

IPBA Journal

March 2019

No **93**

NEWS & LEGAL UPDATE



INTER-PACIFIC BAR ASSOCIATION

8

Reasons You Can't Miss IPBA 2019 SINGAPORE



IPBA 2019 SINGAPORE

25 – 27 APRIL

1 Opening address by
PM Lee Hsien Loong

2 Plenary address by
Dato' Seri Anwar
Ibrahim

3 Keynote address
on the effect of
technology by
Chief Justice
Sundaresh Menon
at the Gala Dinner

4 More than 60
concurrent sessions
with over 300
speakers

5 A special session
discussing rise of
International
Commercial Court &
other topical issues

6 Over 850 lawyers
from all over the world
have registered

7 Get a taste of
authentic Singapore
Hawker Culture with
the best local food

8 Special performances
by home-grown
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local dance artistes



PM Lee Hsien Loong



Dato' Seri Anwar Ibrahim



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The President's Message

Perry Pe
President



Dear Reader,

Technically, this will be my last report at the helm of the IPBA, but I hope this will not be my last opportunity to be of service to our dear organisation.

As promised in the last Journal issue, 2019 indeed started with a loud bang.

On 10 to 11 January 2019, I attended the Opening of the Legal Year in Malaysia. I was accompanied by Tunku Farik, JCM for Malaysia. While there, I met the Chief Justice of Malaysia, Richard Malunjum, the Chief Judge of Sabah and Sarawak, David Wong and also Christopher Leong, who is Malaysian and the current president of LAWASIA. The IPBA was also invited to the Borneo Rainforest Conference in Kota Kinabalu and to the Opening of the Legal Year in Sabah and Sarawak on 17 and 18 January 2019 by its President, Brenndon Soh. Unfortunately, I could not make it because of a previous engagement back in Manila, so I instead requested my college batchmate, Jose Luis Agcaoil, President of the Philippine Bar Association, to attend for me personally and for the IPBA.

On 14 January 2019, I attended the Opening of the Legal Year in Hong Kong hosted by the President of the Hong Kong Law Society, Melissa Pang. I was accompanied by IPBA Past President Huen Wong. I met with the Chief Justice of Hong Kong, Geoffrey Ma Tao-Li and also the current Hong Kong Secretary of Justice as well as IPBA alumna Teresa Cheng. I also met with four leaders of the top international bar organisations in the world, namely, Issouf Baadhio, President of the UIA; Christopher Leong, President of LAWASIA; R Santhanakrishnan, President of the Commonwealth Lawyers Association; and Xavier Costa, President of the AIJA. Expanding our reach, I also had brief discussions with the following major national bar organisations:

David Yu, President of the Shanghai Bar Association; Zhang Xuebing, Vice-President of the All China Lawyers Association; Vradislav Grib, Vice-President of the Russian Federal Chamber of Lawyers; and Arthur Moses, President of the Law Council of Australia. This Hong Kong legal event was of particular personal interest because I was able to meet my fellow Hokkien-speaking heads of the different bar associations coming from Bandar Seri Begawan, Taichung, Taipei and Kaoshiung.

There was an IPBA event from 24–25 January in Dubai—the Middle East Regional conference—which, unfortunately, I was unable to attend. It was hosted by Ali Al Hashimi of Global Advocacy and Legal Counsel, Richard Briggs and Abdulrahman Juma of Hadeef & Partners, Alec Emmerson of ADR Management Consultancies and Mohammed Alsuwaidi of Al Suwaidi & Company. Our Programs Coordinator, Jose Cochingyan III, represented the IPBA officers team at this event.

On 9 March 2019, the IPBA 2nd Mekong Regional Forum will be held in Yangon. The IPBA is hosting this one-day event. I will be attending this together with our Programs Coordinator, Jose Cochingyan III.

As for some forthcoming events, I have been invited by the United Kingdom Law Society to attend and act as the moderator of its seminar series on Asian business, this time focusing on the Philippines, which recently passed the Ease of Doing Business Law. It is a one-day event set for 3 April 2019 to be held at the Law Society's headquarters in London. This is a seminar for its members.

I have also been invited by the American Bar Association, Section of International Law, to speak at its annual Section of International Law Conference in

Washington, DC. I will be speaking on Southeast Asia's trade relations with the US and with China, particularly focusing on the Belt and Road Initiative. This is scheduled for 12 April 2019.

Finally, from 25 to 27 April 2019, it will be at the IPBA's 29th annual conference in Singapore, to be held at the Raffles City Convention Centre. Three main items will occur during this year's conference. First, we will unveil our new IPBA logo, a project spearheaded by our President-Elect Francis Xavier. Second, a Memorandum of Cooperation will be signed with the German Federal Bar Association, International Law Section, headed

by Dr Jan Curschmann. Third, another Memorandum of Cooperation with the American Bar Association, Section on International Law, headed by Robert Brown, will be signed.

I will then turn over the reins of the IPBA to my successor, my dearest IPBA brother, Francis Xavier.

That's all Team. see you all in Singapore!

Perry Pe
President





The Secretary-General's Message

Caroline Berube
Secretary-General



My Final Thoughts

Time has flown as I find myself writing my last message as Secretary-General. It has been a great pleasure and honour to undertake this role within the IPBA for the last two years, stepping into the shoes of Miyuki, who is in line to be the IPBA President in 2021. I could not have fulfilled the last two years as Secretary-General without the help and support of many amazing individuals. I would first like to thank Rhonda and Yukiko for their immeasurable support. They have a wealth of knowledge of the history, background and spirit of the IPBA. Whilst we as officers only volunteer our services for two years, their involvement with the organisation for over a decade makes them the true pillars of the IPBA. They are consistently there. After so many years they have become used to working with lawyers and are able to juggle our busy billable schedules and crazy requests at any time of the day. I am truly grateful for the support they provided me during my tenure. I am also very grateful to have had a team of strong officers who have been constantly pushing the boundaries of the IPBA with new ideas and leadership. This has ensured that the IPBA continues to compete with other bigger organisations, by providing attractive offers to our current and future members with dynamic and creative events, adapting their ideas to the new generation of lawyers, aiming to bring the IPBA to the next level.

A few initiatives from our officers during the last two years are worth mentioning: we initiated and established a social media platform, organised numerous conferences around the world, and published four high quality issues of the IPBA Journal annually—all of these actions improving the awareness and visibility of our organisation and attracting activities from current and new members.

I am also very pleased with our members for two reasons: their participation and loyalty. Without them,

the IPBA wouldn't exist. Our members continue to attend annual conferences in great numbers, including our mid-year conferences and the various events held all over the world. Without their participation and energy, the IPBA wouldn't be what it is and continue to grow. This is why it is so important to select the right leaders through the nominating committee, appointing pillars and influencers as officers. Finally, I am grateful to our loyal members, some of whom have been loyal to the organisation for over 25 years. They attend the annual conferences and remind us of the true spirit of the IPBA and why it was founded. They bring knowledge, history and a reminder of the IPBA values, not least of which is the deep, longstanding friendships between members—the IPBA friendship is unbeatable. Given that we are in a people business, friendship is key when it is time to brainstorm on a legal issue with a trusted lawyer friend or refer your most important client to a lawyer in another jurisdiction.

My vision for the IPBA is to remain relevant to the legal market, notwithstanding the competition from other associations and the global access to information today, so that we continue to attract the next generation of leaders of the IPBA. The world has changed since the formation of the IPBA. Looking for a lawyer in Asia is very different in the world of today than it was 30 years ago. Now, we can be in a small town anywhere in the world, go on the internet and find lawyers of differing expertise in any jurisdiction in the world. We may not know them personally, know the quality of the work they can provide or we may work with them for five years and never meet them, given all the technology available to us ... The legal world can survive without associations of lawyers these days. The IPBA has always had a focus: members across the Pacific Ocean. A great niche, but one now targeted by other associations too. However, I believe that associations, especially the IPBA, provide more than

the name of a lawyer in a jurisdiction to refer to. Many associations, and some of our own IPBA members, wish to have more members. It is a good idea to get more members for any association as it brings diversity, an exchange of ideas and networking opportunities. The IPBA, given its smaller size, provides, I believe, more: a deep friendship that very few associations provide. The fact that our Association remains smaller brings a family feeling and trust between members—even though our conferences attracted 1,000 people, they still have this close family feeling. We must continue to be mindful of the competing associations covering Asia with deeper pockets and resources than we do, but we need to grow our Association maintaining the values of the IPBA and its founders: trust and friendship. These values are very difficult to replicate in bigger organisations.

Another challenge we face is attracting young lawyers and continuing to adapt ourselves to the new needs of the legal industry: legal knowledge from our members

shared on various social media and numerous activities are creating awareness about our members and our Association. The IPBA and its officers have shown ability to adapt to these social media, importantly appealing to the younger generation of lawyers and constantly organising IPBA events or partnering and supporting with other organisations for joint events. We must continue to proactively think of ways to attract the next generation of lawyers who will lead the IPBA. There are some challenges ahead, but I have no doubt that given the drive and loyalty of our members and of those appointed in leadership positions, the IPBA will be able to continue to grow and adapt to the needs of the constantly evolving legal market.

Caroline Berube
Secretary-General

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: (1) your article to both **John Wilson** at advice@srilankalaw.com and **Priti Suri** at p.suri@psalegal.com; (2) a lead paragraph of approximately 50 or 60 words, giving a brief introduction to, or an overview of the article's main theme; (3) a photo with the following specifications (File Format: JPG or TIFF, Resolution: 300dpi and Dimensions: 4cm(w) x 5cm(h)); and (4) your biography of approximately 30 to 50 words.

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.



Message to the Reader

John Wilson

Chair – Publications Committee, IPBA



Welcome to the March issue of the IPBA Journal.

The theme that I have chosen for this issue of the Journal is Employment Law and Cross-Border Employment Law issues.

In addition to the articles contributed by our members, we are privileged to be able to publish in this issue of the Journal transcripts of the remarks made by two Judges, Mr. Duco Oranje and Ms. Heike Hummelmeier, during the course of the IPBA's program on 'International Commercial Courts', which was held in Brussels in November last year. A description of that event can be found on pages 12 and 13 with some photographs. I am also very pleased that we are publishing the transcript of the speech of the Minister of Justice of Belgium who addressed that event. My thanks to Jan Peeters, Sebastian Kühn and Bart Kasteleijn for their assistance in helping to have these transcripts published.

I thought it appropriate to include these transcripts in this issue of the Journal since the topic of International Commercial Courts and their recent rise is so important, and is a legal development which cannot be ignored. The Brussels event provided fascinating insights in regard to what seems to be a widening new trend in the area of dispute resolution. Readers may recall that in the September issue of this Journal, we had a focus on arbitration and a description of the issues which would be covered at the IPBA's Arbitration Day event in Bangkok. It remains to be seen what the extent of the impact of International Commercial Courts will be on international arbitration. Readers may also recall that in the previous two issues of the Journal, an article by Justice Beazley of Australia examined the Hague Convention on Enforcement of Judgments and whether it is a game changer. Enforceability of any judgment of any court is of course key and it will be

interesting to see how and to what extent judgments of International Commercial Courts will be enforced.

As for articles relevant to the theme of this issue of the Journal, I'd like to express my thanks to the Chair of the Employment and Immigration Law Committee, Frédérique David, for assisting in sourcing articles around the theme of this issue: Employment Law and Cross-Border Employment Law issues. Readers will find a wealth of information in the first part of a detailed lengthy article contributed by Jingbo Lu on 'Employment in Internet-platform Industries in China', the second part of which will appear in the June edition. In his article, Jingbo, (known to many of us as Jason), examines the approach of the Chinese legal system to employment in the gig economy.

We thereafter have an interesting article by Vincenzo D'Antoni and Claudio Elestici on 'The International Posting of Workers: Obligations and Safeguards', in which the position in Italy is outlined.

There is also a contribution by Indrani Lahiri, whose informative and detailed article examines the topic 'Discrimination vis-à-vis Employment' and recent developments in India.

From Germany, we have an article on 'Employment and Insolvency in Europe' contributed by Dr. Björn Otto.

From Brazil we have an article on 'Personal Liability of Attorneys-in-Fact in Brazilian Labour Courts' contributed by Ricardo Kunietz.

We also have an article 'Are Your Trade Secrets Protected in the EU?' by Roland Falder, which examines trade secrets in the context of the employment relationship and briefs readers about the need to act after changes in the European Union to

the legal landscape consequent to the new directive on trade secrets.

The Publications Committee of the IPBA is currently engaged in a review of the publication and copyright guidelines. We aim to initiate a discussion on a new set of copyright guidelines by the Officers and Council of the IPBA for consideration during the meetings of the Officers and of the Council which will take place in Singapore in conjunction with the next annual meeting. Discussions in regard to the theme (or possibly themes) for the next Journal are underway!

I hope that all readers enjoy what is yet another issue of the Journal replete with many interesting and informative articles from contributors covering a wide geographical span. On behalf of the Publications Committee I would like to thank all those who have contributed and I encourage all members of the IPBA to continue submitting articles for consideration for publication in future issues of the IPBA Journal.

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		
2019 Mid-Year Council Meeting (IPBA Council Members Only)	Milan, Italy	October 11-13, 2019
Regional Conference: The Evolution of Protectionism and M&A: Circulation of Investment, People and Services	Milan, Italy	October 14, 2019
IPBA Events		
Latin American Arbitration Day, with the Club Español del Arbitraje	Madrid, Spain	June 19, 2019
IPBA-supported Events		
15th Annual ALB SE Asia Law Awards	Singapore	April 11, 2019
Saint Petersburg International Legal Forum	Saint Petersburg, Russia	May 14-18, 2019
TP Minds Australia	Sydney, Australia	May 21-22, 2019
AIJA's Half-Year Conference	Hong Kong	May 22-25, 2019
Wolters Kluwer's Annual International Arbitration, Compliance and Competition Law Summit	Singapore	May 23, 2019
Wolters Kluwer's 8th Annual International Arbitration, Regulatory & Competition Law Forum	Hong Kong	July 4, 2019
Wolters Kluwer's 2nd Annual International Arbitration, Compliance and Competition Law Summit	Thailand	August 8, 2019
Wolters Kluwer's 6th Annual International Arbitration, Compliance and Competition Law Summit	Japan	September 5, 2019
Wolters Kluwer's 6th Annual International Arbitration Summit	Turkey/ME	September 26, 2019

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

THE PARTNERSHIP

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Your Company Exists!



Keep your Finances in order

- We run your accounts
- We file your taxes on-time
- We advise you on deductions
- We ensure you comply with the statutory obligations under the Companies Act
- We keep you penalty-free

You are organized all year-round!



Add - On

- We help you with HR – payroll, recruiting, work passes
- We advise you on employment contracts, CPF and MOM regulations
- We advise you on legal matters
- We help you with IT solutions

Everything under one roof!

IPBA European Regional Seminar in Brussels

22 November 2018



International Commercial Courts in Various European Jurisdictions and in Singapore

IPBA Germany and IPBA France, with the support of Belgian and Dutch IPBA members, organised and held a regional seminar on 'International Commercial Courts in Various European Jurisdictions and in Singapore' on 22 November 2018 in Brussels, Belgium at the offices of Stibbe. The Seminar was conducted in English.

This very up-to-date topic interested a group of more than 40 people—mostly lawyers—from all over Europe. The Seminar was opened by the IPBA President-Elect, Francis Xavier, who gave an introduction on the IPBA and presented, in particular, this year's Annual Conference to be held in Singapore.

Thereafter, the participants listened to and discussed with speakers from England, Germany, France,

Belgium, Singapore and the Netherlands. The growing interest in international commercial court procedures is not only due to Brexit but also as a response to the importance of arbitration. The speakers covered not only the different approaches to international commercial courts but also the status and development of such courts. The discussion covered the applicable language (English as *lingua franca*) but also the applicable law, the applicable rules of procedure and cost aspects. The participants were able to better understand the similarities and the differences between the institutions and the procedures of each jurisdiction and the need to look further into these issues when advising clients on international commercial contracts as well as during dispute resolution.

As a final highlight, the Belgian Minister of Justice, Professor Koen Geens, spoke about recent political



developments for national and international commercial courts in Belgium and more specifically about his proposed legislation which was being discussed before Parliament.

The seminar lasted the whole afternoon and was rounded up with a cocktail reception. This was followed by a dinner, which was well attended, with lively discussions. It was a very typical IPBA event with interesting discussions among good old friends as well as new friends of the IPBA community.

The organisers, Jeffrey Robert Holt, JCM for France, Jan Peeters from Brussels, Sebastian Köhl, JCM for Germany, and Gerhard Wegen, European Regional Coordinator, want to express their special thanks to the following speakers:

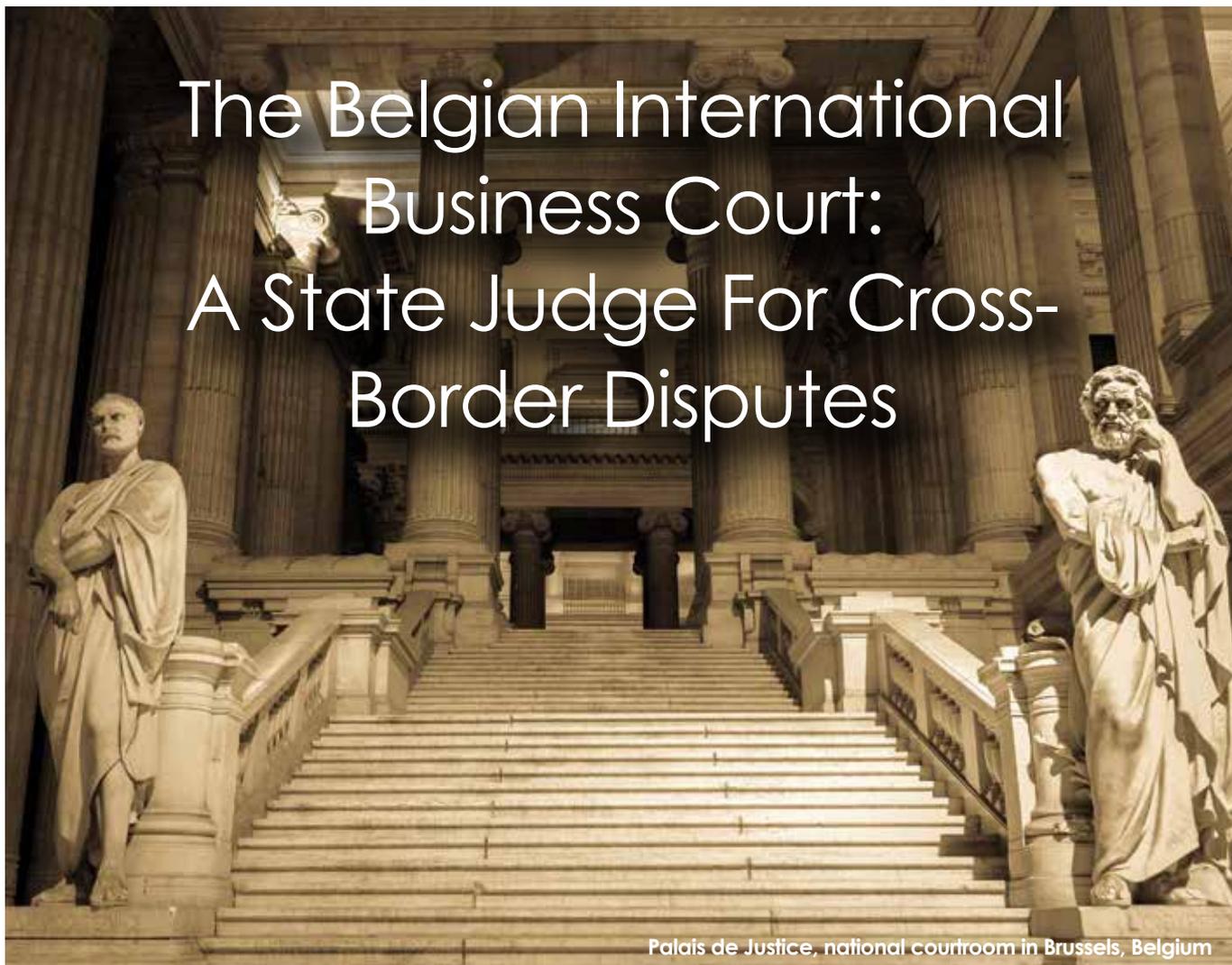
- Alexander Gunning, QC, One Essex Court, London, England;
- Heike Hummelmeier, Chief Justice at the Regional Court (Landgericht) of Hamburg, Germany;

- Ioana Knoll-Tudor, Local Partner, Jeantet, Budapest, Hungary/Paris, France;
- Nicolas Résimont, Partner, Stibbe, Brussels, Belgium;
- Duco J Oranje, President, Netherlands Commercial Court of Appeal, Amsterdam, the Netherlands;
- Laurence Wong, Senior Director, Singapore International Commercial Court, Singapore; and
- Cedric Guyot, Partner, CMS DeBacker, Brussels, Belgium, as moderator.

The organisers also want to thank Stibbe for having provided the organisation, the seminar facilities and drinks and Huth Dietrich Hahn for additional sponsoring.

Note from the Chair of the Publications Committee – a transcript of the Minister's speech can be found on page 14. Transcripts of the remarks of Judge Orange and of Judge Hummelmeier are on pages 16 and 20 respectively.

The Belgian International Business Court: A State Judge For Cross-Border Disputes



Palais de Justice, national courtroom in Brussels, Belgium

National and international economic and political developments in recent years have stressed the inevitable need to have in Belgium a high-level specialised state court which is competent to settle cross-border commercial disputes in English. Many of those disputes are currently not taken to Belgian state courts. This situation will not improve in the future, especially when it appears that 'Brexit' and its related difficulties will lead to an exponential increase in international commercial disputes and therefore of those that will no longer be settled in London.

This is unfortunate since Belgium and Brussels are playing, and must continue to play, a crucial role on the European and the international scene as the headquarters for a very large number of European and international institutions and companies. It makes

no sense to transform Belgium and Brussels into an international political and business hub, if the relevant stakeholders, their lawyers and other advisers, have no choice but to litigate their disputes abroad, at least if they do not want to resort to arbitration but would prefer a state judge. This need is actually met with the creation of a state court operating in English, set up to settle the legal disputes of the international business community established in Belgium: the Brussels International Business Court ('BIBC').

Organising an English-speaking court to settle international commercial disputes involves challenges that have to be overcome in order to succeed: judges must be perfectly fluent in English and specialised in international corporate law, the proceedings must not only be geared to the international business community's

customs, they also must be completed, as the European Court of Human Rights puts it, with 'due diligence', the court's capacity must be perfectly proportionate to the number of cases to be handled—which is still unknown of course—and, last but not least, its operating costs cannot be deducted from the judiciary's operating costs, which is the reason why it must be 'self-sufficient'. And all of these birds must be killed with one stone.

For each case brought before the BIBC, the Bench will be composed of a professional magistrate-president. These presidents will be recruited out of the judges of the Belgian ordinary courts on the basis of their knowledge of English and their expertise in international trade law. Additionally, two judges, called 'judges in the BIBC', will be seated beside them, who will be either Belgian or foreign specialists in international trade law (lawyers, in-house counsel, lecturers etc.) This unique collaboration between professional judges that are ad hoc delegated by the existing courts and tribunals and lay judges makes it possible to set up a 'semi-permanent' tribunal—permanent *in abstracto*, ad hoc or temporary *in concreto*—that gets to work when a specific case arises.

The collective case law, developed by prominent specialists in international trade law, will enable the BIBC to rule in the first and final instance, which will further the efficiency of the proceedings and the authority of these judgments. Furthermore, it will help stakeholders to make a well-considered choice between a single instance in Belgium or a system of first instance followed by an appeal abroad.

There is no doubt that the specific expertise and the composition of the bench of the BIBC will seldom require a 'real' appeal. Moreover, an appeal to the Cour de Cassation (Court of Cassation) for infringement of the law is possible—in case of annulment followed by a referral to the BIBC. Last but not least, a great asset of the BIBC is the national and international automatic enforceability of its judgments.

Belgian civil procedure law does not necessarily give the most appropriate tools to settle such disputes, all the more if those disputes have no legal or factual link with Belgium. The organisation, the competence, including the resolution of conflict of jurisdiction, and the operation of the BIBC, including the proceedings, are therefore in principle exclusively governed by specific rules.

It seemed a good idea to apply, *mutatis mutandis*, at least in principle, the Model Law on International Commercial Arbitration ('Model Law') of the United Nations Commission On International Trade Law ('UNCITRAL'). This Model Law is the most appropriate instrument precisely because it has been drafted in order to settle international commercial disputes. It adequately takes into account the differences in approach between the Western continental and Anglo-American legal systems, especially with regard to the presentation of evidence. Moreover, UNCITRAL rules are well known by the international business community.

As mentioned, the BIBC must in principle be 'self-sufficient', not only because public resources are limited, but also because of the special costs related to the assistance of prominent experts. Therefore, parties will be charged significant registration fees, not in the least to compensate the ordinary costs for the temporary loss of capacity when one of the judges of the Belgian courts is called upon.

I have no doubt that the BIBC will improve legal services not only for the international, but also for the domestic business community. If rules of jurisdiction are met, companies will be able to resort in English to a Belgian state judge. In this way, the BIBC will contribute positively to the quality of the Belgian justice system. And this aspect is a significant factor making our country attractive to investors.



Koen Geens
Minister of Justice, Belgium

Koen Geens is the Minister of Justice in the Belgian federal cabinet. He took office in October 2014, after serving as Minister of Finance from March 2013 to October 2014. He studied law at UFSIA (University of Antwerp) and subsequently at the Catholic University of Leuven (KU Leuven), graduating in 1980 and received an LL.M. degree from Harvard University in 1981. He received his Doctor's degree of Law in 1986 becoming a professor in corporate and financial law and is still teaching at KU Leuven. Koen Geens is the author of many works in the field of corporate law, and a member of the editorial staff of several legal series and law reviews.



The Netherlands Commercial Court

Introduction

On 11 September 2014 the president of the Council for the Judiciary, Frits Bakker, expressed the ambition to create a Netherlands Commercial Court ('NCC'). This marked the start of an investigation into the possibilities and prospects of an NCC, followed by a process of legislative review and the drafting of appropriate rules of procedure.

Many people and organisations were involved in these processes. Consultations were held with stakeholders from industry, legal practice, the judiciary and the Ministries of Economic Affairs and Security and Justice. Consultations were also held with employer organisations, as well as with the Dutch central bank, and the Ministry of Finance.

Given the positive responses, a project committee was subsequently set up, consisting of judges, appeal court judges and associates of the Council for the Judiciary. The committee investigated the various legal and organisational aspects that would be relevant

to an NCC. In doing so, it consulted with the Netherlands Bar Association, the Netherlands Arbitration Institute and the Netherlands Supreme Court. An external focus group was set up consisting of representatives of Dutch companies operating internationally, employer organisations, the Netherlands association of in-house lawyers and Dutch lawyers with an international practice.

All of this ultimately led to a definitive decision being taken by the presidents and the Council of the Judiciary on 29 June 2015 to create an NCC.

Why a Netherlands Commercial Court?

- There is a proven demand in the Netherlands for a specialised English-language court process for handling major international matters.
- Commerce is becoming more and more international, transactions are becoming increasingly technical in a legal sense and English has increasingly become the working language

- Litigation in Dutch is impractical for multinationals whose legal departments are located outside the Netherlands and who correspond internally and with their counsel in English. The same increasingly applies for Dutch companies that operate internationally and whose legal divisions are more often than not mainly staffed by a foreign lawyers.
- The dispute resolution is moving away from the regular courts to arbitration and foreign (English-language) judicial systems.
- The Dutch court system has a good reputation internationally.
- Dutch judges are known to be competent, efficient and upstanding, and Dutch justice is seen as reliable and predictable. Additionally, Dutch procedural law and Dutch legal fees make it a very affordable option.

The features of the NCC

The aforementioned consultations, investigations and talks brought to light a large number of requirements that the NCC needs to satisfy.

- The NCC is to focus on major international disputes
- The parties must have elected the NCC
- The language of process is English
- The law of process is Dutch procedural law
- Consumers and small businesses shall be protected
- Summary proceedings, appeals and appeals in cassation shall be provided for
- The proceedings shall be conducted digitally.

What is the NCC?

The NCC will be part of the Netherlands judiciary and the proceedings will be Dutch legal proceedings.

The NCC will not be created as a new court. It will be a chamber of the Amsterdam District Court and for the appeal the NCCA will be a chamber of the Amsterdam Court of Appeal.

For parties to elect the NCC (and thus opt for proceedings in English in accordance with the specific NCC Rules) it is necessary for parties

- i. to designate the Amsterdam District Court as the competent forum (or the Amsterdam Court of Appeal should parties agree to bring their actions there directly); and
- ii. to express their consensus for the proceedings to be conducted in accordance with the NCC Rules.

Parties may agree to litigate in accordance with the NCC Rules either before or after the dispute has arisen. A further condition for such an agreement to be legally valid is that the matter concerned must lie within the autonomy of the parties to agree upon.

English as the language of process

The most important feature of the NCC is that litigation will be conducted in English. For this, a statutory basis is required to allow an entirely English-language process at the NCC (including its judgments).

A new Article 30r of the Dutch Code of Civil Procedure is currently before the Senate of the Dutch Parliament. This new article stipulates that if parties have designated the Amsterdam District Court or the Amsterdam Court of Appeal as the competent court, they can agree to litigate in English in accordance with the NCC Rules.

This provision implies that a choice for the NCC consists of two elements, a choice of forum designating the Amsterdam District Court (or the Amsterdam Court of Appeal) and an agreement to litigate in English in accordance with the NCC Rules.

The intended amendment thus only provides that parties are able to agree to litigate in English if they have elected the Amsterdam District Court (or Amsterdam Court of Appeal), but does not contain further requirements on the choice of forum or the agreement to litigate in English. These matters are subject to the regular rules (of private international law) that pertain to choice of forum and the law applicable to the agreement involved. This means that the statutory amendment is kept to a minimum.

What cases can be brought before the NCC?

The intention is to avoid as many legislative changes as

possible, and this is considered to be desirable given the time involved in such changes. Therefore the legislation is restricted to the necessary minimum and separate rules of procedure will be drawn up for the NCC (the NCC Rules).

The objective of the NCC is to focus on major international commercial disputes, exclusively on account of its expertise and mode of process. The definition of 'an international matter' is laid down in the NCC Rules. One or more of the following criteria shall be involved:

- at least one of the parties is domiciled outside the Netherlands, or is a company established outside the Netherlands, or incorporated under foreign law or is the subsidiary of such a company;
- foreign law is applicable to the dispute or the dispute results from an agreement drafted in a language other than Dutch;
- at least one of the litigants is a company, or a subsidiary of such a company, of which the majority of the employees worldwide work outside of the Netherlands;
- at least one of the litigants is a company, or a subsidiary of such company, of which over half of the consolidated revenues are achieved outside of the Netherlands;
- at least one of the litigants is a company, or a subsidiary of such company, of which securities are traded on a regulated market outside the Netherlands as defined in the Dutch Financial Supervision Act (Wet op het financieel toezicht);
- the dispute concerns legal facts or legal acts outside of the Netherlands or another relevant cross-border interest is involved.

The NCC rules also stipulate that such criteria need to be satisfied either at the time the case is initiated, or at the time that the election of the NCC is agreed upon.

A further limitation is that the NCC will not hear matters that fall under the exclusive jurisdiction of a different chamber, such as the Enterprise Chamber of the Amsterdam Court of Appeal, the Patent Chamber of the District Court of The Hague and the Maritime Chamber of the Rotterdam District Court.

It will be possible to present regular collective actions to the NCC, provided of course that there is agreement between the parties on a choice of the NCC.

There will be no financial threshold for NCC cases. This was so decided because matters with a smaller financial interest can also be complex and parties may wish to put these to the NCC because of its expertise in international trade disputes.

Consumers and small businesses

A point of attention is the position of consumers and small businesses. There is a concern that they should not be forced into proceedings in English and the accompanying higher court fees.

In order to ensure that consumers and small business are not sued in the NCC without their express consent, the new Article 30r of the Dutch Code of Civil Procedure will stipulate that parties in matters subject to the jurisdiction of the cantonal courts, (which deal with matters less than €25,000, employment matters and lease disputes), cannot agree to litigate according to the NCC Rules. Furthermore, the new Article 30r will provide that the parties must have agreed expressly to litigate in English, which rules out agreeing for the NCC simply by way of general terms and conditions. Combined with the requirement for the dispute to concern an international matter, the interests of consumers and small businesses are sufficiently protected in this manner.

Court fees

To ensure that the NCC does not burden the budget of the regular courts, it has been stipulated that the NCC must be financially self-supporting.

In line with this, the NCC court fees will be higher than those of the regular Dutch courts. Based on an estimation of the number of cases to be expected, and the (average) costs for processing a case, an amendment to the annex to the Dutch Civil Cases (Fees) Act (Wet tarieven in burgerlijke zaken) is being provided for now, which sets the court fee for all NCC cases at €15,000 (first instance) and €20,000 (appeal).

It has been decided not to apply a differentiation according to matter value. A 'pay-as-you-go' system was considered as an alternative. Under such a system, additional court fees become payable depending on the additional efforts required by the court. Ultimately,

this idea was abandoned, in part so that the costs would be predictable.

The judges

The judges, appeal court judges and legal associates will have extensive experience in international commercial cases and a good command of (legal) English. These judges will be drawn from the various courts in the Netherlands. As such they will sit 'part time' as NCC judges, alongside their other duties.

The procedure

As I said, separate rules of procedure are drawn up for the NCC.

The following provisions in the NCC Rules are worth mentioning here.

Case management conference

The point of departure is that the processing of a matter starts with a case management conference. This hearing is of an informal and practical nature and is not a one-off event, but may be held whenever there is occasion to do so. The purpose of case management conferences is to enable a decision to be given as efficiently and effectively as possible, and that it is clear to the parties what is expected from them from the very start.

Motions

Motions need to be brought concurrently as much as possible and must be disposed of and decided on within short time limits (claim, defence, and where necessary hearing).

Designated judge

All cases will be assigned their own designated judge. The designated judge takes all process decisions, presides over the hearings, including the introductory case management conference and the hearings of witnesses, except if it is decided that a multi-judge panel should preside over these matters. In principle, the designated judge remains in charge of the case until the final judgment. In addition to the designated judge, a designated clerk will remain associated with the case.

Litigation practices

Additionally, the Rules endeavour to be in line with elements of litigation practice at existing commercial courts and international arbitration institutes, such as the IBA rules on the taking of evidence in international

commercial arbitration, to the extent that this promotes an efficient manner of litigation that is also familiar to foreign parties.

Legal fees

The parties may agree on the amount of legal fees to be paid to the prevailing party, either before or during the proceedings. This would usually be one of the matters to be discussed at the initial case management conference. In the absence of an agreement between parties, the NCC will apply a standard rate that will be published on the NCC website. If appropriate, the NCC may award a reasonable surplus to the standard rates on the basis of an assessment of the fees actually incurred.

Confidentiality

Like all other Dutch legal proceedings, NCC proceedings are not confidential. The NCC may, however, rule that certain information provided during the proceedings must be kept secret and it can set penalties for any breach of such a ruling. The judgment itself will be pronounced publicly as provided for by article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

This is a summary of the present state of affairs as at November 2018. It is expected that the new law providing for an entirely English-language process will be enacted in at the end of this year and that the Netherlands Commercial Court will be established by beginning 2019.

Postscript

The law providing for the NCC has now indeed been enacted, as of 1 January 2019, and the NCC has issued its first judgment on 8 March 2019.



Duco Oranje
Judge Court of Appeal Amsterdam

Duco Oranje commenced practice at the Dutch Bar in 1985. While at the Bar he had an extensive international law practice, involving arbitration, insolvency, corporate law and banking law. He also acted as arbitrator in various international ICC arbitrations. As judge in the Amsterdam Court of Appeal he deals with commercial matters, mainly corporate and banking. He is president of the Netherlands Commercial Court of Appeal.

Commercial Courts in Germany



Ladies and Gentlemen,

Thank you for the opportunity to present this note on the existing German system of commercial courts as well as an initiative to expand the jurisdiction to a more international level. My name is Heike Hummelmeier and I am presiding Judge of a chamber for commercial matters. I have been a judge for more than 20 years and have been in this particular job for over six years. I am also the Chief Justice of the newly established Chamber for International Commercial Matters.

The German system of handling commercial matters has a long-standing tradition, dating back to the year 1877. It is based on Sections 93 to 114 of the German Courts Constitution Act (*Gerichtsverfassungsgesetz, GVG*).¹ Commercial cases are usually heard at the regional court and, on appeal, at the Higher Regional Court. The establishment of commercial courts is optional for each German federal state and each German court. However, all German regional courts

offer at least one chamber for commercial matters. All of the 115 regional courts in Germany have established Commercial Chambers, although, as has already been pointed out, there is no statutory obligation to do so. My court, the Regional Court of Hamburg, maintains 16 Commercial Chambers. It is the second largest regional court in Germany.

The scope of the jurisdiction of the German Commercial Chambers is set out in section 95 of the Courts Constitution Act, *inter alia*:

- claims against merchants (including legal entities) arising out of mutual commercial transactions;
- financial and banking cases;
- claims arising out of corporate relationships, for example, between the members of a company or of commercial partnerships or between the managers of a commercial partnership or company;



- stock corporation cases;
- merger and acquisition cases, mainly claims arising out of the legal relationship in the context of the acquisition of a commercial business between the previous owner and the acquirer;
- intellectual property cases, mainly based on the infringement of registered trademarks or registered designs;
- unfair competition cases; and
- maritime and transportation cases—Hamburg has one of the biggest harbours in the world and the biggest harbour in Germany, therefore, we have to deal with a wide range of transportation cases.

The Hamburg Court, as many of the bigger courts in Germany, has allocated certain types of cases to one particular chamber of commercial matters—

transportation cases, intellectual property cases and so on—thus, all of these are handled by a very experienced judge in that particular field of law. For example, my Chamber specialises in handling transportation cases.

A Commercial Chamber comprises one professional senior judge and two legal laymen. These are all well-experienced and well-regarded members of the business communities—usually senior managers with a very high reputation within the local businesses. These lay judges are proposed by the local Chamber of Commerce and chosen by the professional Judge for a period of at least five years. My ‘lay judges’ have been in duty for up to 25 years already. Being chosen as a lay judge for a chamber of commercial matters is recognised as an honour within the business community—they put it on their business cards and websites—and, therefore, we are lucky to have a choice among many applicants.

With the consent of the parties, the case may also be heard and decided in the Commercial Chamber without the lay judge. This consent nowadays is usually granted. The participation of lay judges, as highly as they might be recognised, usually leads to a certain amount of delay within the procedures because of the fact that the lay judges—being businessmen, CEOs and important persons within the community—have very tight personal schedules of their own. The judge more or less lives in the court while the lay judges have to make an appointment.

The court fees depend on the respective case value and are regulated by law. They are very low compared to other international provisions and extremely low compared to the cost of arbitration. In principle, the party not prevailing in the dispute has to bear the court costs and to pay the other party’s reimbursable legal costs.

German civil proceedings foresee an active judicial case management on the basis of a sound factual and legal preparation of the respective case. A court hearing can be expected to be scheduled within approximately four months of the civil action’s filing date and court fee payment. In accordance with the German Code of Civil Procedure, oral hearings in civil and commercial cases commence with a conciliation hearing (*Güteverhandlung*) in which the possibilities for an amicable settlement are discussed with the parties. Indeed, the court encourages such a settlement at every stage of the proceedings and also informs the parties of their preliminary legal and factual assessment

of the case in order to facilitate such settlement negotiations. This can also include a professional cost/risk/benefit analysis.

In fact, in the very first oral hearing I will tell the parties exactly where—in my point of view—their legal risks and chances are to be seen and allocated. I do tell them what kind of evidence regarding the facts of the case will be taken, how long this might take and how much money this will cost. I inform the parties about the court's intentions as to the further case management on the basis of its preliminary legal and factual assessment of the case. The parties may exercise their right to be heard either directly in the oral hearing or in written pleadings. A further oral hearing may be necessary if witnesses or expert witnesses need to be heard. After the first hearing, each party is able to evaluate the chances and the challenges of their case. In about 60 percent to 70 percent of these first hearings, a settlement can be obtained. In the oral hearing, minutes are taken by the presiding judge. Such minutes include, *inter alia*, the parties' pleas made during the oral hearing, judicial guidance as to the further case management, any settlement reached as well as any interim or final decisions of the court. If the parties are not able to reach a settlement, a court decision can be expected within 12 months.

We are proud of our judicial system, of the low costs, the transparency, the absolutely non-corrupt judicial personnel and, of course, its efficiency, especially, but not exclusively, regarding highly efficient enforcement mechanisms. The Regional Court of Hamburg (*Landgericht Hamburg*) enjoys a very high reputation—both nationally and internationally—for the quality and expeditiousness of its jurisprudence, especially in international commercial cases and in the areas of unfair competition/commercial practices and transportation law. Hamburg's port—the largest in Germany and the third largest in Europe—as well as the city's Hanseatic tradition and its two law faculties (University of Hamburg and Bucerius Law School) further contribute quality to the Regional Court of Hamburg and enhance it as being an attractive forum for international disputes.

Still, it is noted that 'The language of the court shall be German'. This is a clear and very traditional provision in the German Courts Constitution Act

which also reflects a long-standing tradition. However, facing the challenges of evolving international businesses, Germany strives to establish an even more internationally-orientated court system. First steps already have been taken. For instance, as of 1 May 2018, the Regional Court of Hamburg offers parties to civil and commercial lawsuits to have their cases' oral hearings conducted in English by mutual consent. The Regional Court of Hamburg's English-speaking commercial divisions were established for cross-border disputes of English-speaking parties, allowing them to benefit from Germany's very efficient legal system.

As mentioned, oral hearings can be conducted in English before the Commercial Division of the Regional Court of Hamburg in international cases by the mutual consent of the parties. The request for an assignment or a referral of a case to this particular Commercial Division of the Regional Court of Hamburg, due to its international character, must already be contained in the statement of claim and agreed to by the defendant in the statement of defence (in preliminary written proceedings) or, where an early first hearing is scheduled, in that early first hearing. In its English-language proceedings, the court can also interrogate witnesses in English and consider evidence/annexures in English without the need for such documentary evidence to be translated into German.

The establishment of an English-speaking Chamber for Commercial Matters shall serve to establish Hamburg as an international place of jurisdiction by bringing in international proceedings, which have been conducted in England so far, to Frankfurt. After BREXIT, the enforcement of judgments within the European Union will no longer apply to judgments rendered by English courts. Hamburg is willing, as are other German cities, to take over these cases not only due to its importance as a trade and transportation metropolis, but also due to its infrastructure and special competence in commercial law.

However, the establishment of an English-speaking Chamber for Commercial Matters is only a first step in the right direction. Although the court proceedings are held in English, the written submissions and the decisions will be prepared in German. Further improvements are already on their way. Germany, as well as other countries, seeks to establish specialised Commercial Courts. These courts would complement

the Chambers of Commercial Matters and offer commercial litigants a much more adequate forum for settling cross-border commercial disputes. They would come with a number of advantages that the existing courts are not able to offer.

To begin with, the planned Commercial Courts will be a very international forum.³ Not only the court hearings, but all of the proceedings—from the statement of claim to the court's decision—are planned to be held in English. They will better respond to the needs of international commercial parties than the Chambers of Commercial Matters which are embedded in the existing German judicial structure.

In particular, the plans aim at creating a forum that is able to position itself as a highly experienced and neutral forum for the settlement of international disputes of high value. Just like an international arbitral tribunal, it will be equipped with experienced commercial law judges. The forms of participation of lay judges who offer their particular expertise is still under discussion. The professional judges will ensure that the Commercial Court has the necessary legal expertise and experience to settle international disputes. And they would credibly signal that the Court offers neutral dispute settlement that will not favour one of the parties.

Right now there is a wide-ranging discussion in Germany about commercial parties' needs, international best practice as well as existing law instruments relating to transnational dispute resolution, like the question of how to further strengthen the existing Chambers for Commercial Matters. The current discussion tackles of course the question of the language of the court. As has already been pointed out, there is a general understanding that all proceedings should be held in English. But, furthermore, the Court is intended to allow flexible rules of procedure to ensure an active and efficient case management in response to businesses' needs. Cross examination of witnesses, confidentiality and a very well-defined case management are expected. Finally, the Court should have appropriate staff, buildings, resources and a good IT infrastructure. That infrastructure should allow for electronic filing of claims, electronic communication with the Court, electronic submission of documents and witness statements as well as electronic payment of court fees.⁴

The Commercial Court should only deal with cases of a certain value—probably only cases with a value of more than EUR 1 million onwards—and be located at the higher regional courts. This means that one level of jurisdiction has been cut out, but it will speed up the procedure and the parties will come to an end much faster.

Thank you for your attention.

Heike Hummelmeier

Notes

¹ The following text is partly based on the Court's website: see <https://justiz.hamburg.de/landgericht-hamburg/zustaendigkeit/> as well as the work of Dr Jan Tolkmitts and the author's contribution to the work of the Standing International Forum of Commercial Courts. See, for instance, <https://www.sifocc.org/2019/02/05/report-of-the-second-sifocc-meeting-new-york-2018/>.

² Based on <http://conflictflaws.net/2018/towards-a-european-commercial-court/>.

³ See <http://www.rechtsstandort-hamburg.de/uploads/media/Mindestanforderungen.pdf> (in German).



Heike Hummelmeier

Judge, Chamber of Commercial Matters at the Hamburg Regional Court

Heike Hummelmeier, born 1965, studied administration and subsequently worked at the regional administration in Kassel (1983-1988). Thereafter she studied law at the Georg-August-Universität at Göttingen, Germany (First State Exam 1991). She served as legal clerk (Referendarin) at the Court of Appeal in Celle with trainees at the University of Speyer and at the German Embassy in Reykjavik/Iceland (Second State Exam 1994). Thereafter Heike Hummelmeier worked as lawyer (Rechtsanwalt) in an international law firm specialising in real estate law. Since 1997 she has been a judge at the Hamburg Regional Court (Landgericht), including in chambers for construction, rent, criminal and enforcement of judgements. In 2008 she had been seconded to the Hamburg Senator of Justice as a advisor for civil procedural law and head of the department for supervision of trusts. Since 2012, Heike Hummelmeier is the presiding judge of a Chamber of Commercial Matters at the Hamburg Regional Court. She has extensive training and examination activities and since 2009 teaches also at the National Judicial Academy in Beijing/China.

The Latest Judicial Practices on the Identification of Employment in Internet-platform Industries in China (Part One)

The Sharing Economy mobilises and matches service providers through big data mining generated from ‘information platforms’, and related disputes regarding the rights and interests of service providers with employment law involved begin to arise. Several typical cases reveal the logic behind the court’s judgment by analysis of the power structure of labour and management behind the cases.



Background

The Sharing Economy in Four Years: the Momentum is Rapid, Labour Disputes Appear

Since 2012, with the emergence of 'Didi Taxi', the sharing economy has gradually stepped onto the stage of China's economic landscape. Since then—in addition to e-commerce—mobile payments, audio sharing, online rentals and shared bicycles were initiated, one after another. In 2015, the so-called 'first year of the sharing economy', the sharing economy began to cover all aspects of social life. Services such as driving, housekeeping, beauty, hairdressing, cooking and daily maintenance necessities were becoming internet-based, in succession. A major feature of the economic operation model is that, at the application level, platform companies mobilise and match service providers through big data mining generated from 'information platforms'. This new mode of employment has realised the digitisation and informatisation of business information, work instructions, fund settlement and market evaluation and the previous concepts of working time and space conditions have been diluted. Because of this, problems such as the protection of the rights and interests of service providers have gradually emerged and related disputes have begun to arise. These disputes include not only individual disputes of the internet anchor and housekeeping service personnel, but also group disputes such as online cargo drivers and takeaway riders. In April 2018, the People's Court of Chaoyang district in Beijing analysed 188 internet platform enterprise labour dispute cases from 2015 to the first quarter of 2018. In addition, the courts in Shanghai and Jiangsu also published the judgments of relevant cases through the official media. China's discussion on the legal issues of the employment of platform enterprises is intensifying.

Labour Relations in Digital Labour: From 'Ism' To 'Problem'

The dispute over the identification of employment under the sharing economy platform (also called 'the internet platform') has a long history. In 2014–2015, the practice circles, including government officials, judges and lawyers, almost unilaterally were of the view that in the context of the country's vigorous development of 'Internet +', the external employment in the sharing economy should apply a more relaxed standard of labour relations. Only some labour law scholars have suggested that they should learn from the experience of Germany, Italy and Japan to prevent internet service providers from entering the situation of 'marginal people' with no basic salary, no

unnecessary expense reimbursement, no social security, a high turnover rate and no economic compensation.¹ With the expansion of the scope of disputes, practical and theoretical research has gradually deepened. Sociologists began to use the field investigation method to study the service provider's employment psychology² and labour relations scholars began to conduct quantitative research on capital control of labour through internet technology.³ Some network law scholars have earlier noticed the essence of the 'illegal rise' of the sharing economy. From the two dimensions of digital labour and the platform economy, they continue to pay attention to the definition of property rights and responsibility avoidance in the integration of social resources.⁴ This article selects several typical cases of sharing economic platforms and reveals the logic behind the court's judgment by subtle analysis of the power structure of labour and management behind the case and proposes to expand the scope of view to pay attention to the governance recommendations of the rights and obligations of various participants.

Typical Cases and Characterisations of Such Legal Relationships

Typical Labour Dispute Cases Involving Sharing Economy Platforms

(a) *Zhang Qi v Shanghai Happy-fast Information Technology Corporation*

In *Zhang Qi v Shanghai Happy-fast Information Technology Corporation* ('the Chef case'),⁵ the defendant company ran an app called 'Good Chef', through which people could book online to provide cooking services. The plaintiff was a 'network chef' who complained through arbitration proceedings since he was dissatisfied with the company's 'wage stoppage' and asserted that the two parties were in formal employment and not in a contractual 'cooperative relationship' and that the company should pay the double wages indemnity for not fulfilling the legal obligations to sign the employment contract, and in regard to overtime pay, illegal termination indemnity etc. The case was heard by arbitration in the first instance and second instance. The court of second instance finally confirmed the employment between the two parties and supported the claim for economic compensation.

(b) *Liu hui v Tianjin 58-to-home Home Service Corporation*

In *Liu hui v Tianjin 58-to-home Home Service Corporation* ('the Manicurist case'),⁶ the plaintiff signed a contract

to enter into the 'More Beautiful' APP platform operated by the defendant and signed the '58-to-home service agreement'. After the defendant refused to pay social insurance and the full amount of remuneration, the plaintiff unilaterally terminated the contract and appealed through arbitration, asserting confirmation of employment and payment of corresponding compensation. In this case, the Court did not confirm the employment because the plaintiff did not prove that the defendant had sufficient managerial responsibilities in respect of the plaintiff.

(c) Xue et al v Shanghai Shenzhou East China Automobile Rental Corporation et al

The case of *Xue et al v Shanghai Shenzhou East China Automobile Rental Corporation et al* ('the Online Taxi-Booking Driver case')⁷ involved an online-booking taxi driver ('Shi'), the online-booking taxi platform company ('Shenzhou company'), the outsourcing company and the harmed person ('Xue'). Xue was attacked by Shi. Shi was an official employee of the outsourcing company and he was performing the business distributed by Shenzhou company. In addition, the vehicle was registered as a non-operating vehicle under the name of Shenzhou company. Subsequently, Xue took those three parties to court. Since the court of first instance only determined that Shi had employment with the outsourcing company, the outsourcing company was sentenced to bear the liability for the compensation exceeding the compensation scope of compulsory traffic insurance and it was held that the platform company did not need to assume employer responsibility. Xue appealed on the basis that the platform company and the outsourcing company should bear joint responsibility. The court of second instance supported this claim.

(d) He Yi v Shanghai Panda Mutual Entertainment Culture Corporation

The plaintiff in *He Yi v Shanghai Panda Mutual Entertainment Culture Corporation* ('the Online Anchor case')⁸ was an online game anchor of the defendant's online live broadcast platform company, and signed an exclusive cooperation agreement with the defendant. The plaintiff's position was that the two parties were in an employment relationship and he brought the case to arbitration and asserted that the defendant had to pay the double wage indemnity for failing to sign an employment contract. After arbitration, in the first instance and second instance, the court finally failed to hold in favour of his request.

(e) Li v Beijing Must Response in Same City Technology Corporation

In *Li v Beijing Must Response in Same City Technology Corporation* ('the Flash Courier case')⁹, a flash courier, Li, was involved in a traffic accident while he was performing a delivery. In order to enjoy the work injury insurance benefits, he took the 'flash delivery' platform operator to court, requesting confirmation of an employment relationship between the parties. The crux of this case was that the court analysed the business scope of the platform company and determined that it actually provided the cargo transportation business and then confirmed the employment relationship between the two parties after examining whether the elements of employment were present.

Characterisations: a Legal Relationship Model Different From Past Employment Relationships

(a) Background

It is worth noting that although in the Chef case, the Flash Courier case etc., employment was confirmed, such a finding still only constitutes a small portion of all similar cases. In current cases of labour disputes arising in the context of sharing economy platforms, the platform almost invariably refused to recognise the employment relationship with the service provider and the courts have mainly relied on *The Notice on Related Matters to Judging the Employment Relationships* promulgated by the Ministry of Labor and Social Security in 2005, to examine four parameters in the nature of the subject, management behaviour, payment of remuneration and business subordination. Accordingly, the legal relationship model of the sharing economy platform presents four characteristics different from the characteristics of past employment relationships.

(b) Practitioner Equipped With Instruments of Labour

This means that the service provider may complete the task with its own work materials and work ability. The Internet platform only provides business information and settlement support and the service is provided without the cooperation of other practitioners. However, the establishment of employment relationships is that the practitioner must be attached to the employer and work under the cooperation of other employees under the organisation of the employer.

(c) Business With a Contract Nature

In the past identification course of employment, the employer or organisation of the practitioner often mastered

the internal standards and external pricing of the products produced and supervised the implementation of industry access and industry standards. However, at least in the early days of establishment, the sharing economy platform often does not regulate the entry conditions of operators, service standards and pricing. Some platforms even allow practitioners to get paid directly from customers. Practitioners are almost self-employed. Evidently, the internal and external responsibilities caused by the practitioners are also assumed by oneself.

(d) Platform Enterprises Whose Business Scope is Not Consistent With the Business Objective

Practitioners obtain service information from the internet platform, but the internet platform does not recognise the enjoyment of labour results. Platform companies often claim to be engaged in the development and operation of application software and the integrated push of service information and do not directly operate the physical business. Therefore, there is a large distance between the practitioner's labour and the business scope of the internet platform.

(e) Weakening Subordination

The subordination referred to here is expressed at three levels: First, the subordination weakens from the view of time and space, which means that the practitioner may have the autonomy to decide whether to work and the work time and even the work form and is no longer in full-time standby or a working state. 'By one mobile phone, you can work all over the world'. Second, the subordination weakens from the view of task dispatch, that is, a situation of so-called 'grab orders' rather than the dispatch. After the customer enters the consumption information into the internet platform or the internet platform collects the consumption information, the information is shared among the practitioners' terminals and the practitioners choose to conduct services or compete according to standards such as time and distance and the competition winners complete the service. Third, the subordination weakens from the view of core interests as is discussed in the second characterisation.

Platform Company: Excluding Employment by Agreement, but Strengthening Management De Facto

Overview

If you are a job seeker and want to find a service opportunity through the platform, after logging in to the platform's APP or webpage, you will find that the

platform is often set up with a 'business portal'. However, when you click (although you won't click in most cases) a small line called 'User Service Agreement' during the registration process, you will find that you are defined as a 'server' and that the 'server' in the agreement refers only to 'individual users'. There are also written disclaimers such as 'in between the platform and you there is no employment or even service relationships'.

The question which arises is whether sharing economy platforms strengthen or weaken the management of service providers? General exclusions in such agreements do not represent the exclusion of management in practice. On the contrary, unlike the outside world's beautiful imagination of the platform economy, after the baptism of rounds of market, the management of service providers by platform companies is continuously strengthened. Moreover, in the world where the code is the law, the change of legal relationships may only occur in an app upgrade and the termination of the legal relationship may also be turned into a 'banned access' on the screen. Due to space limitations, the author will not provide a theoretical analysis, but focus instead on the *status quo* and evolution of the internet platform service provider's relationship in regard to 10 points relevant to the allocation of rights and obligations which are now examined.

Deposit

Platform companies often charge deposits to service providers. The effect of the deposit seems to be obvious, that is, the usage fee of the production materials: for example, in the Chef case the platform company said that the deposit was 'the rental fee for providing the chef's clothes and cooking utensils, and is refunded when the items are returned'. In addition, some platforms also charge a deposit for the transaction. For example, in the Manicurist case, when the platform company agreed that when the service provider used the platform to obtain the service order information, he or she should pay the deposit to the platform.

However, the use of this deposit is often interwoven with the other function of platform companies. The production materials provided by the platform enterprises are accompanied by the logo of the platform. The deposit obligation actually constitutes the publicity obligation of the service provider and constitutes the platform packaging of the service provider. The deposit is also deducted for the share of the platform enterprise from

the service fee. The platform enterprise may also deduct the depreciation cost caused by the service provider's use of the production materials from the remuneration received. In addition, some platform companies will also use the deposit as a leverage of retention service when it is restructured, such as regulating that 'no refund for the resignation within half a year, half for beyond half a year to one year, and full for beyond one year'.

Training and Attendance Check

Based on the requirements of standardised services and the consideration of platform packaging, platform companies often conduct pre-employment training. For example, in the Manicurist case, the platform company required her to participate in standardised training for services according to its order service standards during the trial period. According to the manicurist, the training included nail technology, service processes, how to use the 'More Beautiful' app platform and how to serve customers.

In addition, platform companies are not without attendance requirements. In the Chef case, the chef said that he must report to the office where the company managed staff and the dispatch station at 10:00 in the morning, and must check in at 18:30 in the evening. The registration form was by clocking in and the salary was deducted when he was late. In the Manicurist case, the manicurist also said that the platform company stipulated the break time of the manicurist in the app platform and had a four-day break in one month. The leave request must pass through the platform and must be submitted to the team leader appointed by the platform company. After approval, the manicurist could take leave.

Remuneration Payment

Remuneration payment, as a core parameter of the legal relationship between the two parties, requires special attention. In the context of revenue sharing, platform companies often master pricing, control distribution and issue fixed 'rewards' on a monthly basis but exclude monthly payments as a qualitative measure of wages in legal relationships.

(a) Revenue-Sharing Model

The reward distribution model of platform enterprises and service providers can be categorised in two ways based

on whether the platform enterprises take a commission. In the case that the platform enterprises take a commission, the information collection from the supply and demand sides is the main business purpose and the profit point is mostly the advertising fee. In the case that platform companies do not take a commission, the profit point has shifted. In the Chef case the platform company provided the chef with the above two ways of sharing benefits. The chef chooses the second type, that is, not only accepting the on-site cooking service that the customer orders through the platform, but also accepting the platform assignment from Party A to schedule the on-site cooking service. At this time, the customer's service fee is allocated 50 percent by each party and the platform pays the chef for the expenses incurred by the dispatch. In the Manicurist case, the two parties agreed to have an information service fee drawn by the platform, which was 20 percent of the monthly payment service fee for the platform.

Remuneration payment, as a core parameter of the legal relationship between the two parties, requires special attention.

(b) Pricing Power of Services

On the surface, self-employed persons should have the pricing power of the services they provide, including the decision on the initial price and the price adjustment rights based on objective conditions or customer requirements in the actual service process. However, in practice, platform companies tend to firmly control the price agreed by the two parties on the platform to prevent breach of contract or fraud and damage to the interests of the platform. In the Chef case, the platform company stipulated that the service price of the chef shall not be modified without authorisation. If the service price charged to the appointment customer was changed in violation of the regulations, the platform enterprise had the right to immediately terminate the cooperation relationship and demand compensation for the corresponding loss.

(c) Settlement Object

That is, the payment paid by the customer is paid directly to the service provider or through the platform. In the Manicurist case the platform claimed that the income of the manicurist was from the labour service paid by the nail customer through cash (offline) or online. However, in its agreement with the manicurist, it wrote that if the manicurist used the information service

provided by the platform, then after the trial period, the platform enterprise should be entrusted to collect and manage the order service payment. And, when the platform enterprise settles, it has the right to deduct the information service fee that the service provider should pay to the platform. In the Chef case, the platform company also recognised that the payment received by the service provider was the cooperation fee paid by the platform enterprise as an intermediary platform to collect the service payment from the consumer.

(d) Nature, Standard and Settlement Period of Remuneration

Platform companies often do not recognise the remuneration as wages but recognise the remuneration as a 'package income' based on 'incentive bonuses'. In the Manicurist case, although the platform enterprise claimed that the service provider's labour remuneration on the platform was derived from the service fee paid by the customer accepting the nail service, it also agreed that if the service provider complied with the relevant agreement, according to the platform enterprise business policy, the service provider's monthly income would be no less than RMB10,000 (including meal supplements, order incentives and other incentives based on platform incentives). In the Chef case the platform company claimed that the remuneration paid was the cooperation fee including the incentive award. In the Online Anchor case the two parties agreed that if the anchor reached the minimum monthly live broadcast days, monthly average live broadcast audience number and monthly live broadcast time, the anchor would receive RMB7,000. Although the platform enterprises have agreed on a series of conditions for payment, they are still issued on a monthly basis when the actual payment is made. For example, in the Manicurist case, the SMS evidence provided by the manicurist showed that 'the actual guaranteed wage of this month is RMB9,000, and the actual attendance is 26 days. This month, the expense is RMB0, the total order number is 6,269, the total subsidy is RMB52, the total prize is RMB780, the total penalty is RMB0, the deposit is deducted RMB0 this month, the cash has been received RMB0, the actual wage paid this month is RMB1,035'.

Provision of Services

Corresponding to the payment of remuneration is the provision of services. In the process of providing services, platform enterprises often strictly control the service

providers, the time and place of services, the right to choose and the right to refuse.

(a) Personal Specificity

First, in line with agreements such as publishing, performance and technology development, service providers must provide services by themselves, which demonstrates strong personal specificity. For example, the settlement agreement of an online live broadcast platform stipulates that 'the direct broadcast content specified in this agreement may not be completed by itself or by any third party or in any way without the written consent of the platform' and, once it is violated, the platform has the right to immediately terminate the contract. The online broadcast fee that has not been paid is regarded as liquidated damages. If the amount of liquidated damages is still insufficient to compensate for the loss of the platform, the service provider shall also supplement the compensation.

(b) Time and Place of Service

For the on-site service requirements of customers, platform companies often require service providers to arrive at the service location on time. In the Chef case, if the platform company agreed that the customer would submit a home cooking appointment to the service provider through the platform, the service provider had to arrive at the service place within the time agreed by the customer to perform cooking service for the customer. In the Manicurist case, if the service provider failed to arrive at the service location requested by the customer on time, the platform had the right to punish before the partnership is terminated.

(c) Right to Choose and Right to Refuse

Does the service provider have the right to choose a customer? In the grab-order mode, the service provider certainly has the right to choose the customer, although the result of the selection is uncertain. However, in the dispatch mode, the customer orders through the software online and the platform enterprise will preferentially push a service provider according to the geographic location of the service provider, and therefore, the service provider will lose the option.

So, in this case, does the service provider have the right to refuse? This has become one of the main focuses of judges and both parties in the identification of employment in platform enterprises. For example, in the Chef case the platform company answered that the

The platform enterprise will require the exclusion of any possibility of competition from the service provider.

order could be rejected if it would affect the appraisal. If the service provider did not have time, the platform company could arrange other people, but it was necessary to ask the customer whether to accept or withdraw. The chef otherwise advocated that the order cannot be refused, and if it was refused, the salary will be deducted. There is also a similar opposing view in the Manicurist case.

Supervision, Assessment and Discipline

Based on the comprehensive binding benefits of platform enterprises and service providers, the platforms often supervise and assess service providers and provide corresponding disciplinary measures. For example, on a format agreement from an online broadcast platform, it is stipulated that the platform enterprise has the right to formulate the platform operation system and the management rules for the anchor, has the right to manage and supervise the anchor and has the right to make adjustments or changes to the corresponding rules according to the operation. The anchor understands and agrees; in addition, the platform has the right to inspect and judge the anchor to establish (cancel) the reward or punishment for the anchor. The specific inspection project and standards are separately formulated by the platform, without additional consent from the anchor.

In the Manicurist case the platform company not only had assessments, but also irregular disciplinary systems: during the validity period of the agreement, the platform had the right to assess the service

providers from time to time and had the right to divide the enjoyment level in order information services according to the assessment results and to develop information service policies and related systems during the assessment period. If the service failed to satisfy the customer and the customer complained, the platform had the right to perform a discipline system for the manicurist by scoring. If the customer's bad review or complaint score reached a certain number, the platform had the right to cancel the cooperation with the manicurist. Meanwhile, the manicurist was required to compensate for the corresponding losses.

The second part of this article will appear in the June 2019 edition.

Notes

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- ⁵ Beijing Third Intermediate People's Court. (2017) Jing 03 Minzhong No. 11768.
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- ⁸ Shanghai Second Intermediate People's Court, (2017) Hu 02 Minzhong No. 11631.
- ⁹ People's Court of Haidian district in Beijing. 6 June 2018. Accident happens on the way of flash delivery, the flash courier sues the platform to confirm the employment relationship and is held. 称闪送途中发生事故, 闪送员起诉平台经营者要求确认劳动关系获支持 (accessed 15 August 2018, from <https://mp.weixin.qq.com/s/ot9rdDmrvsZ9igRW3GIPQ>).



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The International Posting of Workers: Obligations and Safeguards

From the modification of the European Union legislation on transnational posting to the multiple possibilities of posting in a foreign territory, this article provides an overview of the fulfillments and obligations of employers, the rules and advantages.

The Fundamental Principles of Posting

Posting is a choice of an employer (the 'Service Provider')—driven by business interests—to temporarily place one or more workers at the disposal of another company ('Receiving Company') for the performance of a given work activity. A notable feature is that, although temporary, posting is different from transferring: the posting in fact is characterised by a more structured mandate given to the Receiving Company about the exercise of managerial power over the worker.

In this regard, it is important to note the continued validity of the original employment relationship between the Service Provider and the worker. While the Service Provider retains 'hierarchical' authority in respect of the worker, the Receiving Company assumes exclusive operational authority in respect of the worker, who simply performs the same work activity somewhere else. As such, posting does not require any specific consent from the worker, unless different tasks are to be performed—that is to say, tasks outside the parameters of work which are part of the original employment relationship.

Should the Receiving Company assign higher tasks than those ordinarily performed, the worker will be entitled to a correspondingly higher salary. The worker will also be entitled to all contractual allowances linked to such specific tasks over the respective period. Holidays, leave and career progressions will remain under the responsibility of the Service Provider, which remains responsible for monitoring the correct execution of the employment.

European Union Directive 2014/67 and Legislative Decree 136/2016: The Transnational Provision of Services

Outline of Requirements

A new framework on provision of services from Service Provider to Receiving Company (including those within the same group) has been recently implemented in the European Union ('EU'). The main focus is to tackle issues such as violation of fundamental workers' rights and unfair competition practices. A very brief illustration of a few requirements will follow below:

1. The posting does not require any administrative authorisation (Directive 2004/38/EC and Regulation (EU) 492/2011); for instance, it is not necessary to apply for a residence permit. The only formalities required being the compliance with specific posting procedures and consequent notifications to the

Ministry of Labour. This is to allow the worker to maintain in his or her initial status (the status as an employee of the Service Provider) all pension and insurance contributions.

2. During the posting and up to two years after its termination, the Service Provider should keep relevant documentation, including employment contracts and pay slips with proof of payment, statements indicating the beginning, the end and the duration of working time, the communication of the establishment of the employment relationship and the so-called mod. A1, a specific certificate showing the regularity of the social security worker's position.
3. As far as social security is concerned it is provided that a worker posted to an EU State may remain insured with the social security of the State of the Service Provider, but this can be only for a maximum period of 24 months. Should the worker be posted again in the same State, a period of two months should elapse before he can be posted once more.
4. Heavy penalties have been prescribed in the event of a breach of rules on posting. The most serious consequences can be suffered where the posting is not recognised as legitimate, for example, when the posted worker is considered as being employed by the Receiving Company. A set of fines are also imposed; merely for the violation of the requirements indicated previously at (2) above, up to €50,000 may have to be paid.

Extra-EU Postings

If the posting is between two States, one of which is outside the EU, with very few exceptions, it will be necessary to obtain a visa. The procedures vary from country to country and may take a long time. Therefore, it is advisable to understand in advance all business needs, in order to work more efficiently on the necessary requirements, making sure that all of them could be complied with without any complications and difficulties. Ordinarily, the Receiving Company is in charge of application procedures, while the Service Provider is simply the addressee of formal communications.

For example, from Italy to an extra-EU country, the procedure of posting or hiring a worker is subject to the issue of special authorisation by the Ministry of Labour. The respective request is to be submitted through a

special online procedure. In the case of countries whose political, social, health and economic conditions do not give certainty in terms of adequate guarantees for the safety of the posted worker (countries identified within a special ministerial list), prior approval of the Ministry of Foreign Affairs is also required. After receiving special authorisation, the Service Provider should notify the execution of (1) the posting, up to five days before commencement of the employment relationship; and (2) the hiring, within 24 hours.

Moreover, very often the Service Provider and the Receiving Company enter into an inter-company service agreement: this is usually to confer full legitimacy in terms of recharging costs, describing for example their composition and method of their determination, as well as to regulate the economic relation between the two, containing, by way of further example, provisions on terms and conditions of posting and a description of posted worker's skills as requested to meet particular needs.

Finally, with regard to transfer pricing it is also necessary to document the criteria for determining the following: (a) costs, while quantifying objectively the costs incurred by the Service Provider; (b) advantages, while proving the effective utility for the Receiving Company; (c) as well as the adequacy of the price and the charging criteria.

A Few Regulatory Aspects in the Context of International Posting

Working and Employment Conditions and Benefits

As to the employment relationship between Service Provider and posted workers over the period, the working and employment conditions to be applied should be the same provided for workers performing similar activities as employees in the country where the posting takes place. To make this point clear, it is advisable that the Service Provider obtain formal consent from the worker who is to be posted. To do this, it is sufficient to provide the worker with a letter of posting, as a supplement to the already existing contract. This letter should show and be supported by data of an economic nature that the work activity for business reasons shall be carried out abroad and it shall be continued exclusively in favour of the Service Provider.

In addition, it should be noted that in the event of a posting longer than 30 days, the Service Provider is obliged to inform the posted worker about the currency in which the salary will be paid, any benefits in cash or in kind related to the performance of working abroad, as well as

any conditions of repatriation. The Service Provider is also obliged to inform a competent authority about the hiring/posting and its termination along with the transformation and extension of employment relationships. In this way, the posting can be conducted regularly.

The Law Applicable to the Employment Relationship

The applicable general principle is the freedom to choose the applicable law. In this sense, the parties are legally obliged to issue their common decision explicitly provided that it is not contrary to international public order. If no choice is made, the following criteria could be applied:

- the law of the country where the employee habitually works in execution of the employment contract, even if temporarily 'transferred' to another country; or
- the law of the country where the registered office of the Service Provider is located, when the employee does not habitually perform his activity in the same country—unless it is clear from the circumstances that the employment contract is more closely connected with another country—in which case, the law of that country shall be applied.

Taxation Aspects: Income Taxation

Article 15 of the OECD Model Tax Convention on Income and on Capital establishes that, as for the taxability of employment income, the legislation of the country where the employment activity is performed should be applicable. In any case, taxation under the legislation of the worker's country of residence is possible, but only if the following conditions occur:

- the worker must reside in the country of employment for a period (or periods) not exceeding (more than) 183 days during the tax year in question;
- remuneration is paid by, or on behalf of, a Service Provider who is not resident in the State of employment;
- remuneration paid by the Service Provider is not borne by a permanent entity which the Service Provider has in the country where the activity is performed.

Social Security Aspects

In the context of international posting, the criteria of *lex loci* legislation (the legislation of the State where a worker is employed) would not generally be applicable.

While, in order to protect social security rights within Europe (including Iceland, Liechtenstein, Norway and Switzerland), the EU provides for common rules (it should be noted that such rules do not replace national systems), in regard to posting outside the EU, the rules governing the employment relationship can vary according to whether or not there is in existence an international convention on the subject. For example, Italy has conventions in place with the following countries: Argentina, Australia, Bosnia Herzegovina, Brazil, Canada, Cape Verde, Israel, Japan, Jersey and Channel Islands, Macedonia, Montenegro, Principality of Monaco, San Marino, Serbia, South Korea, Tunisia, Turkey, Uruguay, United States, Vatican and Venezuela.

Conclusion

The panorama of applicable regulations and procedures is particularly complex, the role of the professional expert in the field is therefore essential and fundamental, guaranteeing companies adequate advice—possibly in advance to take the best business decision.



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Discrimination in Relation to Employment

India is a land of diversity, essentially, a multicultural, multiethnic, multilingual and multi-religious society. This diversity has a tremendous bearing at the workplace and discrimination rears its ugly head time and again as people from diverse backgrounds, regions and ethnicities come together to work for a living. The government has taken several legislative steps and measures to counter the plague of discrimination. This article analyses the various kinds of discrimination that are prevalent in Indian society, specifically in the work environment, along with measures taken by the government to eradicate the same.



Introduction

India is a multicultural, multiethnic, multilingual and multi-religious society where the language, caste, religion and habits of individuals change with a change in region. As the age-old proverb goes 'Every two miles the water changes, every four miles the speech'. The multiplicity of cultures, faith, ideology, region, etc., are factors which tend to have a bearing on the way people behave and treat others in a workplace. Discrimination, harassment or bullying in the workplace is not something that is unheard of in India, rather it is prevalent in one form or another. One of the disadvantages of India's multiplicity is the tendency to discriminate, harass and bully those who are not from the same social class or background, are of a different faith or religion, or are from a different region. On the other hand, advantages of multiplicity include learning and imbibing from multiple cultures, co-existing harmoniously, appreciating differences, learning from others and evolving for the better. For instance, irrespective of the religion that one follows, the entire country celebrates with great enthusiasm and devotion

all the major festivals of India be it Diwali, Holi, Dussehra, Durga Puja,¹ Christmas, Baisakhi² or Eid-ul Fitr, and these festivals are declared as holidays for all employees by employers across the country. Not only do people celebrate each other's festivals, but they also enjoy each other's cuisine, attire, art, architecture and culture as well. A large part of India continues to thrive and coexist in this multiplicity.

Is Discrimination a Problem in Indian Society Today?

The short answer is yes, discrimination is a problem in Indian society although, not as much today as it was previously. There is discrimination based on gender, caste, creed (faith), economic status, social background, disability, region, nationality, etc.

Laws and Regulations Addressing Discrimination

The Indian Government has passed several laws and regulations to arrest problems associated with discrimination. Some of these laws are discussed below.

Rights of Persons with Disabilities Act 2016

(a) The Principles

The Rights of Persons with Disabilities Act 2016 ('ROPD Act') was brought in force to give effect to the United Nations Convention on the Rights of Persons with Disabilities ('UN Convention') and for the matters associated with it. The UN Convention, *inter alia*, lays down the following principles for empowerment of persons with disabilities: (1) respect for inherent dignity, individual autonomy including the freedom to make one's own choices and independence of persons; (2) non-discrimination; (3) full and effective participation and inclusion in society; (4) respect for differences and acceptance of persons with disabilities as part of human diversity and humanity; (5) equality of opportunity; (6) accessibility; (7) equality between men and women; and (8) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

India ratified the UN Convention on 1 October 2007. The ROPD Act requires every organisation, whether private or government, to have an Equal Opportunity Policy for persons with disabilities. This policy is required to be displayed on the website or at conspicuous places within the organisation. To ensure compliance with the ROPD Act, the law has prescribed penalties and



stipulated that a copy of the policy be registered with the Commissioner of Disabilities.

(b) Is the Appointment of Persons with Disabilities Mandatory for the Private Sector?

While the law does not make it mandatory for the private sector to employ persons with disabilities, it does mention that the Equal Opportunity Policy should clearly specify that there will be no discrimination against persons with disabilities. The responsibility to ensure that there is no discrimination lies with the head of the company.

The aim of the law is to ensure that people with disabilities receive a fair chance during recruitment and, once recruited, are able to discharge their duties to their fullest capabilities. Thus, the ROPD Act and Rules do not make it mandatory for private establishments to employ persons with disabilities but require that no person should be discriminated against on the grounds of his/her disability.

(c) Incentives for the Private Sector

The ROPD Act provides that the government will provide incentives to private sector employers to ensure that at least 5 percent of their employees are persons with benchmark disabilities.³ 'Benchmark disability' has been defined to mean a person with not less than 40 percent of a specified disability where the specified disability has *not been defined in measurable terms* and includes a person with a disability where the *specified disability has been defined in measurable terms*, as certified by the certifying authority. Further, 'specified disability' includes physical disability (locomotive, visual, hearing impairment, speech and language disability), intellectual disability, mental behaviour, disability caused due to chronic neurological conditions (such as multiple sclerosis or Parkinson's disease), blood disorder (such as haemophilia, thalassemia or sickle cell disease), multiple disabilities and any other category that may be notified by the Central Government.

(d) Is it Necessary to Maintain Records Relating to Employees with Disabilities?

If a private organisation in India hires employees with disabilities, it is required to maintain a record of employment and other details regarding persons with disabilities, including the number of persons with disabilities employed and the date from which employed, name, gender and address of such persons,

the nature of disability, the nature of work being rendered by such persons and the facilities being provided to such persons. This requirement is applicable to employers having more than 20 employees. These records may be required to be produced as and when requested by the concerned authorities during inspection.

(e) Grievance Redressal Mechanism

In terms of the ROPD rules, a person with a disability can file a complaint (for discrimination or for any other reason) with the Chief Commissioner or the State Commissioner for Persons with Disabilities. The Commissioner is required to dispose of such complaint within a period of 60 days.

(f) Are there any Penalties for Non-Compliance with the ROPD Act and Rules?

The ROPD Act stipulates a fine of up to INR10,000 (US\$153 approx.) for the first contravention and for at least INR50,000 (US\$770 approx.), which may extend to up to INR500,000 (US\$7700 approx.), for any subsequent contravention of the ROPD Act or rules.

If the offence is committed by a company, the company and every person responsible for the conduct of its business would be deemed to be guilty, except when such offence is committed without their knowledge or where they had exercised all due diligence to prevent the commission of such offence. Where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against accordingly.

In the case of failure to produce employment records of persons with disabilities, the responsible person would be punishable with a fine extending up to INR25,000 (US\$384 approx.) for each instance. In the case of continued failure, an additional fine of INR1,000 (US\$16) per day of such continued failure would be applicable.

The Companies Act 2013

(a) Requirement as to Women

The Companies Act 2013 ('CA 2013') requires certain classes of companies to have at least one female

director on the Board of Directors. This has certainly improved the gender diversity in boardrooms in India although much still needs to be done before it can be called a success, considering that a significant percentage of women appointees on boards are family members of the owners (see below).

(b) Data and Statistics

According to a report by Grant Thornton, *Women in Business 2018*, 25 percent of women on boards in India are family members of the owners. The Report also mentions that India is still the fifth-lowest country in having women in such roles, although the silver lining is that there has been a consistent rise in the percentage of women in leadership positions from 14 percent in 2014, to 17 percent in 2017 and 20 percent in 2018. The report also mentions that gender equality policies are abundant and most Indian businesses adopt equal pay for men and women performing similar roles and non-discrimination policies for recruitment.⁴ However, merely having these policies in place would not suffice as it is imperative for real success that these policies are implemented in practice.

However, one must add here that increasingly many women are now employed in top positions in companies. They are not only serving as heads of big multi-nationals in India, but also serve as combat officers in Border Security Forces, they fly fighter aircraft and head banks and financial institutions. India also has to its credit, the longest serving woman Prime Minister in the world to date and presently has women in important ministerial positions that are normally dominated by men, for example, the Minister of External Affairs and Minister of Defence. India is making progress on this front, even if not by leaps and bounds, and it is certainly worth taking note.

Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013

(a) Background

The concepts of gender equality and justice are enshrined in the Constitution of India and are part of the fundamental rights guaranteed to every citizen. Removal of discrimination in any form, including sexual harassment, is one of the principles of the constitutional edifice of India. Sexual harassment in the workplace is a violation of women's fundamental rights to equality, life and liberty enshrined in Articles 14, 15 and 21 of the Constitution of India.

The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013 ('POSH Act') and the relevant rules were enacted pursuant to the landmark judgment of *Vishaka v State of Rajasthan*⁵, wherein the Supreme Court of India laid down guidelines and issued directions to the Union of India to enact an appropriate law for tackling workplace sexual harassment. The POSH Act and rules are India's first legislation specifically addressing the issue of workplace sexual harassment.

While the POSH Act provides for measures for protection of only 'women' in the workplace, most multinational companies with a presence in India prefer to adopt gender neutral policies for their organisations which afford protection to both men and women alike. Workplace sexual harassment creates a hostile working environment for women and creates a hindrance to their ability to perform to their fullest capability and competence.

(b) Grievance Redressal Mechanism

The POSH Act envisages formulation of an Internal Complaints Committee ('ICC') to address grievances and provide effective redressal to aggrieved persons. The ICC is required to be composed of at least four members, including a senior-level female employee of the company as presiding officer and an independent member. The aggrieved person is required to file a complaint in writing with the ICC. The ICC undertakes an inquiry in accordance with the law, keeping in mind the rules of natural justice. Pending conclusion of the inquiry, the ICC can grant interim relief such as transfer, leave, etc.

(c) Employers' Obligations

Under the terms of the provisions of the POSH Act, employers are under an obligation to provide a safe working environment, prepare a comprehensive policy against sexual harassment, organise workshops and training for employees and ICC members, insert provisions in the sexual harassment policy and service rules to strongly deal with false allegations/malicious complaints and provide assistance to women to file a criminal complaint.

(d) SHe Box

The Government of India has started a new initiative to deal with issues of sexual harassment in the workplace called 'SHe Box' ('Sexual Harassment Electronic Box'). The SHe-Box portal offers the facility of making online complaints of sexual harassment in the workplace to all

women employees in the country including government and private employees. Those who have already filed a written complaint with the ICC or Local Complaints Committee constituted under the POSH Act are also eligible to file their complaint through this portal. Once a complaint is submitted to the portal, it will be directly sent to the ICC of the concerned employer. Through this portal, the Ministry of Women and Child Development, as well as the complainant, will be able to monitor the progress of the inquiry conducted by the ICC.

This is a proactive step taken by the government in the wake of the worldwide social media campaign #MeToo, where women have related their experiences of facing sexual harassment and abuse. Very recently, the #MeToo campaign has gained prominence and momentum in India specifically in the journalism and media sector, including movies, television, etc.

(e) When an Employee Makes a Complaint of Discrimination, would there be any Backlash on Such Employee?

While the POSH Act provides for counter measures against any backlash on an employee who makes a complaint, discrimination keeps rearing its ugly head in society from time to time. It has been observed that a backlash against an employee often occurs when the person alleged to have committed the offence occupies a significant position in the company or is very critical to the business concerned.

Earlier, culturally there was a mindset in India that where a woman was sexually harassed, she would be considered at fault and the harassment would be indirectly attributed to her sense of dressing, words spoken or an action or omission. However, now there has been a change in the societal mindset as data and statistics reveal that women, irrespective of their age, dress, locality, behaviour or class are becoming the victims of discrimination and harassment.

The POSH Act will go a long way in addressing the evil of sexual harassment against women. The need of the hour is to take active measures to uproot this plague by changing the mindset of society through education, development (leading to economic independence) and the spreading of awareness to the masses regarding the evil effects of discrimination on society as whole. In fact, subsidiaries of large multinational corporations are more proactive and forthcoming in having policies and putting

in place the proper framework as required by law—they usually do not encounter any difficulty in introducing anti-harassment/discrimination policies to local subsidiaries.

(f) False and Malicious Complaints

There are measures in the POSH Act to deal with false and malicious complaints. In fact, in a case where it is proved that a complaint was false and malicious, the woman concerned could be given the same punishment as the offender would have been given if the case had been proved against such person. Therefore, the woman could be given a warning or even be terminated from her employment for a false and malicious complaint.

(g) Data and Statistics

Publicly available data suggests that the number of sexual harassment cases reported has steadily increased over the last few years (from 2013 to 2017), according to data from the National Commission for Women, which is the apex national level organisation of India with the mandate of protecting and promoting the interests of women. The data available clearly suggests that with the promulgation of laws, more and more women are coming forward to report discrimination in the form of harassment in the workplace, which is a clear step forward from the previous scenario when it was considered taboo to report such incidents.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989

(a) Background

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('POA Act') is an Act for the prevention of the commission of offences of atrocities against members of the Scheduled Castes and Scheduled Tribes. Despite various measures to improve the socio-economic conditions of the Scheduled Castes and Scheduled Tribes, they remain vulnerable. They have been denied a number of civil rights, subjected to various offences, indignities, humiliations and harassment. In several brutal incidents, they have been deprived of their life and property. Serious atrocities have been committed against them for various historical, social and economic reasons.⁶

Laws such as the Protection of Civil Rights Act 1955 and the Indian Penal Code ('IPC') were found to be inadequate to check and deter crimes against these groups. Accordingly, the POA Act was brought into force. The POA Act defines various types of atrocities

against the Scheduled Castes and Scheduled Tribes and provides for preventive and punitive measures to protect them from being victimised. Where atrocities are committed, it provides for adequate relief and assistance to rehabilitate them. The POA Act provides for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected with that.

(b) Data and Statistics

As per the data of the National Crime Records Bureau ('NCRB'), Ministry of Home Affairs, the number of cases of offences of atrocities against members of the Scheduled Castes ('SCs') registered under the POA Act in conjunction with the IPC in the country are 40,300, 38,564 and 40,774 for the years 2014, 2015 and 2016 respectively.⁷

Equal Remuneration Act 1976

(a) Overview

Part IV of the Constitution of India lays down the Directive Principles of policy to be followed by the State. Article 39 therein enunciates the principle of 'equal pay for equal work for both men and women'. Article 16 of the Constitution further provides that no citizen should, on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State.

To give effect to the constitutional provision relating to equal pay for equal work for both men and women, Parliament enacted the Equal Remuneration Act 1976

('ER Act'). The law on equal remuneration works towards preventing discrimination and disparity in remuneration of men and women for the same work or work of a similar nature. It also prevents discrimination against women during recruitment for the same work or work of a similar nature. Remuneration has been defined as the basic wage or salary and any additional emoluments payable in cash or kind.

Every employer is required to maintain appropriate registers and other documents in relation to the workers employed by him (comprising description of work, number of men, women, rate of remuneration, basic wages, etc.). The ER Act provides for punishment (in the form of fine and imprisonment) of an employer where the employer discriminates between men and women in contravention of the ER Act. If an employer recruits or pays any remuneration or discriminates between men and women workers in contravention of the provisions of this ER Act, they would be punishable with a fine which shall not be less than INR10,000 (US\$15 approx.) but which may extend to INR20,000 (US\$300 approx.) or with imprisonment for a term which shall be not less than three months, but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for second and subsequent offences.

(b) Data and Statistics

The World Economic Forum has evaluated the standing of various countries and the following table shows where India stands in comparison to other countries in the region and major countries of the world.

Wage Equality Survey

Country	Survey data	Normalised score	Rank in world
Malaysia	5.54	0.79	10
Thailand	5.41	0.77	16
United Kingdom	4.74	0.67	52
Japan	4.64	0.66	58
United States	4.47	0.65	66
China	4.54	0.65	70
Germany	4.14	0.59	95
India	4.01	0.57	103
Korea	3.67	0.52	125
France	3.32	0.47	134

(Source: World Economic Forum, 2016)

(c) How to Redress the Gender Gap

According to The International Labour Organization ('ILO') (2008)⁸, two sets of factors are responsible for pay discrimination, the first relates to the characteristics of individuals and of the organisations in which they work and the second is constituted by miscellaneous factors. In the first set, the ILO lists the educational level and the field of study, work experience and seniority in the organisation, number of working hours and the size of organisation and sector of activity. In the second are such factors as stereotypes and prejudices with regard to women's work, traditional job evaluation methods and the weaker bargaining power of female workers.

The ILO has estimated that in most countries women's wages for work of equal value were on average between 70-90 percent of that of men. Further, in 2010 there was a gender wage gap of 17.6 percent in the median full-time earnings in OECD member countries. The ILO estimated that in the EU, women earned 17.5 percent less than men during their lifetimes. Similarly, in 2009 in the USA, the ratio of women to men's earnings was 89 percent for the age group of 25-34 and 74 percent for that of 45-54 (ILO 2011).⁹

In 2010 there was a gender wage gap of 17.6 percent in the median full-time earnings in OECD member countries.

The Maternity Benefits Act 1961

(a) Background

The Maternity Benefits Act 1961 ('MB Act') was passed to regulate the employment of women in establishments for certain periods, both before and after childbirth and to provide for maternity, maintenance and like benefits during such period. With a gradual increase of women in the workforce, maternity benefits have become common in all societies across industries.

(b) Termination During Maternity

Under the MB Act, when a woman is on maternity leave, it is unlawful for the employer to dismiss her during or owing to such absence. Any such dismissal does not deprive the woman of maternity benefits except where it is for any prescribed gross misconduct. Any woman deprived of maternity benefits or dismissed during her absence from work, may, within 60 days from the date on which the order is communicated to

her, appeal to the appropriate authority prescribed under the MB Act.

(c) Maternity Leave

Through a recent amendment to the MB Act, the Maternity Benefit (Amendment) Act 2017, the Government increased the duration of paid maternity leave available for women from 12 weeks to 26 weeks, although for women who already have two children, the duration of paid maternity leave would remain at 12 weeks (for any additional children). The Amendment Act positions India as one of the most progressive countries in the world in terms of maternity benefits.

The MB Act also provides maternity leave of 12 weeks to adoptive (adopting a child below the age of three months from the date of adoption) and commissioning mothers (a biological mother who uses her egg to create an embryo planted in any other woman).

It has now become mandatory for employers to educate women about the maternity benefits available to them at the time of their appointment after the recent amendments to the MB Act.

(d) Work From Home Option

The MB Act also provides an option of 'work from home' for women, which may be exercised after the expiry of the 26 weeks' maternity leave period. Depending upon the nature of the work, the employer may allow the woman employee to avail herself of this benefit.

(e) Crèche Facilities

The MB Act makes a crèche facility mandatory for every establishment employing 50 or more employees. In terms of the MB Act, women employees should be permitted to visit the crèche four times during the day (including rest intervals).

(f) Data and Statistics

According to a recent study by TeamLease¹⁰, as there are likely to be fewer takers for women in the workplace in the short term, that is, up to one year, the net effects of the amendments are likely to be

negative, with a potential job loss of about 1.6 percent to 2.6 percent across sectors, during the financial year 2018–2019. A report of the World Bank provides that female participation in the labour force dropped to 26.97% in 2018 from 35.11% in 1990.¹¹

Addressing the concerns of the private sector regarding implementation of the Amendment Act, the Government of India, Ministry of Labour and Employment through a Press Release dated November 16, 2018¹² stated:

“While the implementation of the provision is good in Public Sector, there are reports that it is not good in Private Sector and in contract jobs. There is also a wide perception that private entities are not encouraging women employees because if they are employed, they may have to provide maternity benefit to them, particularly 26 weeks of paid holiday. In addition, the Ministry of Labour & Employment is also getting complaints from various quarters that when the employers come to know that their women employee is in the family way or applies for maternity leave, the contracts are terminated on some flimsy grounds. There have been several representations before the Labour Ministry on how the extended maternity leave has become a deterrent for female employees who are asked to quit or retrenched on flimsy grounds before they go on maternity leave. Therefore, the Ministry of Labour & Employment is working on an incentive scheme wherein 7 weeks' wages would be reimbursed to employers who employ women workers with wage ceiling up to Rs. 15000/- and provide the maternity benefit of 26 weeks paid leave, subject to certain conditions. It is estimated that approximately an amount of Rs. 400 crores would be the financial implication for Government of India, Ministry of Labour & Employment for implementing the proposed incentive scheme. The proposed Scheme, if approved and implemented shall ensure the women in this country an equal access to employment and other approved benefits along with adequate safety and secure environment.”

The study by TeamLease further mentioned that the demand for women in the workforce is expected to increase over the medium term, that is, one to four years, provided those businesses that are enthusiastic, build success stories for others to emulate. Large, professionally managed companies (both private

and public sector) and medium-sized public sector companies will actively back the amendment and are likely to hire more women.

(g) Penalty

If any employer fails to pay any amount of maternity benefit to a woman entitled under the MB Act or dismisses such woman during maternity leave, they would be punishable with imprisonment, which would not be less than three months, but which may extend to one year and with a fine, which shall not be less than INR2000 (US\$30 approx.), but which may extend to INR5000 (US\$76 approx.). The court may for sufficient reasons impose a sentence for a lesser term or a fine only in lieu of imprisonment.

Analysis and Conclusion

Are the Laws Stringent Enough to Deal with the Issue of Discrimination?

While the laws in India are robust with sufficient penalties to deal with issues of discrimination, effective implementation of such laws has a long way to go. There are still organisations, especially domestic Indian companies, which do not have an ICC in place or a policy for anti-sexual harassment or an equal opportunity policy for disability as mandated by the law. There should be a mechanism to ensure that the law is effectively followed and so that it is not merely rendered a paper tiger.

Do Organisations Take a Pre-Emptive Approach by Having Policies Against Discriminatory Conduct or Do They Take a Reactive Approach by Responding Only When Issues Arise?

Most organisations are now taking a pre-emptive approach by having policies and procedures in place in compliance with the law. The POSH Act and the ROPD Act have made it mandatory for organisations to prepare and publish policies in compliance with the law. Hence, in view of the laws and penalties, organisations are becoming more proactive and are moving towards having such policies and frameworks in place.

Is There is a Risk of Laws Working to the Detriment Instead of Benefit?

On a macro level, industry has implemented the MB Act, including the amendments which increase maternity benefits. However, it remains to be seen whether in the long run this increase in the maternity leave period and the mandate to provide crèche

facilities beyond a certain threshold of employees will act as a double-edged sword—with employers being vary of employing woman employees to avoid payment of and for such benefits.

Are These Laws Helping in Developing an Inclusive and Holistic Society?

Disability has been defined based on an evolving and dynamic concept. The types of disabilities have been increased from existing 7 to 21 and the Central Government will have the power to add more types of disabilities. Through the ROPD Act and rules, the corporate sector has been mandated to take responsibility for recognising the abilities of disabled persons and giving them equal job opportunities. The enactment of the ROPD will go a long way to promoting equal employment opportunities for the disabled in the private sector as it has made it mandatory for private employers to frame and implement the Equal Employment Opportunities Policy which is required to clearly stipulate the steps and measures taken for ensuring equal opportunities to people with a disability. Additional benefits such as reservation in higher education, government jobs, reservation in allocation of land, poverty alleviation schemes, etc. have been provided for persons with benchmark disabilities and those with high support needs. Every child with a benchmark disability between the age group of 6 and 18 years shall have the right to free education. Government-funded educational institutions as well as government recognised institutions will have to provide inclusive education to children with disabilities.

Conventionally, sexual harassment and other forms of discrimination have been accompanied by social ostracisation and stigmatisation. Positive steps in the form of promulgation of laws ensuring redress from such matters provide respite for those subject to various kinds of discriminatory practices. The laws have made it mandatory to spread awareness, conduct workshops, take positive initiatives to provide support and to sensitise people.

The need of the hour, which has been aptly recognised by the Government, is to take visible and effective steps towards a more inclusive and progressive society ensuring employment for the discriminated and marginalised, helping them to merge with society to create a holistic one.

Notes

- ¹ Festivals of Hindus.
- ² Festival of Sikhs.
- ³ No clarification, rule or regulation in this regard has been issued by the Government thus far.
- ⁴ The findings in this report were drawn from 4,995 interviews conducted between July and December 2017 with chief executive officers, managing directors, chairs and other senior decision-makers from all industry sectors in mid-market businesses in 35 countries.
- ⁵ AIR 1997 SC 3011
- ⁶ "Statement of Objects and Reasons" appended to the Bill (which was presented in Parliament) and later became the POA Act after passing.
- ⁷ Notification by the Press Information Bureau on Implementation of Prevention of Atrocities Act, dated 20 March 2018.
- ⁸ ILO 2008: Promoting Equity – Gender-Neutral Job Evaluation for Equal Pay: A Step-by-Step Guide, International Labour Office, Geneva, Switzerland
- ⁹ ILO 2011. Presentation on the "Equal Pay for Work of Equal Value - How do We Get There?" 29 March 2011; (https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/presentation/wcms_322414.pdf)
- ¹⁰ The Impact of Maternity Benefits on Business and Employment (Maternity Report), by TeamLease (<https://www.teamleasegroup.com/maternity-report>). Dip-stick survey methodology [carried out during the month of April, 2018]: # 10 question survey, with objective type, multiple choice, responses Survey administered on sample size of 300 employers Results tabulated and inferences drawn on the basis of the above responses.
Overview of Research Methodology:
Workforce and sector job statistics: Secondary research / literature review.
Post-Maternity Attrition, Industry reaction and Job Creation / Loss likelihoods
Dip-stick surveys with 300 employers representing the 10 sectors included in the study
Impact of the Maternity Act (Net job creation / loss and industry behavior)
- ¹¹ <https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>
- ¹² <http://pib.nic.in/newsite/PrintRelease.aspx?relid=184805>



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Employment and Insolvency in Europe: Selected Questions of Employment and Insolvency Law From a European Perspective

- ● Companies becoming insolvent has been a staple of the corporate world since its inception. The employees of these companies are arguably affected the hardest, but thanks to the evolution of employment law, they are no longer left in the wind but are given compensation provided that they fit certain requirements. The European outlook on this issue is far-reaching.



**BUSINESS
CLOSED**

Introduction

US investment bank Lehman Brothers, American energy, commodities and services giant Enron, solar cell producer Solarworld, car manufacturers GM and Chrysler, German airline Air Berlin—the list of multinationals and companies with global business operations having had to file for the opening of insolvency proceedings is long and glossy. Corporate insolvencies not only trigger a run of creditors looking for recoverable assets and available 'deep pockets' but also imply turmoil, drama, change and, sometimes, (financial) tragedy for the workforce of the distressed entities. Translated into the crossroads between employment law and insolvency law, typical questions coming up in these kinds of situations relate to the applicable law, termination of employment, role of employee representatives, priorities of wages and institutional guarantees for workers' claims for wages. The following article is meant to give an overview of the state of play of certain insolvency-specific employment issues from a European perspective.

Jurisdiction and Applicable Law in Cross-border Insolvencies

In Europe today, half of all businesses survive fewer than five years. It is estimated that in the European Union ('EU'), 200,000 firms go bankrupt each year (more than 600 a day), resulting in 1.7 million jobs lost every year. One in four of these are cross-border insolvencies, meaning that they involve creditors and debtors in more than one EU Member State. Even though research has shown that increased convergence of insolvency and restructuring procedures would facilitate greater legal certainty for cross-border investors and encourage the timely restructuring of viable companies in financial distress, there is no uniform approach regarding insolvencies yet, either on a global or a European scale.

UNCITRAL Model Law on Cross-Border Insolvency

The lack of a uniform approach persists notwithstanding that international initiatives, such as the UNCITRAL Model Law on Cross-Border Insolvency ('the Model Law'), have been designed to assist States to equip their insolvency laws with a modern, harmonised and fair framework to effectively better address instances of cross-border proceedings concerning debtors experiencing severe financial distress or insolvency. The Model Law, adopted in 1997 and meanwhile incorporated into national law by 44 countries, respects the differences among national procedural laws and does not attempt a substantive unification of the various national insolvency laws.

Rather, it provides a framework for cooperation between jurisdictions, offering solutions that help in several modest but significant ways and facilitate and promote a uniform approach to cross-border insolvency.

Regulation on Insolvency Proceedings

Nonetheless, going beyond this idea, the EU is constantly striving to establish a harmonised insolvency legislation framework within its Member States. For instance, the EC Regulation on Insolvency Proceedings of 20 May 2015 (Regulation (EU) 2015/848) focuses on resolving conflicts of jurisdiction and laws in cross-border insolvency proceedings and ensures recognition of insolvency-related judgments across the EU. Since 2008, the Directive on the protection of employees in the event of the insolvency of their employer (2008/94/EC) ensures the payment of employees' outstanding claims in the event of employer insolvency.

Furthermore, in November 2016 the European Commission presented a 'Proposal for a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU (COM(2016) 723 final, 2016/0359(COD)), which concerns the coordination of safeguards required of companies in respect of the formation of public limited liability companies and the maintenance and alteration of their capital. The proposal, which was discussed again in the European Parliament on 21 August 2018, aims to reduce barriers to the free flow of capital stemming from differing insolvency frameworks and to enhance the rescue culture in the EU. However, it does not intend to harmonise core aspects of insolvency, such as rules on conditions for opening insolvency proceedings, a common definition of insolvency, ranking of claims and avoidance actions, broadly speaking. The impact of an employer's insolvency on its employees thus varies significantly depending on where the employee habitually carries out his/her work or where the place of business through which the employee was engaged is situated.

Centre of Main Interests (COMI)

Against this background, employers (and employees) affected by cross-border insolvency first have to evaluate the applicable regulatory insolvency and employment law framework, as well as the relevant jurisdiction.

For companies doing business within the EU, the answers to these questions are specified by Regulation (EU) 2015/848. The courts of the Member State within the territory of which the centre of the debtor's main interests ('COMI') is situated have jurisdiction to open insolvency proceedings. It can be said to be the jurisdiction with which a person or company is most closely associated for the purposes of cross-border insolvency proceedings. The COMI is the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties. It is generally presumed that the place of the registered office is the COMI in the absence of proof to the contrary. The law applicable to insolvency proceedings and their effects is that of the Member State within the territory of which such proceedings are opened.

As far as jurisdictions outside the EU are concerned, the UNCITRAL Model Law on Cross-Border Insolvency may provide an initial indication. The Model Law, in contrast to Regulation (EU) 2015/848, does not stipulate that the state in whose territory COMI is located is responsible for opening the 'main insolvency proceeding'. Instead, it orders that the main insolvency proceedings in other states be recognised as such if the debtor has its COMI in the state in which the proceedings are opened. However, this naturally leads to the same result. Difficulties only arise if the debtor has assets in countries that have adapted their national law to the Model Law and in countries that have not done so. Then the foreign procedure is recognised in certain countries, but may not be recognised in others.

However, with regard to employment law, the applicable law, at least for employers and employees doing business in the EU, is determined by Regulation (EC) 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I). Typically, this will result in the employment contract being governed by the law of the country in which or, failing that, from which, the employee habitually carries out his work in performance of the contract. Thus, the laws governing the employment relationship do not necessarily need to comply with the laws applicable to insolvency proceedings.

The EU is constantly striving to establish a harmonised insolvency legislation framework within its Member States.

Termination of Employment

With a few exceptions, the insolvency of a company/the opening of insolvency proceedings does not result in automatic termination of employment. Also, many countries, including Germany, do not consider insolvency as such to constitute a fair reason for terminating the employment contract.

However, many European jurisdictions provide for certain insolvency specific facilitations with regard to protection against unfair dismissal laws. In Germany, for example, these relate primarily to procedural aspects of dismissal and the notice period, but do not necessarily cover the reasons for termination of employment. Mostly, this means that it is up to the employer to show that

its need for employees to carry out work of a particular kind has ceased or diminished or is expected to cease or diminish by the end of the notice period.

A request from a creditor or the debtor for insolvency proceedings to be opened or the opening of insolvency proceedings alone is usually not sufficient. Rather, the typical reason for giving notice on the grounds of imperative operational demands, also in insolvency, is the closure of parts of an establishment or of a complete establishment or undertaking. A more proactive approach is taken by the United Kingdom, which allows the liquidator to decide whether he/she wants to keep or dismiss the employee within 14 days. Moreover, as of the commencement of insolvency proceedings, contractual restrictions on giving notice become invalid under German law. Therefore, the insolvency administrator may terminate employment contracts subject to statutory termination protection no matter if the individual employment contract or collective agreements contain regulations that would exclude the ordinary dismissal of employees.

While, as outlined above, the social justification of dismissal is, where required by relevant national law, typically not subject to insolvency-specific particularities in many jurisdictions, the opening of insolvency proceedings can have an impact on who is competent for giving notice. In Germany, for instance, before opening insolvency proceedings, the employer is responsible for giving notice. This is, in principle, also true if a creditor or the debtor has requested the opening of

insolvency proceedings. However, German law allows for the insolvency court to order provisional and protective measures with a view to securing the interests of creditors. In particular, the insolvency court may appoint a provisional administrator. If the insolvency court restricts the debtor's power of disposition, the entitlement to give notice transfers to the provisional administrator. Otherwise, the authority to terminate employment contracts remains with the employer until the opening of insolvency proceedings.

Upon the opening of insolvency proceedings and the appointment of an insolvency practitioner by a decision of the insolvency court, the debtor and its management—unless the insolvency court decides for the debtor to stay fully or partially in control of its assets and affairs (debtor in possession) —usually loses control and the insolvency administrator 'takes over', including the entitlement to give notice.

With a view to not discriminate other creditors against employees and to ease a business rescue, some jurisdictions, for example Germany, allow for the insolvency administrator to give notice with a cut-off notice period (in Germany: three months), unless statutory law or contract provide for a shorter notice period. Longer notice periods agreed by individual or collective contract or regulated by law are no longer valid.

Employee Representatives

Generally, most jurisdictions consider employee representatives not to be entitled to request the opening of insolvency proceedings. However, many countries require employee representatives to be informed and consulted in the event of insolvency or prior to insolvency-related restructuring measures. While some countries provide for trade union participation in this respect, the focus of employee representation is mostly on local employee representatives, that is to say, works councils and economic committees. In Germany, for example, the employer must inform the works council and, if established, the economic committee about the opening of insolvency proceedings or the rejection of such opening due to a lack of assets.

Also, if an employer that regularly employs more than 20 employees plans to restructure an establishment in Germany, the employer needs to inform the works council in good time and comprehensively of the restructuring,

consult with the works council about the intended concept of reorganisation including its impact on the workforce, attempt to reach an agreement on a reconciliation of interests and set up a social compensation plan that mitigates the financial disadvantages suffered by the employees affected by the restructuring,

All of these information and consultation rights of employee representatives typically apply also after the opening of insolvency proceedings. Thus, in principle, the insolvency administrator must fully satisfy them. Also, according to the EU proposal (COM(2016) 723 final, 2016/0359(COD)), affected workers must be granted a right to vote on restructuring plans.

However, some jurisdictions such as Germany allow the insolvency administrator to cut short the usual process of information and consultation and to speed up certain aspects of it. For example, in Germany the insolvency administrator may ask for a court decision consenting to the implementation of the envisaged restructuring or approving the validity of individual dismissals if he or she has properly informed and consulted with the competent works council without having reached an agreement on a reconciliation of interests within a three-week period.

Also, the total volume of severance pay and other financial benefits meant to compensate or mitigate the financial disadvantages can be limited. In Germany, for example, post-insolvency severance is restricted to 2.5 times the monthly salary of all employees affected by the restructuring and, if no insolvency plan is agreed on, one third of the assets that could be distributed to creditors without such social compensation plan. In practice, where the assets are very minor, even this amount may not be met in full or even at all.

Priority of Wages

As outlined above, the opening of insolvency proceedings does not, in most jurisdictions, automatically terminate the employment contract. It does not, therefore, affect the employee's entitlement to salary and other financial benefits.

With regard to the recoverability of wages and other benefits, many European jurisdictions distinguish between claims that arose before the opening of insolvency proceedings and claims related to the time after the opening of insolvency proceedings, as discussed further below.

Claims That Arose Before the Opening of Insolvency Proceedings

Deviating from a number of other jurisdictions, employee creditors do not enjoy priority as against other creditors in Germany. Thus, claims for wages and other financial benefits would, in principle, need to be paid from the estate. Obviously, where the assets are very minor, these claims may not be met in full or even at all. Thus, Directive 2008/94/EC ensures payment of employees' outstanding claims in the event of employer insolvency and requires Member States to set up an institution to guarantee the payments. The minimum guarantee period should cover the remuneration for the last three months within a reference period of at least six months or eight weeks within a reference period of at least 18 months.

For example, German law provides for a public fund collectively financed by German employers out of which employee claims that are not covered by the estate are satisfied. In 2018, the employer's contributions amounted to about 0.06 percent of the employee's salary. This 'insolvency fund' is administered by the Federal Employment Agency as part of the German social security system. It covers any outstanding employees' claims relating to a period of three months prior to the decision to open insolvency proceedings, including wages, vacation allowances, bonuses and pension contributions. The individual amount is subject to the employees' net payment, with the maximum in 2018 being capped at the net amount of €6,500, thus about €4,200. This may lead to significant overall payments. By way of example, in the course of the insolvency of the German airline Air Berlin, about 7,340 employees were entitled to insolvency payments totalling about €55.2 million.

Upon payment, the insolvency fund subrogates the employees' entitlement to wages and benefits. The insolvency fund is thus treated the same way as all other creditors with the effect that it can only partially recover its payments to the employees. Outstanding salary entitlements that are not protected by insolvency funds in practice can often be met only with a quota of less than 10 percent.

Claims That Arose After the Opening of Insolvency Proceedings

Claims for wages resulting from employees' having rendered services after the opening of insolvency proceedings are debts incumbent on the estate. Those debts are often prioritised towards claims from before

the opening. It can thus be said that claims resulting from work performed after the opening are (slightly) more valuable or more likely to be fulfilled. However, if the insolvency administrator envisages that the assets will not sufficiently cover these claims, employees will typically be sent on garden leave for the remainder of their notice period.

Conclusion

Labour and employment law regulations have a great influence on insolvency procedures and vice versa. In this respect, there is a tendency in Europe towards convergence of insolvency and restructuring procedures with an increasing focus on encouraging a timely restructuring of viable companies in financial distress. Nonetheless, employment law-related consequences are still far from being harmonised, requiring insolvency practitioners in cross-border insolvencies to carefully determine and evaluate the details of such insolvency proceedings and their consequences.



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Personal Liability of Attorneys-In-Fact in Brazilian Labor Courts

It is common for foreign companies to act as shareholders or investors in local companies, or to wish to open offices, subsidiaries or branches in Brazil and for this purpose they are required to appoint legal representatives in the country. Although the legal representatives generally have limited powers to represent the foreign companies, they are often recognised as the true shareholders or managers of Brazilian companies by the Labor Courts and are held liable for the labour debts of these companies. As will be explained in this article, this recognition violates the provisions of Brazilian law and adversely affects the inflow of funds and investments into Brazil.



It is extremely common for foreign companies to act as shareholders or investors in local companies or to wish to open offices, subsidiaries or branches in Brazil, in order to develop their business activities in the country and to apply their resources and services from abroad. In this context, in order to enter the country through a corporate interest, the foreign company must appoint a legal representative—who may be a foreign citizen—resident in Brazil, with express powers, granted through a power of attorney, to represent the company and, on its behalf, to accept summonses and writs.

It is necessary to understand the enormous differences in Brazilian legislation relating to the legal representative (also referred to as corporate attorney), the shareholder and the manager. These three concepts are regulated separately by the Brazilian Civil Code and the various ordinances of the Brazilian legal system.

However, the Brazilian Labor Courts usually consider—in the view of the author, quite mistakenly—that the attorney-in-fact of a foreign shareholder company as the true shareholder or even as the manager of the Brazilian company, for the purposes of the Brazilian Civil Code, which provides that, in the case of abuse of the legal personality or deviation from the corporate purpose, the effects of certain obligations, such as judicial foreclosures, may be extended to the private assets of the managers or shareholders of a legal entity.

Brazilian law establishes, as a general rule, that Brazilian companies must have at least two partners/shareholders. In this way, the Brazilian Labor Court understands that it is common for companies to have partners/shareholders with a derisory amount of quotas/shares, which are merely symbolic, only to constitute the corporate structure required by law and give legal validity to the company. Since Brazilian law does not require the company to be formed by two or more active partners/shareholders, nor is there any requirement in regard to the number of shares held by each shareholder/partner in the company, it is understood that this shareholder/partner is only 'pro forma'. In other words, the partners/shareholders lend their names simply because of the rule that there must be at least two partners/shareholders in a company.

Consequently, the Labor Court assigns liabilities—which previously were the responsibility of, by exception, only of the shareholders and managers—to the attorney-in-fact.

The position of attorney-in-fact is commonly undertaken by Brazilian lawyers, also known as 'figureheads', who act on behalf of the company, executing transactions, issuing authorisations and doing everything necessary for the company to operate, but their assets are kept protected and shielded from any collection or enforcement proceeding that may arise. In the event that fraud is committed by a company or its attorneys-in-fact, the latter's personal assets are at risk. Other court decisions, more concisely, have held that the attorney-in-fact appointed by the company in Brazil is the true manager. Therefore, he or she, in spite of being a mere proxy, is also personally liable for the company's business and, consequently for any violations of the law, such as non-compliance with labour obligations.

The principle of piercing the corporate veil—a procedural theory that is used to hold shareholders, managers and/or companies in the same business group liable—has resulted in a major development in Brazilian jurisprudence, since liability can be expanded to the shareholders, managers and/or companies in the same business group if fraud or crimes are committed. This provides greater security for investors and creditors when pursuing legal action in the courts and it also applies to labour proceedings, thereby increasing the sense of justice on both sides. This principle has undoubtedly helped to restrict impunity under the veil of the corporate entity and aims at satisfying employee claims and encouraging companies to enforce the strict liability of shareholders and managers.

The liability of the shareholder, by piercing the corporate veil, is applicable in the execution of labour claims and is clearly justified by the principles guiding labour law and procedure—such as the principles of employee protection, inequality vis-à-vis the company and application of the most favorable norm—in defence of the interests of the worker and the subsistence nature of the credits/assets that are executed before the Labor Court.

In fact, the liability of shareholders and managers, depending on the different types of company, has been extended in cases where abuse of rights, fraud and illegal acts were recognised as well as in situations

when there is no clear distinction between the assets belonging to shareholders or managers and those of the company represented. These are cases where it is legally acceptable to apply the principle of disregarding the corporate entity. The 'disregard doctrine' has been included in several laws in the Brazilian legal system, in particular the Consumer Protection Code and the Civil Code, which support the application of this principle in the Brazilian Labor Courts.

In spite of the absence of specific legislation on this subject, the Labor Courts use this principle, as highlighted in this article, in order to require shareholders and managers to meet the liabilities arising from the employment relationship. It is true that the different principles of labour law invoke the protectionist nature of the decisions of the Brazilian Labor Courts, which together with the subsistence nature of these credits/assets, are always aimed at levelling the employment relationship between employee and employer. Therefore, this theory is an instrument widely and effectively used by Brazilian Labor Courts to settle labour claims of this kind.

However, in the opinion of the author, it is not appropriate under any circumstances to extend the same interpretation to an attorney-in-fact in order to get at the assets of the operating company, since this is totally devoid of legal justification or logic. In fact, in the absence of specific legislation in this regard, these decisions end up violating the famous principle of legality, provided for in the Brazilian Federal Constitution as well as the provisions of the Brazilian Civil Code. Moreover, the guiding principles of labour justice do not override the interests of society and free enterprise, which are also provided for in the Brazilian Magna Carta.

It is also worth noting that on a closer analysis of individual cases, the vast majority of powers granted to attorneys-in-fact are limited to specific matters and specific tasks, such as a simple authorisation to change the company's address. It follows from this that, if there is no grant of general powers to operate the assets and/or services of the shareholders and/or to manage and administer the company, the attorney-in-fact—due to the express absence of powers for this purpose—cannot even accept a judicial summons for the company, let

The 'disregard doctrine' has been included in several laws in the Brazilian legal system.

alone be personally liable for its debts. Accordingly, since the attorney-in-fact is not the manager or the shareholder of the company in question, the issue of liability does not even arise.

In the view of the author, the criterion for piercing the corporate veil should be applied more strictly and accurately, thus avoiding arbitrary decisions that are not in consonance with the principles of the Brazilian legal system and which clearly affect the legal certainty of the parties involved, including those held to be liable.

In the Brazilian Labor Courts, it is also common for a corporate entity to be disregarded to the detriment of shareholders and managers, simply because it is difficult to enforce payment by the main debtor, in this case, the company itself. In practice, because of this difficulty, the principle is applied without demanding clarification or giving a chance to the shareholders, managers, attorneys-in-fact and/or companies in the same business group to explain and defend themselves/itself or even to enable payment by the principal debtor when notice of enforcement is received.

The granting of certain powers to judges in the lower courts has also created serious instability for the parties involved in this type of labour procedure, since the basic processes of law, principle and precedent are not always observed. Clearly, magistrates should take pains to guarantee some basic rights for the parties, such as respect for the due legal process of law and the right to defence, in order to ensure that the judicial process is not simply enforcing claims without following a fair, lawful procedure.

This extension of the principle of disregarding the corporate entity beyond the shareholders and managers and holding the attorney-in-fact or the current or former partners responsible, causes enormous procedural instability, legal uncertainty and, consequently, discourages investment, both domestic and international.

Of course, it is necessary for doctrine and jurisprudence to evolve in line with the changes in recent decades in the social and economic context, as well as in technology. However, this cannot justify an arbitrary imputation of personal liability without the correct legal basis, as has occurred in most of the decisions issued by the Brazilian Labor Courts, in which the attorney-in-

fact has been held responsible for settling labour debts of which the attorney-in-fact was not even aware. This is also true of the excessive use of online liens by the lower courts, through the Brazilian Central Bank system, to compel and enforce payment of labour debts.

It is important to remember that, in general, the attorney-in-fact appointed by the company or by the shareholders is the person responsible for the execution of corporate acts or representation in court and has no effective powers of management or control of the day-to-day activities of the company. So what we have here is a distortion of the principle of piercing the corporate veil, which is intended to hold responsible the shareholder or the manager who uses the company as a protective shield in order to commit illegal acts.

Thus, in conclusion, holding the attorney-in-fact responsible for the satisfaction of labour claims, without the due observance of legal criteria, will end up encouraging other types of fraud. Qualified professionals will no longer wish to exercise their legitimate right to represent companies because of the legal insecurity involved and this will also affect the inflow of legitimate funds and investments to revive the Brazilian economy, which is currently very weak.



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Are Your Trade Secrets Really Secret?

Employers Need to Act After EU Changes Legal Landscape with New Directive on Trade Secrets

'Three may only keep a secret, if two of them are dead'

— Benjamin Franklin



Shortly after the introduction of the EU General Data Protection Regulation ('GDPR'), the EU has once again shown that it will not rest in harmonising national law with particular relevance for the common market. Largely unnoticed by the general public, EU Directive 2016/943, the Directive on the Protection of Trade Secrets ('the Directive') was adopted on 8 June 2016 and entered into force on 9 June 2018. Being a directive and not a regulation (such as GDPR), national lawmakers must translate the provisions into local law in each EU country. Where this has not happened until now (such as in Germany) the directive is, for the time being, directly applicable as far as the interpretation of (previous) laws is concerned. This article outlines the major issues and points out that in many cases employers need to take urgent action in order to adequately protect a company's trade secrets especially in view of their own employees.

What is a Trade Secret?

Article 2 of the Directive defines a trade secret as information which meets all of the following requirements:

1. it is a secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
2. it has commercial value because it is secret; and
3. it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

All three requirements need some further explanation, which can (partly) be taken from official EU documents and national legislation (as an example reference is made to the draft German law, which will likely take effect in early 2019).

Thus, it can be said that the first requirement used in the definition is merely meant to exclude trivial information, experience and skills gained by employees in the normal course of their employment and to exclude information which is generally known among or readily accessible for informed person in the industry or business line of the trade secrets holder.

Commercial value as meant in the directive can be actual or potential. The relevant question is not how to put a financial tag on each piece of information, but rather to ask whether the (unlawful) acquisition, use or disclosure is likely to harm the interests of the lawful holder. It is thus sufficient if the trade secret holder can illustrate that the secret relates to a scientific and/or technical potential, business or financial interests, strategic positions or his ability to compete. Typical examples are production procedures, customer and supplier lists and information on costs calculation, business strategies, company data, market analysis, prototypes formulas and recipes.

The final, and often most crucial question, will thus be: what is meant by 'reasonable steps under the circumstance' to protect the secret? Without being able to prove that the trade secret holder has done everything necessary to protect the information there is, by definition, no secret at all, let alone a possibility to protect such information against any other party.

Generally, physical and contractual measures are seen as suitable to protect valuable information. Technical measures include access policies, encryption and a 'need to know' policy. Many of these technical issues have only recently been discussed in the context of data protection and will thus not be difficult to comprehend and may often already exist. However, it will be useful to once again review all processes and policies in view of the different categories of company secrets. Since many categories of secrets have no relation to personal data, it might be necessary to extend the view and measures to other kinds of valuable information.

While technical measures seem natural and often may exist to a certain extent, this will likely be different for contractual measures. In the past, employment contracts as well as third party contracts (with freelancers, project personnel, service providers, etc.) often contained only very generic 'catch-all' clauses (of the kind: 'Please be aware that you are obliged to keep all company secrets confidential during and after the end of the contract'). This will only be sufficient and adequate for those persons who have no access to trade secrets at all. For all others, who more or less frequently get access to confidential information due to the type of their work activities, such clause today is completely useless and will create no protection at all. It will now be essential to have very specific clauses, which in detail outline which trade secrets are meant, if not in detail then at least as far as the category of information is concerned. Since the regulation expressly allows reverse engineering as far as no clause to the contrary exists employers will need to address this issue as well.

Further, it needs to be taken into account that things change over time, especially in long-lasting contractual relationships. An employee may be promoted and get access to new information or he/she might even be working to develop new secrets (for example, in Research and Development). Since a frequent contract adjustment seems impractical and might even be impossible (if the other party refuses such amendment) it must be possible, but also necessary, for trade secrets holders to regularly update their trade secrets policies and make them known to all employees concerned, thus obliging them to respect the trade secret(s). Thus it is obvious that many companies will need a dedicated trade secrets compliance program which requires constant attention and regular training.

Lawful Versus Unlawful Acquisition

The Directive clearly states in which cases it is lawful to acquire and make use of generally protected information. Apart from independent discovery or creation or freely available information, the Directive expressly acknowledges the right to freedom of expression and information (especially mentioning investigative media practices), information rights of employee representatives (unions and works councils) and the acquisition of knowledge through rightful work and nothing shall hinder employees to make use of their mobility rights (including taking with them expertise and skills gained at their previous employer).

Further, it is interesting to note that the Directive tries to protect whistle-blowers from persecution on the grounds of trade secrets protection. This is the step to be followed by an already discussed new directive to protect whistleblowing (expected for 2020 earliest).

Protection in Legal Proceedings/Remedies and Measures

In order to avoid that trade secrets are publicly discussed in legal proceedings, the Directive offers a number of measures that can be taken by (labour) courts to protect the interests of the company (such as non-public hearings, limited disclosure of documents, etc.).

Practical Steps for Employers

The introduction or revision of a comprehensive trade secrets compliance system is inevitable. In a first step, a company must analyse and classify which trade secrets will need to be protected. This task requires a high degree of cooperation among departments likely to be organised by Legal and/or HR. The aim is to have an overview of all kinds of information which meets the criteria of a trade secret and to determine which technical measures for protection are already in place and which measures need to be adopted. In case a works council has been elected, co-determination rights of employees need to be observed when introducing new policies and/or control and security measures.

After having identified all current secrets and technical measures, it needs to be determined which employee has access to such secret and whether this is needed to fulfil his/her tasks. Subsequently all employment contracts with trade secrets holders need to be updated.

In view of constant changes to the trade secrets situation within the company, a committee needs to be established which regularly monitors the situation and immediately initiates required adjustments (whether to the employment contract, to policies or technical measures). In that regard, a perfect documentation system is essential to be able to prove, in the case of a dispute, that all has been done to protect the secret. This includes regular monitoring as well as training measures for employees as well as management. In case of changes of employee roles or responsibilities as well as organisational or technical changes and developments, new contract documentation needs to be issued to each employee concerned, who often will have to sign an acknowledgement to have received new and current instructions as amendment to the existing employment contract.

Conclusion

The new EU trade directive and respective national laws require the immediate attention of any employer doing business with the EU. This often will mean the introduction of a new compliance division, without which trade secrets might not be protected at all and employees as well as their new employers or their newly founded business are free to exploit such new source of information in a perfectly legal way.



Roland Falder
Founding Partner and Counsel,
Employers PartmbB

Roland Falder is a founding partner of Employers – Lawyers for Employers – a German employment law boutique in Munich, which represents employers in all labour and employment law matters. Roland has previously been a partner in large international law firms for more than twenty years. He is a specialist in international cross border labour and employment law matters, especially the secondment of employees, the international coordination of Incentive programs and compliance regulations as well as individual and collective terminations and corporate reorganisations. Further he is one of the leading German experts on employee data protection (GDPR and German Data Protection Law) and Trade Secrets. Roland frequently lectures about German and Chinese as well as international employment law and has published books and articles on numerous issues of German and Chinese employment law. He is a member of IPBA since 1997 and previously has served as Co-Chairman of the Immigration and Employment Law committee.

IPBA New Members

December 2018 – February 2019

We are pleased to introduce our new IPBA members who joined our association from December 2018 – February 2019. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

Austria , Anne-Karin Grill <i>Vavrovsky Heine Marth Attorneys-at-Law</i>	Hong Kong , Raymond Goh <i>China Travel Service (Holdings) Hong Kong Limited</i>
Australia , Caroline Kenny QC <i>International Arbitrator</i>	Hong Kong , Maëva Slotine <i>SLOTINE Hong Kong solicitor's firm</i>
Australia , John Kettle <i>McCullough Robertson</i>	Hong Kong , Poey Foon Angela Wang <i>Angela Wang & Co</i>
Bahrain , Saad Al Doseri <i>Saad Jaber Aldoseri Attorneys at Law & Legal Counsels</i>	India , Malvika Madan Mohan Bakshi <i>Fox Mandal & Associates</i>
Cambodia , Deline Sieng <i>R&T Sok & Heng Law Office</i>	India , Aditya Bhargava <i>Phoenix Legal</i>
Canada , Selena Kim <i>Gowling WLG</i>	India , Mona Bhide <i>DAVE & GIRISH & CO.</i>
Chile , Juan Turner <i>Grasty Quintana Majlis & Cía. Ltda.</i>	India , Ganesh Chandru <i>Lakshmikumaran & Sridharan</i>
China , Linda Qiao <i>Rajah & Tann Singapore LLP, Shanghai Representative Office</i>	India , Souvik Ganguly <i>Acuity Law</i>
China , Bin Wang <i>Tiantai Law Offices</i>	India , Shailesh Kejriwal <i>Kejriwal Advisory LLP</i>
China , Chen Wu <i>Wu & Associates Law Firm</i>	India , Saurav Kumar <i>INDUSLAW</i>
China , Jian Zhang <i>Shanghai Fangben Law Office</i>	India , Trisha Mandal <i>Fox Mandal & Associates</i>
Germany , Klaus Oepen <i>Blaum Dettmers Rabstein Rechtsanwaltspartnerschaft mbB</i>	India , Sharath Mulia <i>Fox Mandal & Associates</i>
France , Jacques Buhart <i>McDermott Will & Emery</i>	India , Rishabh Shroff <i>Cyril Amarchand Mangaldas</i>
France , Guy de Cordes <i>Cordes & Partners</i>	India , Shardul Jashwant Thacker <i>Mulla & Mulla & Craigie Blunt & Caroe</i>
France , Marion Ngo <i>NGO JUNG & PARTNERS</i>	India , Karan Thukral <i>The Thukral Group</i>
France , Amandine Rominskyj <i>Poulain & Associés</i>	India , Shabbir Wakhariya <i>Wakhariya & Wakhariya</i>

Indonesia , Ahmad Fikri Assegaf <i>ASSEGAF, HAMZAH & PARTNERS</i>	Korea , Chung Hwan Choi <i>Lee & Ko</i>
Indonesia , Faizal Faizal <i>Thamrin & Rachman Law Firm</i>	Korea , Suyung Park <i>Kang, Lee & Jang</i>
Indonesia , Joseph Wira Koesnaidi <i>JWK Law Office</i>	Korea , Chang-Hyun Song <i>Shin & Kim</i>
Indonesia , Denia Isetianti Permata <i>Soemadipradja & Taher</i>	Korea , Eric Eunyong YANG <i>Bae, Kim & Lee LLC</i>
Indonesia , Antonius Herri Setianto <i>Thamrin & Rachman Law Firm</i>	Malaysia , Sadir Al Kherdaji <i>Cham Consulting Ltd.</i>
Indonesia , Nurul Setyorini <i>Thamrin & Rachman</i>	Malaysia , Wai Fong Lai <i>Shearn Delamore & Co.</i>
Indonesia , M. Husni Thamrin <i>Thamrin & Rachman Law Firm</i>	Malaysia , Swee Im Tan <i>39 Essex Chambers</i>
Jamaica , Christopher Malcolm <i>Malcolm Gordon</i>	Malaysia , Tung Seng Yeoh <i>Messrs Yeoh & Joanne</i>
Japan , Sho Imanaka <i>Mori Hamada & Matsumoto</i>	Netherlands , Adam Diels <i>Everaert Advocaten</i>
Japan , Rika Kawahara <i>Yodoyabashi&Yamagami Legal Professional Corporation</i>	Netherlands , Eline van Deijck <i>Everaert Advocaten</i>
Japan , Mangyo Kinoshita <i>southgate</i>	New Zealand , Lloyd Kavanagh <i>MinterEllisonRuddWatts</i>
Japan , Akira Nagasaki <i>City-Yuwa Partners</i>	Peru , Eduardo Garcia Godos <i>Garcia Godos & Lindley Russo, Attorneys at Law</i>
Japan , Takashi Sugimoto <i>Yodoyabashi & Yamagami Legal Professional Corporation</i>	Philippines , Elaine De Los Santos <i>Aurecon Australasia Pty Ltd</i>
Japan , Shinji Sumida <i>Akasaka International Law, Patent and Accounting Office</i>	Philippines , Jaime Renato Gatmaytan <i>Gatmaytan Yap Patacsil Gutierrez & Protacio</i>
Japan , Yuto Suzuki <i>NAKAYAMA&PARTNERS</i>	Philippines , Rosemarie Sicangco <i>Sicangco & Sicangco Law Offices</i>
Japan , Hajime Taniuchi <i>Oh-Ebashi LPC & Partners</i>	Philippines , Mark Tiaoqui <i>Romulo Mabanta Buenaventura Sayoc & de los angeles</i>
Japan , Shohei Tezuka <i>Higashimachi, LPC</i>	Philippines , Ben Dominic Yap <i>Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)</i>
Japan , Tomoki Ueda <i>Midosuji Legal Profession Corporation</i>	Pakistan , Hadi Rehman <i>Daudpota International</i>
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Japan , Ryotaro Yamamoto <i>Oh-Ebashi LPC & Partners</i>	Singapore , Lee Fong Chia <i>Rajah & Tann Singapore LLP</i>
Japan , Shinya Yoshida <i>Higashimachi LPC</i>	Singapore , Clarissa Chow <i>Oon & Bazul LLP</i>

Singapore , Shunsuke Domon <i>Oon & Bazul LLP</i>	Taiwan , Penny Chen <i>Chiang & Partners Attorneys at Law</i>
Singapore , Piyush Gupta <i>Kochhar & Co.</i>	Taiwan , Wei Chen Chen <i>Zhong Yin Law Firm</i>
Singapore , Michael Hwang <i>Michael Hwang Chambers LLC</i>	Taiwan , Peng-Kuang Chen <i>Formosa Transnational Attorneys at Law</i>
Singapore , Nawaz Kamil <i>Providence Law Asia LLC</i>	Taiwan , Tin-Hsuang Cheng <i>Yeh law Group</i>
Singapore , Max Ng <i>Gateway Law Corporation</i>	Taiwan , Wen-Lung Cheng <i>Justice Law Firm</i>
Singapore , Roderick Noble <i>39 Essex Chambers</i>	Taiwan , Pei-Hsuan Chia <i>Taiwan Semiconductor Manufacturing Company Ltd.</i>
Singapore , Danny Quah <i>Providence Law Asia LLC</i>	Taiwan , Ta-Wei Chien <i>ChunLu Law Firm</i>
Singapore , Paul Seah <i>Tan Kok Quan Partnership</i>	Taiwan , Yunghao Chiu <i>Chang-Hong Law Office</i>
Singapore , Kwan Kiat Sim <i>Rajah & Tann Singapore LLP</i>	Taiwan , Taiwei Chou <i>Eternity Law Firm</i>
Singapore , Lian Yok Tan <i>K&L Gates Straits Law LLC</i>	Taiwan , Tung Chou <i>Taiwan Depository & Clearing Corporation</i>
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Singapore , Julia Yu <i>Oon & Bazul</i>	Taiwan , Hsinyi Feng <i>Chang-Hong Law Office</i>
Singapore , Jiaxiang Zhuo <i>Providence Law Asia LLC</i>	Taiwan , Hsin-Yun Han <i>Sanrio (Taiwan) Co., Ltd. (in-house)</i>
Taiwan , Ernie Chang <i>Chiang & Partners Attorneys at Law</i>	Taiwan , Yu-Che Hsieh <i>JihSun International Bank</i>
Taiwan , Wan-Ching Chang <i>Lee and Li, Attorneys-at-Law</i>	Taiwan , Chi Yao Hsu
Taiwan , Yuning Chang <i>LCS & Partners</i>	Taiwan , Jui-Chih Hsu <i>LexPro Attorney-at-Law</i>
Taiwan , Jung Han Chang <i>KPMG Law Firm</i>	Taiwan , Kuang-Chen Hsu <i>Chia-Ho Law Firm</i>
Taiwan , Yi-Ming Chang	Taiwan , Ling-ying Hsu <i>Winkler Partners</i>
Taiwan , Kuo-Chieh Chao <i>Huang & Partners Attorneys-at-Law</i>	Taiwan , Chien Hsun <i>Lin & Chang Attorneys-at-Law</i>
Taiwan , Peiyi Chao <i>Formosa Transnational</i>	Taiwan , Cheng-Yi Huang <i>TIPLO Attorneys-at-Law</i>
Taiwan , Huan-Chun Chen <i>TIPLO Attorneys-at-Law</i>	Taiwan , Pei-Chen Huang <i>TIPLO Attorneys-at-Law</i>

Taiwan , Ju-Yu Kitty Huang <i>Taiwan High Speed Rail Corporation</i>	Taiwan , Kuan-Chun Liu <i>TIPLO Attorneys-at-Law</i>
Taiwan , Yuyun Huang <i>Chang-Hong Law Office</i>	Taiwan , Jou-Hui Lu <i>LCS & Partners</i>
Taiwan , Meiling Huang <i>Line Taiwan Limited</i>	Taiwan , Jian Wei Luo <i>LCC Partners Law Office</i>
Taiwan , Yi-Ru Huang	Taiwan , Yu Lin Pan <i>Zhongyin Law Firm</i>
Taiwan , Cheng-Hao Hung <i>TIPLO Attorneys-at-Law</i>	Taiwan , Sun Pin
Taiwan , Robert Kang <i>Baker & McKenzie</i>	Taiwan , Yen Fun Shih <i>Justice Law Offices</i>
Taiwan , Su-Ning Kao	Taiwan , Jing-Ya Su <i>Huei-Sheng Attorney at Law</i>
Taiwan , Hsiang-Cheng Kuei <i>Financial Ombudsman Institution</i>	Taiwan , Yu-Ting Su <i>Lee and Li, Attorneys-at-Law</i>
Taiwan , Shelly Kuo <i>Taiwan Semiconductor Manufacturing Company Ltd. (TSMC)</i>	Taiwan , Bernard, Siong-Bun Tan
Taiwan , Chi-Ying Lee	Taiwan , Chieh Mei Tsai <i>Yeh Law Group</i>
Taiwan , Vicky Lee <i>LCS & Partners</i>	Taiwan , Meng-Jen Tsai <i>Formosa Transnational Attorneys at Law</i>
Taiwan , Yen-Chun Lee <i>Baker McKenzie</i>	Taiwan , Hsing-Wen Tung <i>Justice Law Firm</i>
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Taiwan , Kevin Lin <i>Zhong Yin Law Firm</i>	Taiwan , Hsin-Yang Wu <i>HYW Law Firm</i>
Taiwan , Po-Cheng Lin <i>Beacon International Attorneys At Law</i>	Taiwan , Tien-Lun Wu <i>Formosa Transnational Attorneys at Law</i>
Taiwan , Tzu-Ching Lin <i>Zoomlaw Attorneys-at-Law</i>	Taiwan , Hsien-Tsu Yang <i>TIPLO Attorneys-at-Law</i>
Taiwan , Chi-Yang Lin	Taiwan , Yi-Sheng Yang <i>TIPLO Attorneys-at-Law</i>
Taiwan , Huan Cheng Lin <i>2019-HL0217</i>	Taiwan , Adam Yang <i>LCS & Partners Law Firm</i>
Taiwan , Feng-Jou Liou <i>Formosa Transnational Attorneys at Law</i>	Taiwan , Minhung Yang <i>Chang-Hong Law Office</i>

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Thailand , Chatchavej Chitvarakorn <i>Siam Premier International Law Office Limited</i>	United Kingdom , David Brynmor Thomas <i>39 Essex Chambers</i>
Thailand , Rawat Chomsri <i>Siam Premier International Law Office Limited (Head Office)</i>	United Kingdom , Henry Ellis <i>Quadrant Chambers</i>
Thailand , Torsakul Cunvong <i>Siam Premier International Law Office Limited</i>	United Kingdom , Adrian Hughes QC <i>39 Essex Chambers</i>
Thailand , Saroj Jongsaritwang <i>R&T Asia (Thailand) Limited</i>	United Kingdom , Wayne Martin AC QC <i>39 Essex Chambers</i>
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Thailand , Supawat Srirungruang <i>R&T Asia (Thailand) Limited</i>	United Kingdom , Lindsay Scott <i>39 Essex Chambers</i>
Thailand , Bancha Wudhiprecha <i>Siam Premier International Law Office Limited</i>	United States , Shunsuke Koyama <i>MUFG Union Bank, N.A.</i>
United Arab Emirates , Faisal Daudpota <i>Daudpota International</i>	United States , Fu-Yi Lu <i>Stanford Law School</i>
United Arab Emirates , Hani Ghattas <i>Norton Rose Fulbright (Middle East) LLP</i>	

Members' Notes

Ivo Greiter, Austria



Ivo Greiter is a lawyer in Innsbruck, Austria. He has been a member of the Austrian Bar since 1971 and of the IPBA since 1991. He specialises in helping clients obtain high compensation amounts in personal injury cases, showing his strong sense of solidarity with accident victims. He is the author of 'Compensation for Pain and Suffering After an Accident' and has just published a new book called 'Schmerzensgeld für Trauer' (Compensation for Grief and Sorrow), which includes all the important decisions made by the Austrian courts relating to compensation for grief and sorrow after the death of a close relative. Ivo works in English, German and French. He is married, has four children and five grandchildren.

Members' Notes

Dr Christopher Malcolm, Jamaica



Dr Christopher Malcolm is a dispute management practitioner and academic, who has recently become a member of the IPBA. He has been the Attorney General, British Virgin Islands; and Head, Legal Unit, Organisation of Eastern Caribbean States. He is now a Senior Lecturer, Faculty of Law, The University of the West Indies, Mona Campus, Jamaica and Director of the Mona Law Institutes Unit; Partner, Malcolm Gordon; Secretary General, Jamaica International Arbitration Centre Limited; and Executive Director, Street Law Caribbean Limited.

He received a Best Research Award from the Principal of the Mona Campus, The University of the West Indies on 8 February 2019. The award recognised the body of arbitration and alternative dispute resolution work undertaken by Dr Malcolm, including that which culminated in the Jamaica Chapter that has been published in the second edition of the World Arbitration Reporter.

Dr Malcolm is based in Jamaica, while maintaining a jurisdiction focus that includes the entire Caribbean region. He has been admitted to practice law in Jamaica, British Virgin Islands, St Lucia, Belize and Dominica.

Members' Notes

Max Ng, Singapore



Mr Max Ng has recently joined the IPBA and is looking forward to the meeting in Singapore this April. Mr Ng has been received as a member of the Intellectual Property Panel of Arbitrators of the Singapore International Arbitration Centre, been made a Fellow of the Singapore Institute of Arbitrators, is an Associate Mediator with the Singapore Mediation Centre, and has recently been appointed to the Singapore Innovation Advisory Board. He also volunteers his time as a Mediator with the Small Claims Tribunal of the State Courts of Singapore. Mr Ng currently manages the boutique legal practice Gateway Law Corporation.



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

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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):

- | | |
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| <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 and Aerospace | <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):

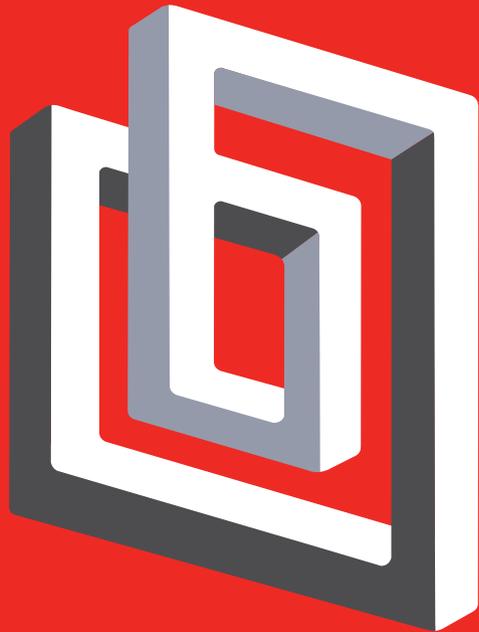
- Credit Card
 - VISA MasterCard AMEX (Verification Code: _____)
 - Card Number: _____ Expiration Date: _____

- 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: 9 Battery Road #15-01, MYP Centre, Singapore 049910

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



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