoon, Myanmar
For inquiries please email:
Le Net: net.le@lntpartners.com
Shigehiko Ishimoto: shigehiko.ishimoto@mhmjapan.com

➤ **Doing Business with Asia: Developments in Trade, IP, Investment and Dispute Settlement**

20 September 2018
Los Angeles, California (Crowell & Moring, LLP's office)
For inquiries please email:
Jeffrey Snyder: JSnyder@crowell.com
Corey Norton: cnorton@tradepacificlaw.com

➤ **LatAm Legal Views on Investment, Trade, Compliance & International Dispute Resolution**

28 September 2018
Santiago, Chile
For inquiries please email:
Rafael Vergara: rvergara@carey.cl

➤ **4th IPBA Arbitration Day**

5 November 2018
Bangkok, Thailand
For inquiries please email:
Robert Rhoda: Robert.Rhoda@twobirds.com
Hiroyuki Tezuka: h_tezuka@jurists.co.jp
Colin Ong: dco@onglegal.com
Punjabom Kosolkitiwong: punjabom@dejjudom.com

➤ **IPBA 4th East Asia Regional Forum**

7 November 2018
Seoul, Korea
For inquiries please email:
Jihn U Rhi: jurhi@rhilaw.com
YJ Chang: yjc@leeko.com

➤ **IPBA European Regional Conference International Commercial Courts in Various European Jurisdictions & in Singapore**

22 November 2018
Brussels, Belgium (Stibbe's office)
For inquiries please email:
Jeffrey Holt: jeffreyholt@yahoo.com
Sebastian Kuhl: Kuehl@hdh.net
Jan Peeters: Jan.Peeters@Stibbe.com
Bart Kasteleijn: bart.kasteleijn@wintertaling.nl

➤ **IPBA Mid-East Regional Forum**

24 January 2019
Dubai
For inquiries please email:
Ali Al Hashimi: ali.alhashimi@globaladvocates.net
Richard Briggs: r.briggs@hadefpartners.com

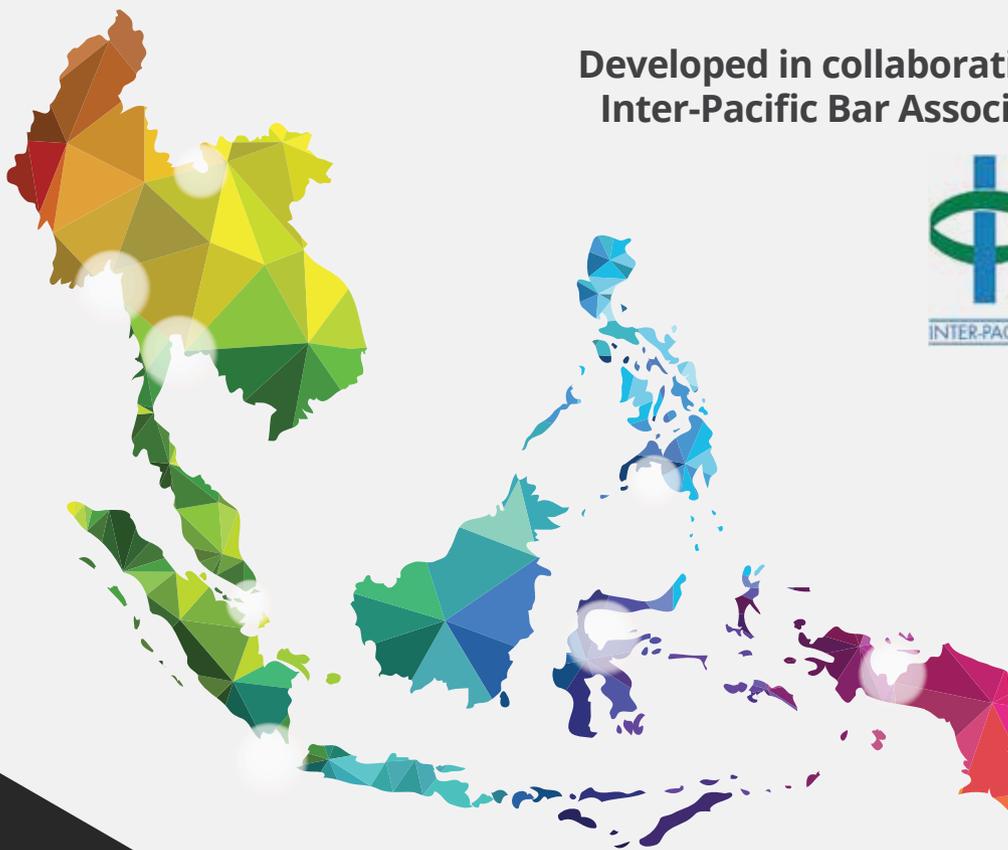
➤ **Asia M&A Forum 2019**

28 February to 1 March 2019
For inquiries please email:
Myles Seto: myles.seto@deacons.com.hk
Wilson Chu: wchu@mwe.com

➤ **Global Challenges, Local Solutions & Singapore Being an International Hub**

IPBA 29th Annual Meeting and Conference in Singapore 2019
24 - 28 April 2019
Singapore
Please visit the IPBA 2019 booth at Level 3, Foyer Area of Grand Ballroom
Shangri-la The Fort

Developed in collaboration with the
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