

IPBA Journal

June 2019

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NEWS & LEGAL UPDATE



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BAR ASSOCIATION



IPBA 2020 SHANGHAI

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IPBA 2020



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The President's Message

Francis Xavier
President



Dear Friends,

Thank you for your unstinting support of the 29th Annual Conference in Singapore! The Host Committee is grateful to you for making the event memorable and resulting in us recording the highest number of attendees in IPBA history.

Your many responses and feedback informed the Host Committee that what members truly wish for in an annual conference are basic components—meaningful plenary sessions, well-thought through substantial concurrent sessions, a spread of local food and fun-filled social events. Future host committees will definitely take heed of this.

One key milestone achieved at the Conference was the launch of our new logo. You will notice that it adorns this edition. The circular design signifies the unity in our membership and represents our global presence. The blue arc at the bottom represents the Asia-Pacific region, the foundational jurisdiction for the IPBA. The two teal arcs represent the remaining land masses—the Americas and Europe/Africa, completing the other components of our membership. Past President Perry (not so fresh from his recent sojourn to the Antarctica) never fails to remind us that the arrow-like A (with the middle bar missing) signifies the IPBA reaching even greater heights of achievement.

On another note, the leadership is presently carrying out a review of what the IPBA really stands for—the effective interaction between Asia Pacific and the other parts of the world; we are also studying our current system of regional coordinators and representatives as to whether it is fit for purpose and what we can do to fill the needs of smaller nations across the globe. The leadership is also re-looking at our global calendar to see if we are indeed meeting the aspirations of members.

In order to tackle these and other issues, the leadership team will 'meet' in cyberspace once every two months or so. We will keep you updated on these deliberations. In the meantime, if you wish the leadership team to review any particular concern or proposal that you may have, please do get in touch with us.

Wishing you a fabulous year ahead!

Francis Xavier
President



The Secretary-General's Message

Michael Burian
Secretary-General



Dear IPBA Members and Friends,

It is my honour to write to you all as the new Secretary-General after two years as Deputy Secretary-General.

My genuine thanks and best wishes go to my predecessor, Caroline Berube. Caroline did an exceptional job during her tenure from 2017 to 2019. I learned a lot from her and I am really looking forward to contributing to the success of the IPBA as an organization in my new role.

As Secretary-General and attendee of numerous consecutive IPBA conferences for more than a decade, I am keen to share my impressions of the last Annual General Meeting with IPBA members, especially those who might not have had the possibility to join.

The 29th Annual General Meeting and Conference was held from 25 to 27 April 2019 at the Raffles City Convention Centre in Singapore. The conference, which was themed 'Technology, Business and Law—Global Perspectives', was a great success and achieved the high IPBA standards bringing together leading regional as well as international lawyers. Its aim was to examine broad-ranging legal issues concerning developments in global and regional trade, new technology and emerging trends. Additionally, the numerous concurrent sessions were able to engage in a wide range of present-day legal issues.

This year's conference again marked a record number of attendees. This as such is a reason to celebrate. I am, however, particularly proud of the continuing high attendance rate in the concurrent sessions. It shows that the Annual General Meeting of the IPBA is more than a get-together. It is a place of real exchange and of intense discussions regarding the challenges and opportunities of an ever-changing legal market

all over the world. This would not be possible without the tremendous efforts of our devoted organizing committee; without the passion and commitment of the IPBA Secretariat, our council members, officers and committee members; and without the contributions of speakers from across the world. We should never take this gift for granted.

We were also blessed with inspiring speeches from our honorary guests, in particular Singapore Prime Minister Lee Hsien Loong and Anwar Ibrahim.

It is in this spirit that I would like to thank everyone for the perfect organization and for making the conference in Singapore such a huge success for all participants.

As newly elected Secretary-General, I promise to devote my efforts to fostering the success of the IPBA in a sustainable way and look forward to working with all of you towards this common goal!

Michael Burian
Secretary-General



Message to the Reader

John Wilson

Chair – Publications Committee, IPBA



Welcome to the June issue of the IPBA Journal.

The theme that I have chosen for this issue of the Journal is Aviation and Aerospace Law. I'd like to express my appreciation to the Chair and the Vice-Chair of the Aviation and Aerospace Committee, Fernando Hurtado de Mendoza and Jean-Claude Beaujour, for their assistance in arranging articles dealing with aviation and aerospace.

This edition of the Journal follows on from the very successful and memorable 2019 IPBA Annual Conference in Singapore in April and you will find included in this issue of the Journal some photographs of the conference as well as write-ups about and photographs of some of the committee sessions which were held at the Singapore conference. It took longer than usual for the conference photographer to get the photographs across to us and so the publication of this edition of the Journal is taking place in August. We will be back on schedule with the next edition of the Journal!

Those readers who attended the IPBA conference in Singapore will recall that we had the privilege of being addressed by some very important speakers and I am pleased to inform you that a decision was taken to publish a separate commemorative special issue of the Journal which includes transcripts of the speeches of the Prime Minister of Singapore, Dato Anwar Ibrahim of Malaysia and Chief Justice Sundaresh Menon of Singapore. The picture accompanying this message of the organising committee in fancy dress is a great reminder of a conference which was both extremely educative, thought provoking, full of substantial content as well as a lot of fun.

As for articles relevant to the Aviation and Aerospace Law theme of this issue of the Journal, readers will find in the articles a wealth of interesting information. The second

part of the detailed lengthy article contributed by Jingbo Lu on 'Employment in Internet-platform Industries in China', (the first part of which appeared in the April issue of the Journal), is also published in this issue.

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 to the Officers and Council of the IPBA for consideration during the meetings of the Officers and of the Council which will take place in Milan and Shanghai.

The theme for the next Journal will be Banking, Finance and Securities Law.

I hope that all readers enjoy what is yet another issue of the Journal replete with interesting articles on a very specialist area of law. 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 of the IPBA



IPBA Upcoming Events

Event	Location	Date
IPBA Annual Meeting and Conferences		
30th Annual Meeting and Conference	Shanghai, China	Spring 2020
31st Annual Meeting and Conference	Tokyo, Japan	April 1, 2021
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
Asian Investment Issues - the Lawyer's View	Sydney, Australia	July 4, 2019
North America, Asia and the Law in International Business: Rules of the Road in 2019 and Beyond	Chicago, USA	September 5, 2019
5th IPBA Arbitration Day	Osaka, Japan	November 13-14, 2019
IPBA 5th East Asia Regional Forum	Beijing, China	November 21, 2019
IFLR/IPBA Asia M&A Forum 2020	Hong Kong	February 26-27, 2020
IPBA-Supported Events		
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
AIJA's Annual Congress 2019	Rome, Italy	September 3-7, 2019
Wolters Kluwer's 6th Annual International Arbitration Summit	Turkey	September 26, 2019
ABA-SIL's Asia-Pacific Forum: Navigating the Life Cycle of a Cross-Border Deal	Hong Kong	October 24-25, 2019

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

IPBA Annual Meeting and Conference Singapore 2019

Photo Gallery







Committee Session Highlights

International Trade Commission Sessions

From Tweets About Trade to Negotiations About Nukes: How Asia-Pacific Countries and Companies Are (and Should Be) Dealing with Disruption in International Trade Law and Policy

This Panel directly addressed the chaos in the world trading system at the multilateral, FTA and national levels that has occurred since the January 2017 inauguration of Donald Trump as US President. Moderated by longtime IPBA friend and supporter, Bruce Aitken (Aitken Berlin LLP, Washington, D.C. and Houston), a full audience heard substantive, non-partisan presentations from seasoned professionals about the effects of American trade law and policy on both practical and conceptual challenges facing lawyers and businesspersons. Paolo Vergano (FratiniVergano European Lawyers, Brussels) covered the perspective from the EU, Shigehiko Ishimoto (Mori, Hamada and Matsumoto, Tokyo) reviewed developments from Japan, Ngosong Fonkem (Addison-Clifton LLC, Milwaukee) analysed matters from the US and Cody Wood (Dentons US LLP, Kansas City) discussed relevant topics to exporters wherever located facing US trade remedies (such as anti-dumping and countervailing duties, safeguards and/or Section 232 or 301 actions). Raj Bhala (University of Kansas School of Law, BloombergQuint, Mumbai) concluded with an effort to explain Trump Administration trade law and policy, highlighting the importance of national security to explain the seemingly incoherent disruption.

How International Trade Lawyers Can Add Value For Corporate Clients

This Panel was a moderated discussion featuring trade lawyers from five different jurisdictions: Kala Anandarajah (Rajah & Tann, Singapore), Samuel Scoles (White & Case, Singapore), Devin Sikes (Akin Grump Strauss Hauer & Feld, Washington, D.C.), Hideaki (Roy) Umetsu (Mori Hamada & Matsumoto, Tokyo), Ronaldo Veirano (Veirano Advogados, Brazil) and Paolo Vergano (FratiniVergano, Brussels). Tracey Epps (Chapman Tripp, New Zealand) moderated.

The goal was to explore the challenges and opportunities for building and sustaining a trade law practice and to consider how trade lawyers add value for corporate clients. There was a real sense that any entity conducting business across borders should be paying attention to matters of trade policy, particularly given the fast-moving

nature of developments of late. The bottom line is that government action or inaction can radically alter the risks and opportunities associated with doing business. Trade lawyers may play a variety of roles to assist entities—from advising on the margins in a merger or acquisition, to advocating for more favourable trade policy settings, to litigating rights in domestic courts in the face of unfair competition from subsidised or dumped goods.

Russia in Asia: Inbound and Outbound Trade and Investment—Legal Issues For International Business

This Panel was a showcase and survey of current issues in Asia-Russia trade and investment, including the conditions affecting inbound trade and investment in Russia, a look at the impact of US and European sanctions on Asian business in Russia and a selected country review of Russian investment in Southeast Asia, Korea, Japan and China. The session was moderated by Gerhard Wegen (Gleiss Lutz, Germany) and Jeff Snyder (Crowell & Moring, Washington, D.C.). Speakers included Ekaterina Rozenbaum (Egorov Puginsky Afanasiev & Partners LLP, Moscow), Jack Li (Jin Mao, China), Yong-Jae Chang (Lee & Ko, Seoul), Kie Matsushima (Anderson Mori & Tomotsune, Tokyo) and President Perry Pe (Romulo Law Firm, Manila). The session included a lively discussion of the diverging views of world order, international trade, the role of international investment, the ascendance of Southeast Asia in Russian investment, followed by a robust Q&A—resulting in a memorable session showcasing the growing involvement of Russia in Asia trade and investment.

Joint International Trade and Tax Committee Session

Doing Business in China

To open, Jeff Snyder drew a connection with the past IPBA sessions on this topic and the ongoing challenges facing global business investing in China: in particular, the potential trade, customs, technology and IP obstacles. Liyao Wang then summarised the tax topics that needed to be addressed, including permanent establishment ('PE'), profit repatriation and transfer pricing and introduced this year's focus, the Belt and Road Initiative ('BRI'). The Panel then analysed these issues from the perspective of a number of jurisdictions.

Tracy Xiang (Yiyou TianYuan, China) explained how the PE concept is interpreted in China and the way it affects foreign investment into China. Pieter De Ridder (Mayer Brown, Singapore) shared his deep knowledge of the tax issues that need to be considered when repatriating profits from China. Charlie Hwang (Crowell & Moring, Washington D.C.) took us on a guided tour of the new US Tax Cuts and Jobs Act and the implications for US outbound investment. Conchi Bargallo (Cuatrecasas, Spain) shared some European considerations and experiences for EU investors seeking to access the Chinese market. Keanu Ou (Jin Mao Partners, China) provided a succinct update about the BRI. Selena Kim (Gowling WLG, Toronto) explained a number of important technology and IP issues that need to be taken into account and discussed a number of interesting 'cautionary' case studies. Shanshan Xu (Hiways, Shanghai) carefully explained the customs issues that arise when importing to China; in particular, the issues associated with royalty fees. 'King' Khong Siong Sie (Skrine, Malaysia) discussed a number of current Chinese investment projects in Malaysia and successful strategies adopted by China. In relation to India, Seetharaman Sampath (Seetharaman & Associates, India) highlighted a number of trade issues that have been encountered by Indian companies investing in China. For New Zealand, Tracey Epps (Chapman Tripp, New Zealand) shared a number of stories involving New Zealand companies that have successfully engaged and established very good relations with China.

All in all, a rich tapestry of information and advice for business lawyers in Asia confronting the challenges of dealing with China's emerging economy was presented. The Joint Session was very well attended with a robust Q&A session, reflecting the strong interest in the issues.

Multi Jurisdiction Termination of Employees

John Wilson gave a warm welcome to all the members that attended the session.

John thanked Frédérique David, the Chair of the Employment and Immigration Law Committee for the invitation to moderate the committee's panel discussion on Multi Jurisdiction Termination of Employees.

John, in his capacity as Chair of the Publications Committee, informed those present that the April issue of the IPBA Journal has a special focus on employment

law and cross-border employment law and urged those present to read it.

He opened the session by requesting the panellists Sandra McCandless (USA), Leonard Yeoh (Malaysia, who had kindly agreed to participate in the panel due to the sudden last-minute inability of one of the panellists to attend the Singapore conference), Frédérique David (France), and Indrani Lahiri (India), to introduce themselves.

John then outlined a hypothetical factual scenario regarding termination of employment and asked the panellists to participate in answering questions specifically relating to their jurisdictions.

The hypothetical facts presented concerned 'Fred', a highly qualified Finance Manager of company ABCD, a subsidiary of a multinational IT company, XYZ. Operations and employees of ABCD are managed by company XYZ, the parent company, where the HR and accounting functions are centralized. Fred has been an employee of company ABCD for the past 7 years. He had received nothing but positive reviews in all of his performance appraisals. Company XYZ introduced a new technological system which basically rendered Fred's role almost redundant. The new program enabled the centralized performance of most of Fred's functions as set out in his job description. Since the introduction of the new system, Fred had only been involved in mundane tasks such as salary payments and managing day-to-day expenses. Company XYZ was of the view that the full potential of highly paid Fred was not being used and decided to give him a new role, and to provide him with the necessary training to fulfil this new role.

Company XYZ however informed Fred that the new role would be with one of the other subsidiaries of the group, in another country. Fred, being married and having two young daughters refused to leave the country. Fred was informed that his role was redundant and that Fred would have to leave employment. Company ABCD requested him to resign voluntarily so that his work record would not reflect the termination. Fred reluctantly agreed. Company ABCD paid him all the required dues in terms of the labour laws of the country and the salary in lieu of notice that he was entitled to, as well as other legally stipulated benefits in terms of the laws of the country. Company ABCD also paid him an *ex gratia* amount as a form of compensation for loss of employment. Fred accepted the payments and service

letter provided to him by company ABCD but informed his employer that he was reserving the right to take legal action against the company. Fred did not leave the company on good terms at all. A month later Fred, true to his word, filed a labour case against Company ABCD alleging constructive termination.

The panellists were asked to comment on several legal aspects arising for discussion in the context of the factual scenario from the perspective of their respective jurisdictions.

Questions raised for discussion included the following: How does termination work in your jurisdiction? When is termination possible? What is the attitude of courts generally with regards to termination of employment? What the remedies that an employee can seek? Does the law of your jurisdiction recognise constructive terminations?

One of the key takeaways from Sandra's remarks was that the USA is a termination-at-will jurisdiction but an employer could face claims for large amounts of damages, for example in a claim alleging discrimination. As there are no labour courts as such in the US, except for union-related matters, employees that claim that they were discriminated against will sue their employer in a Federal or State Court and are generally entitled to a jury of regular citizens. However, due to the high cost of discovery, risk of jury trial causes and the fact that the burden of proof is on the employee, most cases get settled out of Court. Mediation is very common in the US.

Leonard shared his views regarding the position in Malaysia, in that Malaysia is regarded as a pro-employee jurisdiction as opposed to a termination-at-will jurisdiction. Constructive dismissal is recognized in Malaysia and rightful termination can only occur with just cause or excuse. A high threshold or standard of proof is placed on the employer to justify any termination with just cause or excuse. In the scenario above, it would appear that the 'redundancy' of Fred may not be genuine and the employer is at risk of failing to justify his termination with just cause or excuse.

Another interesting takeaway provided by Indrani was that in India an employer could terminate the services of white-collar/non-workman employees pursuant to any of the grounds mentioned for termination under the contract of employment. The employment of workman/



blue-collar workers could only, on the other hand, be terminated for certain defined reasons, for example, redundancy. Therefore the termination of Fred's employment would be possible.

An important takeaway from Frédérique's remarks was that in France the possibility to terminate and the conditions would be based on whether the termination is for economic reasons or personal reasons.

On the issue of approaches of courts, Sandra commented that an employer must have a very strong, well-documented business case to win on summary judgment. These days however, courts in the US very rarely grant summary judgments in employment cases.

Indrani commented that in India, the courts are generally employee friendly. However, in the case of white-collar employees, an employee would typically file a suit in a Civil Court and these courts tend to be more neutral.

Leonard highlighted that the common recourse for Fred in Malaysia would be to file a claim for reinstatement under the Industrial Relations Act. The claim will be heard in the Industrial Court, which is employee friendly.

The topic of remedies for termination in general was also discussed, whether reinstatement was a concept recognised, and the panellists were asked to comment on whether or not the remedies would be different if termination occurred due to redundancy.

Sandra commented that in the US, remedies such as damages, back pay and benefits, front pay

and benefits, emotional distress damages, punitive damages and attorney fees could be claimed. However, reinstatement is never seen except when a union-represented employee is terminated. Remedies in relation to redundancy are different.

Discussing the position in India, Indrani mentioned that the Labour Court has the power to order reinstatement and payment of wages and benefits lost from time of termination for blue-collar workers. In some case the court may even order compensation. In the case of white-collar workers, their only remedy is damages or compensation from the employer in terms of their employment contract, unless the employer is a public sector employer, in which case reinstatement of the employee can also be sought.

Leonard added that in Malaysia, a successful claim for reinstatement in the Industrial Court will result in the employer having to pay back wages of up to 2 years and compensation in lieu of reinstatement based on Fred's years of service. The remedies would be similar if the court finds that the redundancy was not genuine.

The discussion was followed by questions from the audience with some providing information on the position in their respective jurisdictions.

Properly Managing Employee Issues in Cross-Border Transactions – Avoiding a Nightmare Topic Outline

'When companies enter into a transaction to merge or purchase businesses, the primary goal is to achieve greater profitability in the long run through, *inter alia*, synergy and efficiency. While a lot of attention is put into due diligence, the price and the tax issues, due consideration needs to be given to the impact of the transaction on the employment relationship and how to transition employees in accordance with the business objectives and the requirements of local law, which can differ greatly between the jurisdictions. The issues that arise include the legal framework in various jurisdictions affecting employee issues in an asset/business sale transaction, whether there is an obligation to make an offer of employment on the part of the buyer, whether the buyer can choose the employees it wants, the seller's obligation to its employees and achieving functional integrity and alignment in the conditions of employment post-completion. There are



also issues if the business has organised labour. Is there a need for consultation with unions/works council? What happens to the collective agreement between the seller and union when there is a transfer of the business? This panel will share their knowledge and experience in achieving a successful outcome when dealing with these issues as well as on other related issues from both a legal and practical standpoint.'

Panel Members

John Stamper – Legal Director & Head of Employment Law, The Bench (UAE)

Veena Gopalakrishnan –AZB & Partners (India)

Felicia Tan – TSMP Law Corporation (Singapore)

Jingbo (Jason) Lu – River Delta Law Firm (China)

Report

The panel members shared their experience in various jurisdictions on the following issues:

1. Is there a difference in impact on the employment relationship between a sale of assets, sale of business and sale of shares? Is there a difference if there is a part sale?
2. Is there an automatic transfer of employment from the buyer to the seller? If not, what mechanism is there for transfer? Can the employee reject the transfer?
3. What are the obligations of the buyer and the seller in these transactions? Does the buyer need to offer employment to all the seller's employees?

4. Is there a need for approval/consultation with work council/unions?
5. What if the seller is unionised? What happens to the seller's union and the seller's collective agreement?
6. What if the buyer is also unionised and has a collective agreement? How does that impact on the transaction if the seller has a similar situation with different union and a collective agreement on different terms?
7. Best practices for early identification of employee issues pre-transaction. (Due diligence? What to look out for. What could go wrong if you didn't?)
8. How does one harmonise the different terms and conditions of employment between the buyer's and seller's employees? At what stage should this be done: as part of the transaction or post-transaction?
9. What are best practices/recommendations for achieving transactional business objectives in so far as employees are concerned (e.g., effective communication, tie down key employees)?
10. Strategies for achieving practical post-merger integration including from a cultural/values aspect.

Tax Committee Session Singapore 2019 Report

The Tax Committee was fully active at the 2019 Singapore Conference with three full sessions and a joint session with the International Trade Committee.

Our first session focused on 'Tax and the Digital Economy' and on cross-border double taxation issues that arise in the videogaming industry with suppliers located in one jurisdiction and gamers in others throughout Asia Pacific. The session was chaired by Brígida Galbete and the speakers were David Blair, Min Young Sung, Neil Russ, Wiebe de Vries, Saravana Kumar, Pieter de Ridder and Hong (Julie) Cheng.

Our second session was on 'Crazy Rich Asians' and was a detailed overview of the challenges of tax planning for high net-worth Asians with modern-day families all over the world. The session focused on challenging tax and information exchange rules. The session was moderated and organised by Millie Chan and the speakers were

Heida Donegan, Lee Wong, Sean Coughlan and Eric Roose.

Finally, our last pure tax session focused on dealing with 'Tax Disputes in a Brave New World'. It focused on issues relating to tax disputes involving multinational enterprises of various Asia Pacific jurisdictions. Jay Shim and Allison Forster organised and moderated the session. Speakers were Picharn Sukparangsee, Ian Gamble, Sung Hyun Ru, Sheryl Bartolome, Ryosuke Kono and Navneet Chugh.

Jeffrey Snyder and Michael Butler coordinated our joint session with International Trade on issues related to doing business in China including tax, IP protection, regulatory and other issues.

Thank you to all who participated in and attended our sessions. All sessions were informative, interactive and well attended.

We look forward to great sessions in 2020 under the leadership of Jay Shim.



Fintech: Hot Topics for the Fintech Industry

Moderator: Dr Thomas Zwissler, ZIRNGIBL (Germany)

Panellists: Vinay Ahuja (DFDL Legal & Tax, Indonesia, Thailand) Conrad Chan (Kwok Yih & Chan, Hong Kong), David Robinson (Fladgate, United Kingdom), Yuri Suzuki (Atsumi & Sakai, Japan), Yap Wai Ming (Morgan Lewis Stamford, Singapore), Yo Yeo (Monetary Authority of Singapore, Singapore)

Following the very successful panel discussions on 'Key Legal Challenges Fintech Companies are Facing in Different Jurisdictions' held in Auckland in 2017 and 'Cryptocurrencies and ICOs' held in Manila in 2018, this year's Fintech panel reviewed the most recent developments in cryptocurrencies and ICOs (initial coin offerings) and then focused on 'Payment Solutions and Robo Advice'. Dr Thomas Zwissler introduced the topics and led the discussion, which was particularly enriched by the presence of an external speaker representing the Monetary Authority of Singapore.

The Panel started by discussing the current status of developments in cryptocurrencies and ICOs. It became clear that regulators across the different jurisdictions take and enforce the view that in most cases token offerings are nothing but securities offerings and need to be treated as such. Also, experiences with Cryptocurrency ATMs were discussed.

The second part of the session was dedicated to 'Payment Solutions'. The panellists presented interesting insights on how regulators support and control the emergence of new payment methods and the providers of such services. Special focus was given to a case where a suspension order was issued against payment service providers based in Hong Kong.

The third and final part of the session was dedicated to 'Robo Advice', which is becoming increasingly popular in many countries. Special attention was given to the 'Guidelines on Online Distribution and Advisory Platforms' issued and most recently implemented by the Securities and Futures Commission in Hong Kong. The discussions also covered the report presented by the Financial Conduct Authority (UK) in May 2018, which criticised standards of compliance within the robo industry.

The session was once again well attended and with numerous contributions from the audience it was very interactive. It is therefore planned to continue the series



of Fintech panels presented by the Banking, Finance and Securities Committee at future IPBA conferences.

Best Practices in Financing Energy Projects

Moderators: Gmeleen Tomboc (Sidley Austin, Singapore) and Peter Owles (Buddle Findlay, New Zealand)

Panellists: Net Le (LNT & Partners, Vietnam), Monalisa Dimalanta (PJS Law, Philippines), Mutiara Rengganis (AYMP, Indonesia), Yibai Xu (Zhong Lun Law Firm, China), Fernando de Carcer (CMS Carey & Allende, Chile), Joaquin Terceno (Freshfields Bruckhaus Deringer, Japan)

This was a joint session organised by the Banking, Finance and Securities, International Construction Projects and the Energy and Natural Resources Committees. The Panel was comprised of experts in energy projects from a variety of jurisdictions including Vietnam, the Philippines, Indonesia, China and Chile, and was complemented by input from Joaquin Terceno, who is based in Tokyo and is an experienced advocate in international disputes. The panellists began the discussion by exploring the basic industry and regulatory frameworks in their respective jurisdictions and the common methods of structuring of financing of power projects. They then engaged in a lively discussion exploring a wide range of issues that are



material to achieving successful bankable power projects in various jurisdictions around the Region. We then moved on to cover in more detail some of the thorny issues that are often encountered, such as common terms in power purchase agreements, managing currency and market risks, termination payments, government guarantees and lessons that can be learned from projects that have ended up in dispute. We also had an interesting discussion on what value lawyers can add to a successful project beyond negotiating the documentation. The session was a useful reminder that there are common issues that lawyers need to be aware of that are applicable to all projects no matter which jurisdiction they are located in.

Legal Entrepreneurship — Ready to Jump In?

Moderator and Speakers: Olivia Kung; Professor Dr Colin Ong, QC; Maxine Chiang; Richard Goldstein; Areej Hamadah; Roland Falder; Lyn Lim; Tatsu Nakayama and Joyce A. Tan

With the rapid increase in start-up companies in the past 10 years, entrepreneurship has become a hot topic of discussion. Apart from the fact that it promotes innovation and creativity, it also generates healthy competition and new job opportunities. In view of this, the Women Business Lawyers Committee invited a panel of founding partners of law firms to discuss legal entrepreneurship and to share their personal experiences with the audience.

The session addressed the following topics particularly relevant to start-up law firms:

1. how market a new firm to compete with existing market players;
2. how to use technology to promote efficiency;
3. how to handle challenges in human resources;
4. the importance of understanding finance and accounting;
5. how to co-exist and work with big firms in the dispute resolution field;
6. the challenges specific to female lawyers and how to overcome them;
7. the importance of business planning;



8. the importance of compliance with local and foreign bar rules and visa rules when working outside one's own jurisdiction; and
9. suggested timing when to make the move.

Apart from the need of (lots of) courage and passion to be a legal entrepreneur, the Panel also raised and addressed practical problems legal entrepreneurs might face and tips to avoid and/or resolve the problems.

We hope the session gave the audience an insight into the journey of legal entrepreneurship and some helpful practical advice to those considering jumping into the deep end. We also hope the session will inspire more lawyers to have the courage to take the plunge and, as one of the speakers said, 'It's never too late to do it'.

Summary of the Session of the Maritime Committee

I, Yosuke Tanaka, spoke as the first speaker and presented the procedure and requirements in Japanese law to enforce arbitration awards made in foreign countries, including my experience in this field. The second speaker was Ms Rong Liu who spoke about Chinese law regarding the enforcement of arbitration awards, including special provisions in respect of maritime arbitration awards. The third speaker was Mr Simon Cartwright (whose paper was read by a lady colleague of his), who discussed the current legal situation for unmanned ships in New Zealand. The fourth speaker was Mr Chen Xiangyong who spoke about some issues in connection with unmanned ships in Chinese law and international conventions. The fifth speaker was Mr Leong Kah Wah who spoke about the enforcement procedure of arbitral awards in Singapore law, including his experiences in a case in which an application was made to an Indian court against a party



to compel it to refrain from arbitration in Singapore. The sixth speaker was Mr Nigel Cooper QC who spoke about enforcement procedures in English law, including an injunction to assist a foreign arbitration.

How Legal Design Thinking Will Change the Practice of Law

The Ad Hoc Next Generation Committee gathered around 50 delegates for a 'learning by doing' session prepared and moderated by Juan Martin Allende, Anne Durez, Ngosong Fonkem, Valentino Lucini, Ferran Foix Miralles and Patricia Cristina Ngoshua. During the 1.5-hour session they worked in various groups to solve the following hypothetical business case: a company wants to invest in a country to extract a valuable mineral in an area in which borders are disputed by two provinces. How can this company obtain an extraction permit without the risk of paying double royalties?

This complex case was successfully and rapidly resolved using a specific approach called 'Design Thinking', which aims to improve and simplify the way lawyers and in-house respond to their clients' concerns. Essentially, it is a user- and human-centred approach that identifies a client's needs as well as all stakeholders' expectations and positions. Instead of looking for the perfect and ideal solution to a problem, the parties involved brainstorm together, then ideate and prototype their solutions until they reach a satisfactory one.

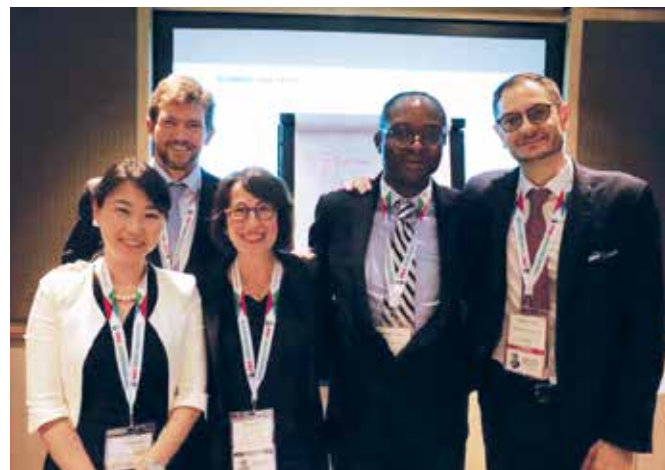
The session was just a brief experience of how Design Thinking works when applied to legal problems. It showed how the process has helped to bring to the fore creative ideas that are out of the box which many times do not appear when we are doing our work inside the box that we are used to. It also fostered

the exchange of ideas among diverse workgroups of different cultural backgrounds, genders and generations.

Legal Design Thinking can apply to all sorts of legal and business issues. It is taught in prestigious law schools such as Stanford and Harvard. The first Annual Legal Design Summit took place in 2017.

For more information on Legal Design Thinking you may contact the Next Generation Committee.

The Restitution of Ill-Gotten Assets in an International Context



Moderator: Simone Nadelhofer (Switzerland), Aoi Inoue (Japan)

Panel: Susmit Pushkar (India), Chen Shuo (China), Shin Jae Kim (Brazil), Siva Kumar Kanagasabai (Malaysia)

The session commenced with Simone introducing the panel speakers and providing a brief background of what the session would entail and the issues found in Switzerland. She stressed the need to address practical hurdles for restituting ill-gotten assets stashed globally and the need to ensure that the restituted funds are not misused again. The moderator introduced a case study involving a political leader involved in corruption, amassing huge wealth and laundering it across the globe.

The key issues discussed during the session were:

1. country-specific procedures for restitution of assets (for example, in India, China, Brazil and Malaysia);

2. international cooperation among the authorities; and
3. obstacles to asset recovery in an international context.

The other issues discussed included potential civil actions for recovery of assets, enforcement of awards in their respective jurisdictions and extradition.

The panel speakers also shared recent developments and case studies of important anti-bribery/money laundering investigations in their respective jurisdictions, for example, Lava Jato (Car wash) in Brazil, the PNB scam in India and the 1MDB scandal in Malaysia.

The session was well attended and interactive.

Climate, Energy and Technology: New Developments and Directions

Chairs: Douglas A. Codiga, Vice-Chair, Energy & Natural Resources Committee

Alberto Cardemil, Chair, Environmental Law Committee



Broadly speaking, what role is climate change playing in emerging key issues in energy law—and what are the practical implications for law practice? This joint session organized by the Energy & Natural Resources Committee and the Environmental Law Committee sought to answer these questions in its program titled “Climate, Energy and Technology: New Developments and Directions.”

This panel was viewed as particularly timely and appropriate given the venue of Singapore and the passage of nearly a decade since Singapore hosted the IPBA annual meeting in 2010. As many will recall, in



2010 the theme for the annual meeting was “Climate Change and Legal Practice”. This was considered to be the first major legal conference in the Asia region focusing on climate change and legal practice, and featured stimulating and provocative presentations by former US Vice President Al Gore and other leaders in climate change law and policy.

Continuing the thread of critical examination of such issues, this panel featured presentations by Gerald Sumida on implications of climate change for law practice; Sean Muggah on renewable energy law and policy in Canada and the United States; Manoj Kumar on recent developments in mineral resources policy in India; Pham Ba Linh on renewables in Vietnam and climate policy drivers; and Jeffrey Robert Holt on energy developments in France and Europe.

By focusing on climate change as a policy driver, this panel provided an overview of major developments and offered insights into how lawyers can help their clients make the most of these challenges and opportunities. The participants in the audience, a good crowd for a Saturday session, appreciated the efforts made by the speakers and were able to further explore certain issues, addressed earlier by the speakers, during the Q&A session at the conclusion of the session.

Generational Differences in the Legal Profession: How to Bridge the Gap

The Ad-hoc Next Generation Committee and the Legal Practice Committee, along with guest participation from the International Association of Young Lawyers (AIJA), organised a session titled ‘Generational Differences in the Legal Profession: How to Bridge the Gap’, which was held during the second session on 26 April 2019. The Panel, moderated by Julie Raneda (Partner, Schellenberg Wittmer, Singapore), consisted of Amira

Budiyano (Associate Director, Gateway Law Corporation, Singapore), Mark Lowndes (Director, Lowndes Ltd, New Zealand), Dushyantha Perera (Partner, Sudath Perera Associates, Sri Lanka) and Xavier Costa (President-AIJA and Partner, Roca Junyent, Spain).

The aim of the session was to analyse the interplay and interaction of the various generations (from Baby Boomers to Millennials and beyond) in legal practice and consider the issues and opportunities arising out of it. The panellists discussed questions such as the existence of a 'generational gap' and the reasons for the same, as well as the approaches of law firms, corporations and bar associations towards addressing some of these issues. With lively audience participation (including discussions on personal topical experiences from around the world, and comments from IPBA council members on its own generational inclusivity initiatives), the session ended with an articulation of several proposals (revolving around workplace motivation and flexi-working arrangements) that law firms and corporations can consider for internal implementation.

The session was extremely well attended, with over 40 participants, including present and past council members of the IPBA, as well as representatives from other international associations including AIJA and Multilaw (an international law firm association consisting of over 90 member firms in more than 100 countries).

Beyond our Borders: Cross-border Challenges in Data Privacy

Speakers: Tong Lai Ling, Krzysztof Wojdylo, Steve Tan and Kevin Shepherdson

Moderator: JJ Disini

Tong Lai Ling kicked off the session discussing Malaysian data privacy law with a comparative view of the Singapore statute, the Personal Data Protection Act. Having gone through the data privacy principles, she then focused on cross-border issues from an ASEAN perspective. She also discussed in detail the California Consumer Privacy Act, a newly enacted law that will have an impact in Asia simply because many of the global tech giants processing personal information are headquartered in California.

Krzysztof Wojdylo presented the European Union's General Data Protection Regulation ('GDPR') and the means by which personal information can enter

the EU and the mechanisms that permit the export of data to countries outside the EU. He then discussed the challenges faced by cross-border data flows with a particular focus on blockchain and the fact that since the public blockchain exists online and is simultaneously accessible in all jurisdictions, it would be difficult for any single data privacy regime to regulate effectively.

Steve Tan then engaged in a comparative review of ASEAN data privacy regimes concluding in general that while some variances occur, many of the privacy principles are the same — showing that there is more of a convergence than a divergence in the region. Then he explained the importance of data privacy in the context of the Internet-of-Things ('IoT') and how unsuspecting users can give up their privacy right by simply operating everyday appliances in the smart home of the future.

Finally, data privacy compliance expert and technologist Kevin Shepherdson provided an overview of the data privacy compliance market in ASEAN. He shared the results of his own study (conducted with regional data privacy regulators) that there will be a huge demand for data protection officers throughout ASEAN and these are likely to be filled by attorneys. In this regard, he outlined the career prospects for attorneys wishing to chart a career path in the data privacy field including options for certification. He noted that despite the great anticipated demand for data privacy professionals, a very small number had secured professional certifications.

During the open session, a number of questions raised the point that data privacy officers ('DPO's) require skills beyond those of lawyers because they entail knowledge about management, business processes, information security and technology. The panellists explained that a DPO need not be alone in his work and should draw from the expertise within their respective organisations. In closing, the audience shared their own personal experiences as data subjects and the different ways in which their privacy rights were impacted by the current technologies.

Fake News: Legal Regulation and Challenges

Speakers: Rajesh Sreenivasan (Partner and Head of TMT Practice, Rajah & Tann Singapore LLP), Christopher Kao (Partner, Pillsbury Winthrop Shaw Pittman, LLP San Francisco and Silicon Valley offices; Co-Managing Partner, Pillsbury's Taipei office), Julia Carreras Marin (Lawyer, Basetis, Barcelona, Spain) and



Barunesh Chandra (Founder & Partner, August Legal), who also moderated the session.

This session unwittingly almost became the centrepiece of the 29th Annual Conference of the IPBA as the Prime Minister of Singapore, in his opening address to the delegates and attendees, specifically mentioned fake news as one of the key issues affecting democracies around the world which requires urgent attention from the global legal community.

Fake news has probably been around ever since news became a marketable product over 500 years ago with the invention of the printing press. However, with the advent of the Information Age and the proliferation of social media, rapid information sharing and large-scale information cascades have become very convenient for anyone with a smartphone. Rapid spread of fake news has started shaking the foundations of press legitimacy and, by extension, the democratic world. In many instances, the spread of fake news is causing disturbance of public peace and violence and/or defaming people or entities.

This session dealt with possible solutions and also took an expansive look at what legislatures and governments around the world are doing in terms of regulating fake news. While it became clear that not much was being done in India or the US for the purposes of curbing fake news, it was also seen that in Canada, EU member states and Singapore, very proactive measures were being taken to deal with the menace. Following closely on the heels of this session, on 25 April 2019, the new Singapore law on fake news was also passed.

Blockchain and Smart Contracts—Finance, Law and Beyond

Moderator: Bryan Tan, Partner, Pinsent Mason

Blockchain is the type of distributed ledger technology upon which smart contracts will be built. Smart contracts are contracts built on technology which can be self-executing, self-enforcing or even self-destructing. In this session, four panellists including Ms Yvonne Zhang (CEO, Aquifer Institute, Singapore), Mr Nikolai Lushkevich (Product Manager, Soramitsu, Japan), Dr Eliza Mik (Professor, Melbourne University, Australia) and Mr Tom Bicknell (Pinsent Masons, Dubai) spoke freely about the various challenges from their perspectives and jurisdictions. We also had a live demonstration of the kind of applications smart contracts would have in the banking world and discussed the legal issues, which are still in their nascent stages.

A great debate ensued over permissive and public distributed ledger technologies and whether these would qualify as blockchains. In addition, there was uncertainty as to whether smart contracts are even contracts in the legal sense of the term. The conclusion was clear—that blockchain is here to stay and that we as lawyers need to figure out the legal issues around it.

Challenges to Low Cost Carriers (LCC) in the Aviation Industry

Chair: Fernando Hurtado de Mendoza, Aviation and Aerospace Committee

For the leadership of the Aviation and Aerospace Committee, the previous months in preparation for the Singapore Conference were thrilling. The Committee not only initiated in Manila a phase under new direction, but incorporated aerospace law within its scope of action after the mid-year council meeting in Chiang Mai. Further, it had the challenge to prepare, after a period of silence, exciting sessions intended to meet elevated standards, consistent with the relevance of Singapore in the aviation sector.

While highly specialised areas of law (such as aviation law and aerospace law) pose a number of complexities, such as a shorter list of specialists and a narrower smaller interested audience, it also provides great satisfaction when a mix of good ideas, attractive topics and wilful professionals are able to offer sessions that catch the interest of attendees. This was the case for the solo session



of the Committee related to 'Challenges to Low-Cost Carriers (LCC) in the Aviation Industry' and also the joint session held with the Environmental Law Committee called 'From Saving the Planet to Saving the Universe: Challenges to Environmental Law Posed by the Growth of Air and Space Activities'. Below is a short description of these sessions as well as a set of articles on relevant topics for the aviation and aerospace industries.

As highlighted in the AGM in Singapore towards the end of such a wonderful conference, the Aviation and Aerospace Committee has been revived and this is just a starting point. As revealed by the regulation of aerospace matters, let us believe that the world is not enough!

Aware of the tendency of the aviation industry to diversify the offer of air transport by carriers and the positive response of passengers to those airlines offering very competitive prices, the Aviation and Aerospace Committee planned for the IPBA Conference in Singapore a session called 'Challenges to Low Cost Carriers (LCC) in the Aviation Industry'. Besides taking advantage of the positioning of the Lion City as an aviation hub for a number of short flights within South East Asia, it felt just right to discuss this topic in this annual gathering.

Attendees of the session were able to experience a vivid exchange of ideas in relation to the following:

1. passenger rights and consumer protection regulations for LCC activities;
2. the approach of aviation regulation to LCC activities, if any;
3. airport infrastructure for LCC activities: advances and challenges; and
4. governments as promoters of LCC activities.

These main topics were transversally explored by five exceptional speakers led by the Chair of the Committee, from the point of view of Asian jurisdictions (Malaysia, Japan, the Philippines and Singapore), contrasted with the Latin American approach of the moderator, giving the session a truly Asia Pacific aspect consistent with the objectives of the IPBA. This session not only provided the perspective of recognised practitioners in the aviation law field (Fernando Hurtado de Mendoza, Lai Wai Fong and Akihiko Izu), but also the solid contribution of a praised aviation law academic in the person of NUS's Professor Alan Khee-Jin Tan. In addition, the session gave an insider insight from a major airline, Cebu Pacific (pioneer LCC in Asia), shared by the President of the IPBA himself (Perry Pe), offering the audience a very complete approach to the matters under discussion.

The session reached some interesting conclusions based on the input of the panellists and the ideas explored together with the Panel, which are useful to share for the benefit of legal practitioners with an interest in the aviation field, namely:

- Regardless of the prices they pay, passengers' expectations on service remain.
- Not only low-income individuals use LCC.
- While a single aviation market may favour LCC activities, such market only exists in Europe through their implementation of the 7th freedom.
- Competition among airports may encourage the development of LCC activities.
- Japan is exploring a legal framework which accelerates LCC, enabling these carriers to operate activities more efficiently on certain issues, such as fuelling with passengers on board.
- In Malaysia it is intended that LCC pay a reduced airport tax.
- Singapore's terminal 3 for LCC failed because of connectivity issues, which together with slots congestion are strong challenges to LCC.
- In the Philippines, air traffic congestion and mediocre terminal facilities will hopefully be solved

by the renovation and construction of two new airport infrastructure facilities in Manila and in Clark.

- Regardless of intended measures in advance by private parties to avoid problems and denial by the authorities to such solutions, governmental agencies will still sanction LCC.
- Nowadays we are experiencing a hybridisation of services, which brings complexities to identify, in essence, what an LCC is.
- Current regulation of insurance, compensation and airport taxes are under scrutiny due to the influence of the LCC industry.
- Traditional airlines, with the cooperation of aviation authorities and an outdated legal framework, may pose barriers to the entry of LCC. Not only slots allocation or insufficiency of checking counters may pose barriers, but also more subtle ones such as customs, immigration and quarantine availability to LCC passengers arriving to airports at particular times assigned.

From Saving the Planet to Saving the Universe: Challenges to Environmental Law posed by the Growth of Air and Space activities

Few topics are as attractive as those related to space, this limitless area with a number of unsolved mysteries, but which humankind considers part of its sphere of influence and certainly acts in conformity with such belief.

Human beings have been for years performing activities in the space and, of course, the Earth being inhabited by an army of thousands of lawyers, it is not surprising that since more than 50 years ago a number of regulations have been enacted to govern the actions to be carried out thousands of miles away from our planet. Because the world is not enough, our species tries to use the space through satellites, and to conquer it through launches of spacecraft and astronauts' missions.

The joint session organized by the Aviation and Aerospace Law Committee and the Environmental Law Committee was structured, precisely, to discuss about these phenomena and the way in which lawyers and environmentalists are dealing with the



issues that are starting to show their teeth, as space activities escalate with the passage of time and the industry is moved by astonishing monetary figures.

The topics discussed were the following:

1. Introduction to Space Law - main legal instruments and background.
2. Space debris and applicable regulations.
3. Privatization of the Outer Space.

These fascinating matters were touched upon by a diversified panel, including environmental and aviation and space law specialists from India (Arya Tripathy), Spain (Rosa Isabel Peña), France (Jean-Claude Beaujour) and Poland (Mirella Lechna), well guided by co-moderators Gabriel Kuznietz (Brazil - Aviation and Aerospace Law Committee) and Ang Hean Leng (Malaysia - Environmental Law Committee).

The audience to this session did not only have the chance to watch interesting videos to illustrate the position of the panellists on the impact of space activities in the environment (which resulted an useful tool for a Saturday 9am session!), but to learn about basics of the space industry (including insurance needs), the risks associated to the fall of space debris on the Earth, the effects of collision of objects orbiting the space and the existence of an Outer Space Treaty in force since 1967, which sets the most important statutes governing space (and is also a source of liability regulation under certain form of cosmic law), among others.



Cape Town Convention and Protocol – Making Aircraft and Aircraft Engines the 'Super Assets' of the Leasing and Lending World



Introduction

Where property or an asset is located for legal purposes, *its situs* (Latin for position or site), is important in determining which laws apply to such asset. So for instance, real estate located in Brazil is subject to Brazilian law and a car located on the island city of Singapore is subject to Singapore law. Therefore, a lender who funds the acquisition of the property based in Brazil could get an effective mortgage over the property in Brazil by completing all relevant filing and other procedures required under the laws of Brazil. Such 'perfected' mortgage would be enforceable in Brazil. Similarly, a lender who provides a car loan in relation to a car located and registered in Singapore can also perfect its security charge over such car by completing

all relevant procedures necessary and required under the laws of Singapore. Such perfected charge over the car would be enforceable in Singapore.

The Problem

However the issue of what law applies becomes more complicated for assets which can move across borders, especially where high value movable assets like aircraft, trains, ships and satellites are involved. What laws are the assets subject to as they move across jurisdictions? How does a lender who funds the acquisition of such assets get effective security over such assets? Will security which has been perfected and is therefore enforceable in one country be enforceable or even recognised in another country?

Domestic Versus International — Uncertainty Arising From Conflict of Laws

Property laws of most countries tend to derive themselves from domestic real estate and consumer laws. They are rarely suited to regulate assets which travel internationally. Applying conflict of laws rules of any country when there are conflicting laws between that country (for example, the country of origin of the asset) and another country asserted by a party as more appropriate to govern the asset (for example, the country the asset is in at the time) does not always result in certain and repeatable outcomes or give the certainty that lenders and business people need to fund or invest in such high value assets if a dispute arises.

Uncertainty as to what laws the asset is subject to translates commercially into increased risk and increased costs to fund or to acquire the asset. The benefits of reducing such uncertainty are obvious, including not just cheaper funding but also the availability of broader funding sources (for example, capital markets) to owners and airlines. This helps promote the faster and more efficient renewal of airline fleets, and ultimately results in the quicker introduction of new aircraft which are by and large more fuel-efficient, environmentally friendly, safer and more technologically advanced.

The international community have for years been looking to unify laws between states in order to reduce the uncertainty relating to the laws that apply to movable assets. In particular, the laws relating to the owning, leasing and financing/taking of security of movable assets. By that we mean the rights and remedies conferred on owners, lessors and security interest holders.

Convention History

In 2001 at a diplomatic conference in Cape Town, South Africa, attended by 68 countries and 14 international organisations, 53 countries signed the resolution proposing the treaty: Convention on International Interests in Mobile Equipment ('Cape Town Convention') together with the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (the 'Aircraft Protocol'). Subsequent protocols for railway rolling stock (signed in 2007) and space assets (signed in 2012) were also entered into but none have come into force as yet.

The Cape Town Convention came into force on 1 April 2004, and has been ratified by 78 parties (as of 2018). The Aircraft Protocol (which applies specifically to aircraft and aircraft engines) took effect on 1 March 2006 when it was ratified by eight countries: Ethiopia, Ireland, Malaysia, Nigeria, Oman, Panama, Pakistan, and the United States.

The Basics

The Cape Town Convention together with the related Aircraft Protocol (collectively, the 'Convention') is an international treaty regime aimed at facilitating and streamlining the financing and acquisition of aircraft equipment by, among other things, conferring clear rights and remedies for breaches and also a priority regime in the event more than one person claims an interest over the same aircraft at the same time.

The treaty introduces two important developments:

- **International Interest:** this is an interest derived from the Convention and not from domestic law and can be registered for added protection and priority against competing interests.
- **International Registry:** this is a virtual registry which records International Interests and more importantly protects the priority of International Interests registered with it.

A beneficiary of an International Interest ('creditor') will be conferred legal rights and remedies under the Convention, which is given effect by a Contracting State (as defined below) that has properly ratified the Convention and incorporated its provisions within its domestic laws. See the Annex which sets out by way of a flow chart when the Convention is applicable to a transaction.

International Interests

International Interests arise under three types of contracts: Lease, Security Agreement (Mortgage/Charge) and Title Reservation Agreement (for example, Conditional Sale) contracts. All such interests may be registered in the International Registry. There is a fourth category of contracts ('sales' contracts) which does not give rise to International Interests. Such contracts are however (under the Protocol) registrable under the International Registry and serve to protect the interests of the buyer under the sale against (among other things) another buyer under a subsequent competing sale for the same asset.

The Convention will not apply in the absence of a connecting factor to a Cape Town Convention contracting state ('Contracting State') at the time of the conclusion of the agreement. Essentially the debtor (that is, a mortgagor or a lessee or a seller under a Sale — see the Annex for the definition) under each of the above contracts needs to be situated in a Contracting State. The location of the creditor (that is, mortgagee or lessor or buyer) is irrelevant.

Remedies Generally

Other documentary requirements are set out in Article 2 and are clear and simple to follow. If met, the interest created will be accorded with certain benefits by the Convention such as rights of enforcement and remedies which include possession, sale, lease and control of the asset (subject to the Contracting State not opting out of these remedies specifically when ratifying the Convention). The Convention also prescribes that there should be 'speedy' interim court remedies like the right to have the asset preserved until final judgement can be issued (again these remedies are subject to the Contracting State not opting out of these remedies).

Insolvency Remedies

One of the advantages (and a fundamental goal) of the Cape Town regime is the standardisation of remedies, including with respect to the treatment of creditors in insolvency situations involving aircraft equipment. When a ratifying Contracting State makes its declarations under the various treaty and protocol articles, one declaration that can be made is with respect to Article XI of the Protocol.

Article XI declarations give a Contracting State the opportunity to declare and establish an insolvency regime for creditor rights. A Contracting State can make an 'Alternative A' declaration, which requires that when an insolvency related event occurs with respect to a debtor under Cape Town in the Contracting State, such debtor must, within a specific time frame or waiting period, return the aircraft or equipment to the creditor (or otherwise cure the all defaults and agree to full performance under the relevant agreements with the creditor) and, through other related provisions and declarations, gives the creditor rights to repossession related thereto.

Under the Alternative A regime, the Contracting State's local court system would not have the authority to stay such enforcement. The debtor is also obligated during the waiting period to preserve the value of the aircraft and maintain it in accordance with the terms of the debtor-creditor agreement. Many commentators consider an Alternative A declaration to be one of the most important declarations a Contracting State can make.

The International Registry is the filing system for international interests arising under the Cape Town regime

Alternatively, a Contracting State can make an 'Alternative B' declaration under Article XI, which most observers note is far less useful to creditors than Alternative A. While Alternative B still requires the defaulting debtor to cure defaults within a to-be-specified waiting period, Alternative B provides that repossession of the aircraft by the creditor remains subject to applicable local law. Further, Alternative B does not require the debtor to maintain the aircraft's value and condition, as Alternative A does. A

Contracting State can also make no declaration at all regarding Alternative A or Alternative B under Article XI, in which case the local insolvency regime in the Contracting State will continue to apply.

The International Registry

The International Registry is the filing system for international interests arising under the Cape Town regime. It is a digital registry, accessible by computer 24 hours a day, every day (subject to security and log-in requirements, particularly in order to make filings).

Generally, the purpose of the International Registry is to record, in chronological order, the filings made in respect of a piece of aircraft equipment. Each filing made on the International Registry has two parties (a debtor and a creditor), and, in the case of some filings, also a Right to Discharge holder. The parties to these filings are typically corporate entities.

Filing Process

In order for the filings to be made, such entities would need, if they have not already done so, to create accounts under the International Registry (either as a Transacting User Entity ('TUE') or a Controlled Entity). Then, each of the parties to a filing must consent to the proposed filings. Consent to filings can be granted in a number of different ways, including by consenting

to the specific filings after they are made (but before they are released as 'live' filings subject to consent), by consenting to a locked and pre-set suite of filings in a Closing Room (typically containing all filings to be made as part of a transaction closing), or by granting Professional User Entity ('PUE') authorisations to make filings on behalf of such entities with respect to the equipment (PUE entities are often the law firms or advisors involved in a transaction).

Filings (Assignment, Subordination, Prospective Interests)

The Registry also permits Assignment of International Interest filings, by which the creditor under an International Interest filing records the assignment of its underlying rights to another party (a secured lender, for example); and Subordination filings, by which an earlier-in-time filing, which would otherwise have priority over a later filing, would be subordinated to such later filing by way of the relevant parties entering in a subordination agreement and making the applicable filing.

Further, prospective international interest filings can be registered, which can be filed before the interests being secured exists (for example, if the relevant documents are not yet fully executed). When the relevant interest is actually created (that is, when the transaction documents are fully executed and in effect), subject to various requirements and time limitations, the prospective international interest filing crystallises into a perfected international interest filing, with priority dating back to the initial prospective filing date (rather than the time of the creation of the interest).

Discharge of Filings

Finally, filings can be discharged, for example, when the leasing of an aircraft under a lease agreement terminates, or the secured debt is discharged. The creditor under an international interest (or other party to which the Right to Discharge has been transferred) can discharge a filing made on the International Registry. The International Registry ledger will not delete the discharged filing; instead, it will show both the original filing as well as its associated discharge.

Registry Searches

Any user who accesses the International Registry website can search the filings made with respect to a specific piece of aircraft equipment (for a small fee). By searching the specific equipment details, the registry will provide

the user with a Priority Search Certificate, which will list, in chronological order, the filings made to date with respect to that equipment (as well as other information, for example, name changes for relevant parties).

Cape Town Today

As of 2018, the Protocol has 73 contracting parties including the countries with the largest fleets of registered aircraft (for example, the United States and the European Union) but also the countries where the largest fleets of future aircraft will be delivered (for example, China, Indonesia, Malaysia etc). The International Registry in January 2019 recorded its one millionth registration with little or no major downtime or failures over its more than 10 years of operation. This is an unprecedented success for an international treaty.

It should be noted that the Convention only applies to 'Aircraft Objects' which are airframes and helicopters (of a certain size and capacity); and engines (of a certain performance level). No other movable asset enjoys the benefit of an overarching treaty which unites so many Contracting States in recognising and enforcing the rights of interest holders under a set of common rules. This may explain the recent renaissance of aircraft-based asset backed securities. Billions of dollars of such paper have been issued in the last year alone, with more in the process of being issued this year.

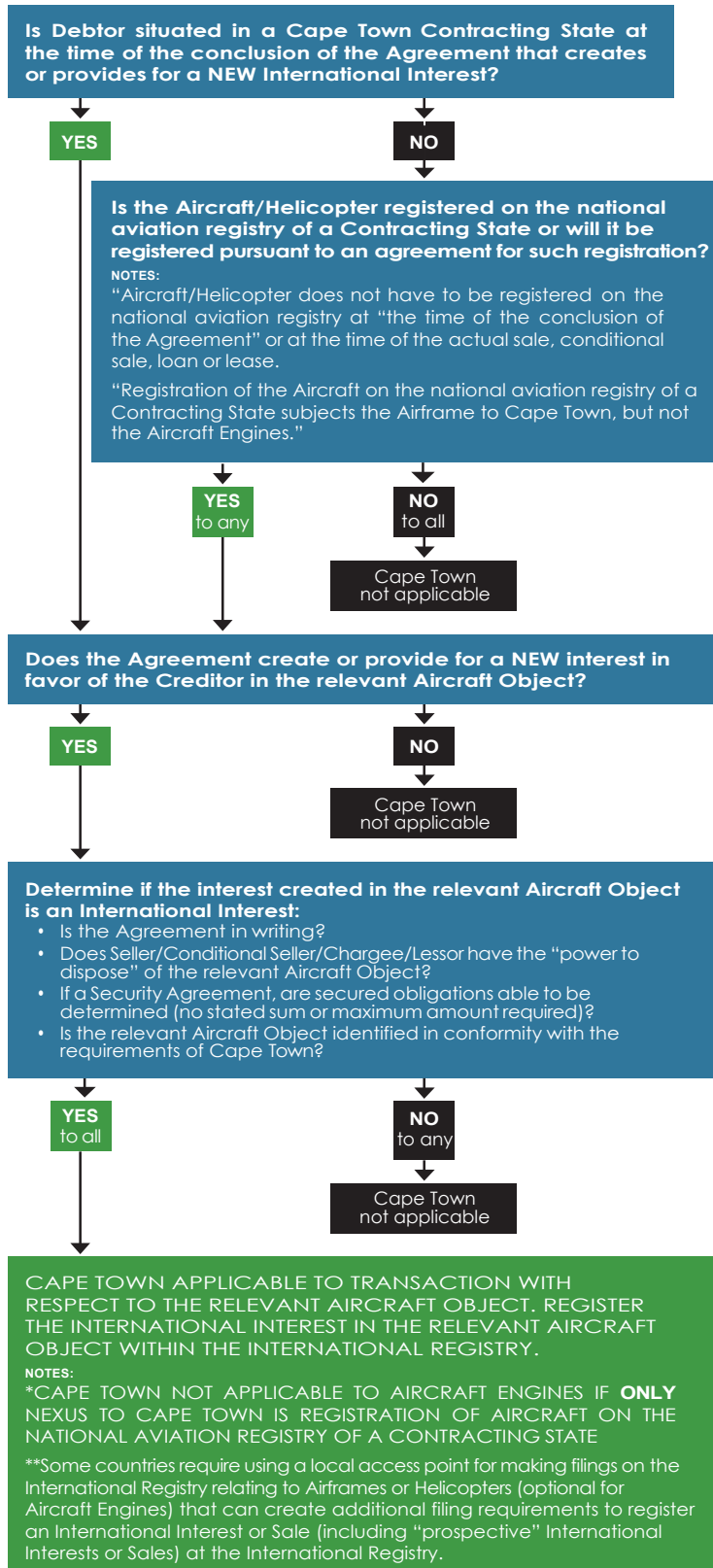
The Convention is truly a gold standard for other asset classes (like maritime assets) to aspire towards and is a big part of why aircraft and aircraft engines have become 'super assets', preferred by lenders and lessors alike.



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Paul Ng heads the Asia desk of the Transport and Space practice of Milbank. He has been voted 'Best of the Best' by Euromoney periodicals and has helped some of the most cutting-edge and industry-leading transactions in his sector. He sits as a member of the prestigious legal panel of the Aviation Working Group and is the chair of their South East Asia country group.

CAPE TOWN CONVENTION TRANSACTION FLOWCHART¹



CERTAIN TERMS EXPLAINED

Debtor is 'situated' in a Contracting State if:

- Debtor is incorporated or formed under the law of a Contracting State;
- Debtor's registered office or statutory seat is located in a Contracting State;
- Debtor's center of administration is located in a Contracting State;
- Debtor's place of business is located in a Contracting State (if Debtor has more than one place of business, this refers to its principal place of business, if Debtor does not have a place of business, this refers to Debtor's habitual residence).

Debtor in a transaction:

- Sale = Seller
- Conditional Sale = Conditional Buyer
- Security Agreement = Chargor/Mortgagor
- Lease = Lessee

Creditor in a transaction:

- Sale = Buyer
- Conditional Sale = Conditional Seller
- Security Agreement = Chargee/Mortgagee/ Secured Party
- Lease = Lessor

Agreement:

- Contract of Sale (the actual title transfer document)
- Title Reservation (Conditional Sale) Agreement (US State laws treat Title Reservation Agreements as Security Agreements)
- Security Agreement
- Lease Agreement

Aircraft Objects:

- Airframe = type certified by the relevant aviation authority to transport at least 8 persons (including crew) or goods in excess of 2750 kg
- Aircraft Engine = powered by either jet propulsion, turbine or piston that have at least 1750 lbs of thrust or the equivalent (for jet engines) or at least 550 rated take-off shaft horsepower or the equivalent (for the turbine or piston engines)
- Helicopter = type certified by the relevant aviation authority to transport at least 5 persons (including crew) or goods in excess of 450 kg

*Propellers are not covered under Cape Town although their related engines are. Aircraft Objects used in military, customs or police services are not covered under Cape Town.

Aircraft Object Identification:

- Manufacturer's Name;
- Model Designation (general/generic name); and
- Manufacturer's Serial Number

¹NOTE: Insert citation to AWG's Practitioners' Guide to the Cape Town Convention and The Aircraft Protocol (<http://www.awg.aero/assets/docs/VED-Practitioners-Guide-9-9-15.pdf>).



Airport Privatisation: a Strategic Challenge for International Air Transport





Introduction

The privatisation of Aéroport de Paris ('ADP') is at the heart of a national political debate, to the point of having fostered an alliance in the French Parliament between the right, once very favourable to privatisation,¹ and the left, which, culturally, has always been in favour of state control of the country's industrial production facilities and major infrastructures. Indeed, this privatisation of ADP, voted by the presidential majority, was so contested that a good third of the members of Parliament (228 members out of 577) filed a complaint with the Conseil Constitutionnel² to oppose this initiative.

ADP is the world's largest airport structure and it expects to welcome nearly 120 million passengers in France by 2022. However, this is not just a French issue; it is a global one and the President of IATA, Alexandre de Juniac, has expressed his reservations about current and future privatisations throughout the world.³ If airport privatisations are this important, it is because they are of interest not only to the some 4.3 billion travellers who flew in 2018,⁴ but also to the investors who are candidates for equity participation, as well as to all the players involved in this sector.

First, it is of interest to domestic and foreign investors who see airports as great investment opportunities because they generate significant profits. It is all the more true that airports have become real commercial and service trade centres.

Second, the potential for privatisation of other airports in France makes ADP a strategic investment. Already, partially or totally privatised airports handle 41 percent of world traffic and 75 percent of European passengers.⁵ Furthermore, the number of additional passengers expected by 2020—2.4 million passengers—as well as the enormous needs required to develop and renew airport platforms, make the task of public institutions, both in France and abroad, complicated⁶.

That being said, there are arguments against the privatisation of ADP and those arguments, which are diverse, could be applied to other privatisations around the world as well. This is the reason why the way the French case is managed will have an impact on other airport investment projects around the world. The privatisation of ADP is all the more a key issue because it is a leader in airport engineering worldwide. Indeed, ADP is not simply an airport company that manages the Paris

airports, but it is also a company that provides its services to other airports throughout the world.

These are all reasons why privatisations must succeed. Their failure could have a major impact on the development of air transport. However, for privatisations to succeed, we must offer private investors legal security and redefine public/private partnerships.

Enhancing the Legal Security of Private Investments

The development of air traffic is such that the modernisation of infrastructure is constant and the cost involved is considerable. Yet public authorities do not always have the financial resources to achieve this. It is therefore vital that the private sector, which has such financial resources, brings its contribution, without being seen as a threat to national sovereignty and without public authorities losing all control. A subtle balance is required based on a guarantee given to investors while clarifying the obligations of stakeholders.

The Airport: A Company of a Particular Type

The recent episode between a Chinese company and French leaders in the Toulouse airport affair reflects the place it occupies: some consider that states must remain in control of their airports for reasons of national sovereignty and security. Roissy and Orly are seen as the first gateway to France and represent a vital national security issue.⁷

The airport is therefore not an infrastructure like any other and, as such, benefits from a special legal regime. It is obvious today that an airport platform is of a particular type. It is a migration point, promoting the passage of populations, either locally or cross-border, with all the consequences we can imagine. This means we must master a new kind of borders: the borders of the modern world.⁸

In France, airports are traditionally a public service of national interest with a specific legal regime. Until 2005, French airports were managed either as a public service delegation, like concessions to chambers of commerce, or as a public establishment. In a decision of 30 March 1916, the Conseil d'Etat⁹ defined the concession as 'a contract which entrusts an individual (or a company) to carry out a public work or provide a public service, at his own expense, with or without a subsidy, with or without a guarantee of interest and which is compensated by

entrusting them with the operation of the public work or the execution of the public service with the right to collect fees from the users of the work or from those who receive the public service'.¹⁰

Thus, airports are managed under concession contracts between the state and chambers of commerce. However, the requirements in terms of development, security and investment associated with the integration of new modalities, particularly those affected by digital technology, have made their management particularly complex, forcing the government to come up with alternative solutions.

The law of 20 April 2005 on airports, codified in Articles L. 6322-1 to 6322-4 of the French Transport Code, established a framework for reforming the management of the State's major regional airports. The law transformed the status of ADP, turning this public body since its creation in 1945 into a public limited company. This transformation allowed the company's capital to be open to private investors, without keeping the State from remaining the majority shareholder. The text also provides for the establishment of a new management regime for major regional airports. These airports would remain under the jurisdiction of the State, with an airport company set up for each platform concerned. The new legal framework aims to promote the participation of private investors while maintaining the public authorities' power of control and the possibility of carrying out the public service mission.

The Need to Protect Private Investors

The first significant experience involved the Toulouse-Blagnac regional airport in the south of France in 2014. The opponents to the project, according to whom this was a failure, expressed dissatisfaction over the alleged purely financial intentions of private investors, who also happened to be foreigners.¹¹

The opposition to the privatisation of ADP is fuelled by the desire to prevent this previous experience, which had enabled a group of Chinese investors (Casil Europe) to acquire part of the capital of Toulouse-Blagnac airport. The French then considered it a failure, to the point that they brought an action before the courts to oppose this operation. Subsequently, by a judgment of 16 April 2019, the Paris Administrative Court of Appeal annulled the decision concerning the transfer by the Government to Casil Europe of 49.9 percent of the shares of Aéroport de Toulouse Blagnac.¹² However,



Toulouse-Blagnac airport

it is important to note that this annulment was based on procedural grounds and did not dispute the very principle of the sale. One can easily imagine the concern of investors who, five years after the project's launch, were being called into question.

Still, investors may be reassured as the legal framework makes it possible to secure investments made, particularly in public structures. Indeed French law, supplemented by well-established case law, makes it possible to secure private investment, whether French or foreign. This means there can be no arbitrary nationalisation or expropriation. Nor can there be a nationalisation or expropriation without compensation.

It is accepted that nationalisation, which results from operations justified by the public interest, allows public authorities to take ownership of property, land or movable property belonging to a private person and have it transferred to them. However Article 545 of the Civil Code specifies that 'no one may be compelled to transfer his property except in the public interest and for fair and prior compensation'. This formula is borrowed from Article 17 of the Declaration of the Rights of Man and the Citizen (the French Civil Code

having substituted the public utility cause for the public necessity one mentioned in the Declaration). The compensation is fair when it covers all the direct, material and certain damages caused by the deprivation of the right of ownership (Article L. 13-13 of the Code of Expropriation for Utility).

Expropriation therefore allows a public person to acquire the property necessary for the performance of its missions. The public interest naturally takes precedence over the private interest of the owner of the property. The applicable legislative and regulatory rules have been compiled in the Code of Expropriation for Utility, but except for the rare cases where specific texts have specified that certain circumstances justify the use of expropriation (for example, in cases of natural or technological risk), it is the case law that has defined the notion of public utility.

While expropriation is a deprivation of property within the meaning of Article 1 of Protocol No 1, the European Court of Human Rights recognises that states have a margin of appreciation in assessing the public utility on which expropriation is based, provided that the private person is not disproportionately burdened

(1) and that the declaration of public utility and the decision on transferability by the administrative judge (2) satisfy the requirements of the Convention.

In its decision of 16 January 1982 on the Nationalisation Act, the Conseil Constitutionnel observed a twofold evolution in the field of property rights from the Revolution to the present day, marked on the one hand by the extension of its scope to new individual fields and, on the other hand, by limitations justified by the public interest.¹³ Nevertheless, the principles of the Declaration of Human Rights retain their full constitutional value. One of the goals of political society remains, among other things, the preservation of property rights. But it is in the light of this evolution that the constitutional value of the right of ownership must be understood.

It results from the combination of all this legislative framework that investors who are candidates for the takeover of airports must be reassured as to the guarantees given to them not to see the significant sums devoted to the development and operation of airport platforms go up in smoke.

Redefining the Development of Airport Platforms

The French Court of Auditors ('Cour des Comptes') concluded in a report in October 2018 that 'in general, the transfer procedures [of airports] do not take sufficient account of the industrial, environmental and social dimension of the projects. The State must define precisely the interests it intends to preserve, adopt a global strategy and maintain a high level of information on decisions affecting the quality of the public aeronautical service'.¹⁴

These are elements that should make it possible to provide a better framework for future privatisations. It is therefore necessary to rethink the partnership, which must lead to economically profitable projects, failing which private investors will find it of no interest to commit, but at the same time it is necessary to ensure that public aeronautical services can be provided under satisfactory conditions.

The Need For a Global Strategy For the Development of Hubs

An airport is no longer simply a little runway as it was at the beginning of aviation. It is a real instrument of

regional economic development that is evolving into a sophisticated eco-system. Airports are 'vital centres of growth and development as important as business districts. They determine the business facilities and urban development of this century, like highways did in the 20th century, railways in the 19th century and seaports in the 18th century'.¹⁵ Atlanta, for instance, is the first airport in the world and employs 56,000 people, making it the first employer in Georgia and in the region.

Airports are vital centres of growth and development as important as business districts

The strategy in question must be implemented on three levels: at the level of each airport, at the level of the country concerned and finally at the global level. First, it is up to each community to have specific objectives with local authorities and to set medium and long-term objectives for a given platform. Second, while there is genuine competition between airports, it is up to the national authorities to establish a national development plan for the various platforms that corresponds to the national market and its needs. Finally, airports must be thought of in relation to the other airports of their region and even of the world. Africa is a good example of the importance to develop major airports strategically, rather than systematically; resources should be allocated in a manner that allows better connections between the different cities and states of Africa. Attempting to create a hub in every single city throughout Africa would only result in fragmented resources, potentially leading to disappointment in terms of infrastructure, as well as underutilisation of such airports. This is clearly a need for inter-state cooperation. It is in this context that the Single African Air Transport Market ('SAATM'), the African single sky project, was launched in Ethiopia on 28 January 2018. Today, more than half of the 54 African countries are members of the ASAM.

The Need For Better Control of Financial Risks

Any airport project is enormous and naturally implies certain needs. So one of biggest pitfalls is the underestimation of financial commitments. This not only endangers the profitability of concerned airports, but also their sustainability.

The complexity of airport structure management is still too often the cause of significant disappointments

between public authorities and licensees around three main points. Some licensees are tempted either to carry out development work that does not correspond to identified market needs or, on the contrary, to limit their investment. This can lead operators to increase their unregulated tariffs such as fuel, real estate, facilities leased to airlines and dedicated to passenger handling, as state airport licensee taxes are sometimes re-invoiced even though public authorities do not provide any additional services. Inevitably, these costs are re-invoiced one way or another to airlines and ecosystem players, who will inevitably pass them on to travellers.

The end result is that air transport is becoming more and more expensive when we spent the past 50 years trying to make this means of transport accessible to all with the arrival on the market of large carriers. The high cost of air transport is likely to hinder the economic development of a region and in some cases would penalise the whole country or region. Specifically, the development of the African continent will depend on the development of air transport within the continent. One of the main causes of the high cost of air tickets in Africa is the tax imposed by states. The different taxes and charges imposed by each state contribute to high ticket prices, especially on domestic routes.¹⁶

Ensuring Air Transport Security and Safety

The security and safety of passengers and equipment is obviously paramount. Privatisation must not be at the expense of the budget dedicated to the maintenance of the airport and the security and safety of its users. Indeed, the sceptics see privatisation as a risk. They are of the opinion that privatisation means the airport is managed for only goal financial gain as opposed to the state managing an airport with the main goal of satisfying its constituents. As private investors cut down expenses to increase profit, the sceptics fear this might lead to shortcuts in terms of security.

Privatisation must be carried out with the guarantee that the private operator will respect the highest safety standards, in particular by training a sufficient number of staff and by using the technology available, which will also be the source of many investments and much debate in the future.

In Conclusion

Airport privatisations, including ADP's privatisation, are inevitable as airport management has become too

complex and too costly for states. However, to say they are inevitable is not to say they are to be feared. When private investors act under the control of public authorities and follow all safety and security regulations, privatisations are a great way to develop not only airport infrastructures, but also the ecosystems that go with them. And as aviation continues to expand in the upcoming decades, we need more than ever to adapt in an optimum fashion and to do so fast. Airport privatisation can help achieve that. But first we need to make it attractive to private investors, which requires us to change our mindset both from a legal and a social standpoint.

¹ It was then Prime Minister Jacques Chirac's government that launched in 1986 a vast privatisation program of companies that were originally nationalised by the socialist government when it came to power in 1981.

² The Conseil Constitutionnel is the French constitutional court.

³ <http://www.iata.org/pressroom/speeches/Pages/2018-02-05-01.aspx>.

⁴ <https://www.air-journal.fr/2019-01-02-oaci>.

⁵ Bruno Trevidic, La privatisation d'aéroports dans le collimateur des compagnies aériennes, 14 juin 2018.

⁶ Privatisations des aéroports un mouvement de fond, Le point, 7 mars 2019.

⁷ Laurent Izard, L'Obs, 25 mars 2019.

⁸ La frontière à l'épreuve des mobilités aériennes : l'exemple de l'aéroport Charles-de-Gaulle, Annales de géographie n°690, p5-27, mars-avril 2013.

⁹ The Conseil d'Etat is the highest administrative jurisdiction in France.

¹⁰ Compagnie d'éclairage de Bordeaux, Recueil Lebon n°59928.

¹¹ Stéphane Thépot, Le point, 27 février 2018.

¹² Arrêt n°17PA01605 du 16 avril 2019.

¹³ Conseil constitutionnel 25 juillet 1982.

¹⁴ Le processus de privatisation des aéroports de Toulouse, Lyon et Nice, Oct 2018, Cour des Comptes-www.ccomptes.fr-@CourdesComptes.

¹⁵ Eric Leser, Le monde, 2 juin 2005.

¹⁶ Voici pourquoi le transport aérien africain est si cher et si désorganisé, EcoFin Hebdo, n°78, 19 Octobre 2018.



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Living on the Moon 2060



Introduction

Imagine the year is 2060 and for 40 years since 2019 humanity has developed space faring civilisations across various planets from the Moon to Mars. The space economy grew from US\$360 billion in 2018 to US\$558 billion by 2026.¹

In 2016, Director General Woerner of the European Space Agency announced a commitment to a permanent settlement on the Moon.² Currently, over 60 different space faring nations are developing the Moon Village.³

It would appear to be a logical step since the successful cooperation of the International Space Station, that humanity would return to the Moon, to stay and develop a permanent base. How would that be done? It would result in using the Moon's own natural resources, namely its water, ice, metals and minerals to build and construct, say through 3D printing. Rovers landing on the surface of the Moon could build a structure around an inflatable dome to protect astronauts and crew and the initial construction is envisaged to take about three months, starting on a smaller scale and then increasing in scope.

There are many factors to consider when constructing a Moon base, for example health and safety: where would we place the landing sites for crew and cargo vessel? What kind of robots or avatars would we use to minimise risk? Given the long-term human presence envisaged, crucial psychological and physiological factors need to be taken into account, apart from the technical problems to be solved on the harsh environment of the Moon.

At the Moon Village Association meeting in 2017 it was concluded that the Moon Village is 'not a single location nor a traditional space project, but is rather a broadly defined conceptual framework encompassing a diverse suite of planned and potential future human activities in space.'⁴ One could draw a parallel between the aspirations of the developments on the Moon, and towards Earth.

It may well be the case that the first batch of space farers would be engineers and scientists. There are also notions of responsibilities in space, not just to the individual but the collective. As many of you may know, the legal foundations for international space activities are primarily for peaceful purposes only, with the

prohibition of weapons of mass destruction and non-militarisation of the Moon and other celestial bodies. Certainly envisaging space futures scenarios is important to consider options and choices that we make in going to and living on the Moon. What factors would we consider when living on the Moon?

What kind of legal developments, space systems engineering and mission would we need to establish as we consider spacecraft design for crew and cargo, surface structures for crew, habitats, surface transport and equipment, infrastructure, *in-situ* resource utilisation and interstellar transportation systems and along with orbital and flight mechanisms, and general operational challenges?

Imagine living on the Moon—what kind of house rules would we have? What code of conduct might we develop? Unlike Earth, where we are in the comfort of our homes, our country or jurisdiction, on the Moon, there are no set rules as to how we should live, and what we ought to be governed by individually.

At the International Space University Space Summer Course, the Humanities and Law and Policy working group raised four important key pillars⁹ which include:

- (1) influence;
- (2) integration and need fulfilment;
- (3) shared emotional connection; and
- (4) membership.

Influence refers to interaction between inhabitants. In terms of needs we may consider Maslow's Hierarchy of Needs: shared emotional connection because of the shared adventure; migration and settlement in a hostile environment; and membership because we are a community helping and supporting each other to survive against the odds and overcoming many risks.

This idea of community and coexistence is not new and something we embrace on Earth in our daily lives. The question is: in such a harsh risk environment, could we be expected to extend the same kind of help that we may do so on Earth? For example, on Earth if you see a young person drowning do you have a moral obligation to save

them? Do you have a legal obligation to save them? The answer is yes to the former and no to the latter, unless of course you establish some sort of legal or contractual relationship such as doctor and patient.

In the scenario where we can envisage the possibility of utilising many robots, avatars and AI systems in space and on the Moon, would such help be extended to them? Under national jurisdiction, for instance, a robot, avatar or AI needs to establish itself as a legal entity first; without that they have no basis for a claim if any. The interesting question becomes what if future robots, avatars and/or AI systems become fully autonomous where we could potentially even claim they could have consciousness, then were they to seek help or assistance in outer space be it moral/legal or otherwise, would humans have an obligation?

Imagine living on the Moon — what kind of house rules would we have? What code of conduct might we develop?

There are many possibilities; one possible answer to this question depends on the relationship between two parties. First, whether there is a contractual relationship, that is, a human being and a subcontracted robot, avatar or be it a human in supervising a robot, avatar and/or AI system. By implication there would be a form of employer/employee relationship or one that is vicariously liable. Second, whether under a contract, there is an obligation on the part of the human and/or Robot/Avatar/AI system to do something. In the case of an avatar, by definition it could be considered an extension of oneself, therefore, could we be responsible for something done, caused or created on a different planet? Would the same laws apply?

If we go further, regardless of whether the answer is yes or no, is there any possibility of reinforcement?

On Earth, usually actions or claims require evidence. One could argue that it would be rather difficult if not impossible to deal with any potential claims or cases from Earth. Then how about setting up a court system on the Moon? Would that be possible? Could we duplicate what laws we have on Earth and send it up to space to execute on the Moon? In other words, utilise AI-enabled smart robots that have downloaded thousands of years of case law and history into their system to spit out neatly packaged court decisions within seconds?

Or would we need to develop new principles, new case laws depending on the behaviours and social norms on the Moon? How do we ensure law and order on the Moon? Would we send police up to the Moon or would we be self-disciplined and self-governing individuals? How would we ensure that the habitant develops in a sustainably environmental way? Alongside a court system, would we need to develop a UN office of the Moon? Or would we report back to Earth?

What if we built Society 5.0 starting from the four pillars on Earth and then think about the Moon? How could we manage the transition in which human interactions differ from our past? How about equality and inclusivity?

The Moon is like a new start, a possibility for reverse engineering of our society on Earth. As a lunar inhabitant, how would we make decisions for the benefit of the Moon? Would it be by vote? Or consensus? Could Earth veto our decisions?

On Earth we have governments that collect the rubbish, keep the parks clean and provide public services like libraries. On the Moon who would be in charge of this? Would it be individuals, robots or avatars in charge of cleaning and participation? It is safe to say that it may be desirable for the lunar society to be based on respect for each other, and the recognition and acceptance of rights and responsibilities with consensus-based decision making — just like Earth?

By 2060, as a full-fledged ecosystem, we begin to reflect the topics of self-sufficiency and sustainability in the same way that we would do so on Earth. Self-sufficiency means recycling resources and sustainable food production, with the release of toxic gases being a form of environmental control in the closed sealed habitat.

In Society 5.0, we can imagine living a fully automated life and working amongst robots, avatars and AI systems. To what extent would the world of AI and digital transformation change us?

If the Moon society is around say 300, 3,000 or 300,000 people, we would need to ensure a mechanism that allows the law to be changed in response to evolving circumstances with governance structures that are flexible and independent of Earth.

Questions of legal status, ownership and type of contracts between individuals, organisations and entities may become increasingly important. What if the Moon Village develops and evolves to the point that the Moon becomes a resort and an attraction for the initial wealthy few to the many? Population density, regulation, migration, human rights would become increasingly important—just like on Earth. Or would it?

Currently, there are a handful of organisations that are looking into the 'Governance of the Moon' and the scenarios are yet to be fully fleshed out. We may never know what we don't know, hence the importance of our collective voice in developing and eventually living on the Moon Village.

Talk originally given at the TedxRome talk on 4 May 2019

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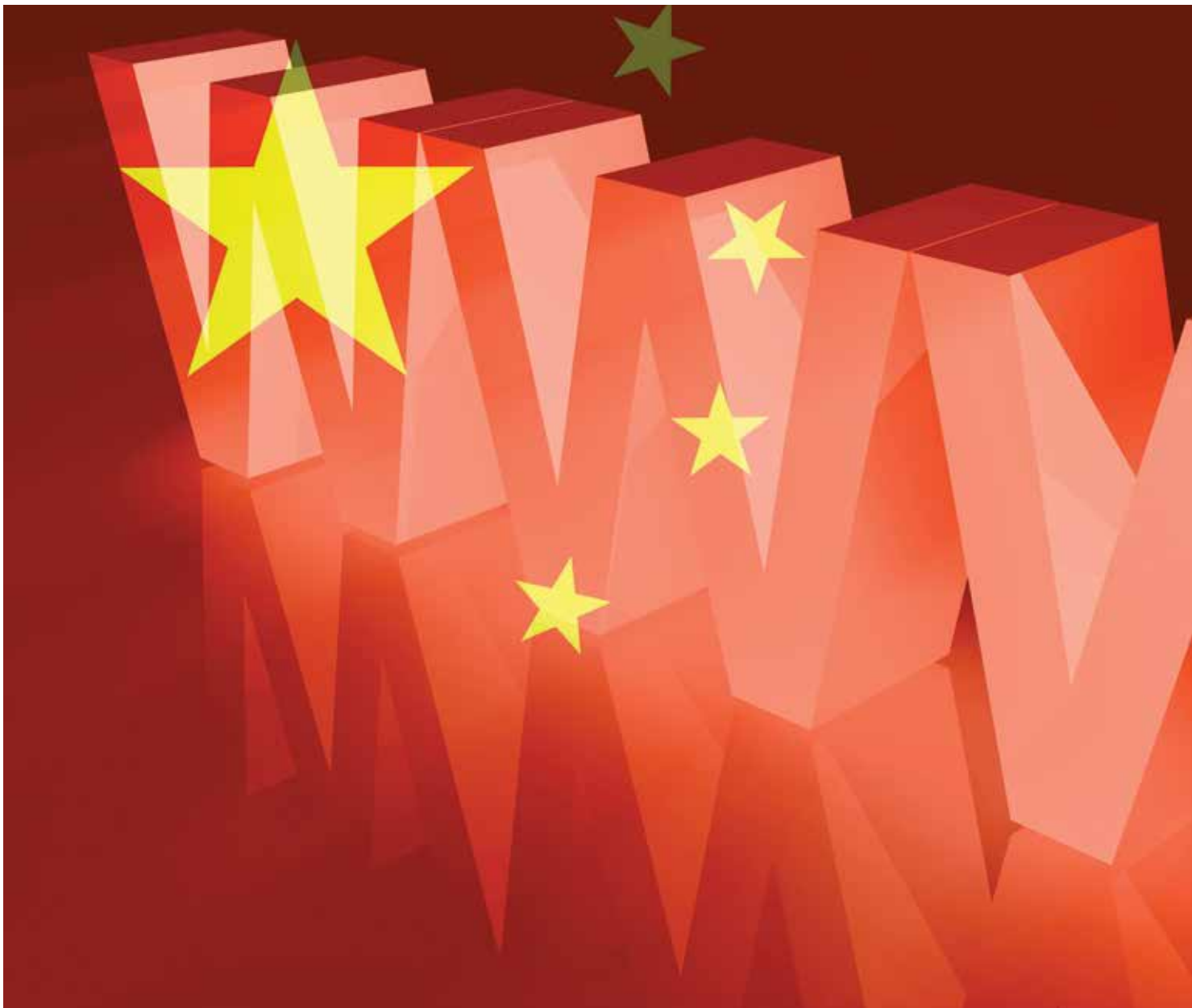
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³ Ibid, p 2.
⁴ Ibid, p 3.
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The Latest Judicial Practices on the Identification of Employment in Internet-platform Industries in China (Part Two)



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Awards and Subsidies

The reward and subsidy system of platform companies has also become an important incentive for attracting service providers to register. In the Manicurist case the platform company would issue subsidies based on the number of orders, the amount of the order and the customer evaluation. At the same time, platform companies also often stipulate that: 'In order to adapt to the changing market policies and the changing

situation, the platform has the right to introduce certain incentives such as transportation subsidies and incentive bonuses from time to time, but the service providers do not have the right to require compensation, indemnity or subsidy in any way.' The right to claim incentives as subsidies and bonuses limits the right of service providers to recourse to wages. In the online broadcast industry where a model often referred to as 'gift economy' is mostly applied, the service provider obtains the proceeds according to the established redemption rules and the proportions stipulated by the platform through obtaining the virtual items presented by the users, and the rewards are directly linked to the customer evaluations (gifts).

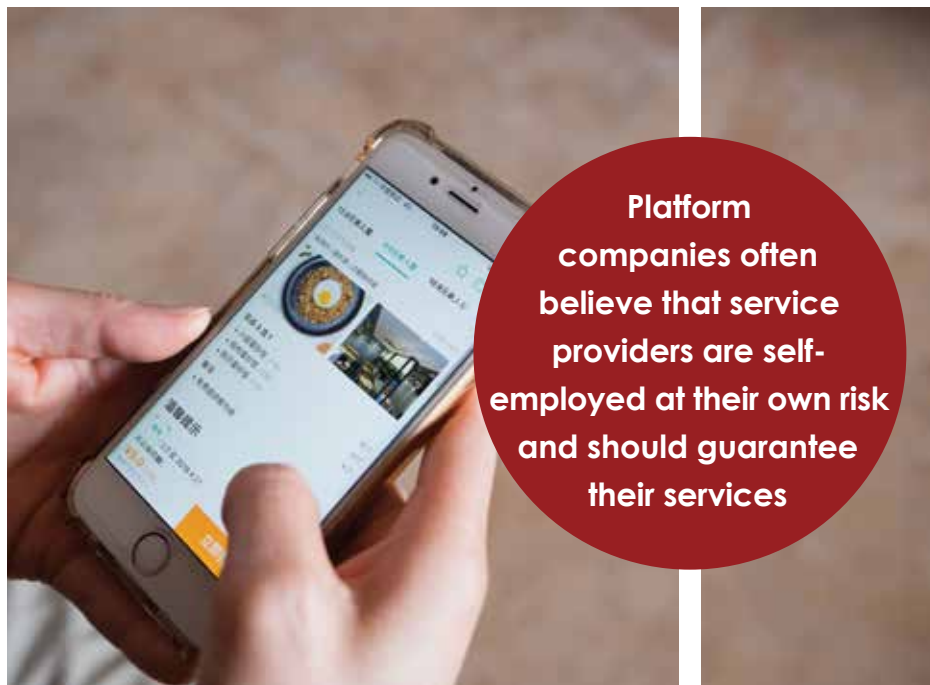
Collection and Use of Personal Information

The transfer of personal information of service providers is also worthy of attention. In fact, as an important asset of platform enterprises, the acquisition of personal information of service providers is an inevitable requirement for platform brand promotion. In entry agreements of online broadcast platforms, the platform is often entitled to use the name of the anchor (including but not limited to the real name, pen name, network name, used name and any text symbol representing the identity of the anchor), portrait (including but not limited to real people portraits and cartoon portraits etc) for various types of publicity. In the Chef case the two parties agreed that the chef 'knows and agrees to provide some private information such as identity information and contact information to the platform and publish it', and 'knows and agrees that the price corresponding to the cooking service provided by itself is publicized and released by the platform'. On the other hand, some platforms will also serve as a service to the service provider's own promotion. For example, in the Manicurist case, it was provided in the terms that the platform will manage and display the personal information and order service information for the manicurist and push its promotion as a 'value-added service'.

Ownership of Intellectual Property Rights

In the case of intellectual property rights arising from the provision of services, platform companies often determine their ownership through agreements. For example, an entry agreement of an online broadcast platform stipulates: 'the property rights (including but not limited to intellectual property rights such as copyright and trademark rights and all related derivative rights)





competition platform directly or through a third party.'

It is worth noting that despite a slight lack of supervision ability, some sharing economy platforms based on manual labour will still agree with the service providers on the 'excluding competition' clause. In the Flash Courier case, the two parties agreed that 'the courier should not provide services for other platforms at the same time', which in some cases eventually led to the court's decision to confirm the employment relationship.

Risk Outsourcing

Even with all of the above, platform companies often

of all the knowledge generated by the service provider during the webcast of the platform (including but not limited to commentary video, audio, and any text, video, audio, etc., related to this agreement), and such ownership and related rights and interests are enjoyed by platform enterprises'. This ownership is free and indefinite. Without the written consent of the platform, the anchor shall not use or authorise any third party to use and obtain any proceeds in any way.

Exclusion of Competition

On the basis of determining the rights, the platform enterprise will require the exclusion of any possibility of competition from the service provider. In the Anchor case, the online broadcast agreement of the two parties stipulated that the anchor agreed to use the live broadcast platform as the platform for exclusive internet online broadcast sharing, and promised not to share live broadcast on any third-party internet online broadcast platform without the written consent of the platform during the cooperation period: 'The anchor shall not broadcast games online outside the scope specified or approved by the platform, and shall not broadcast online in the name without platform's approval; no product introduction not related to platform shall occur without the prior written consent of the platform; no competition shall be undertaken during the agreement period. Any commercial activity on the platform may not be uploaded to the

believe that service providers are self-employed at their own risk and should guarantee their services. In the Manicurist case and the Chef case, the platform was defended on the grounds that 'the service provider is the freelancer providing services for the customers at his own risk'. The online broadcast platform also provides a 'safe harbour' exemption: if the anchor's result contains other people's intellectual property rights, portrait rights, name rights or other legitimate rights, the anchor should ensure that the relevant rights holder's legal authorisation has been obtained and the platform is authorised permanently to use freely without geographical restrictions; if the anchor violates the regulations, the platform has the right to request the anchor to pay the platform the payment in advance and relevant fees to the other party by itself or by entrusting a third party and deduct the corresponding broadcast fee from the anchor, with the insufficient part complemented by the anchor; if the platform suffers any economic and reputational losses, the anchor should fully compensate and be responsible for eliminating adverse effects.

Another typical method of transferring risks is outsourcing. In the Online Taxi-Booking Driver case, the platform company tried to evade the employer's responsibility for the professional behaviour of the driver by letting the driver sign an employment contract with the outsourcing company. The platform company asserted that according to the 'Road Traffic Accident Responsibility

Certificate', the cause of the accident was the improper operation of the driver, not because of the vehicle itself involved. The platform enterprise was only the owner of the vehicle and there was no fault, so it should not bear any responsibility; the outsourcing company, which was also a wholly-owned subsidiary of the platform company, voluntarily assumed responsibility beyond the scope of insurance. For the online catering platforms, it has become a common situation that the platforms outsource the employment of the couriers to other companies.

Other Matters

It should be noted that, based on the business logic of the sharing economic platform, although most of the management measures can be attributed to the above 10 points, not all of them are applicable to a certain platform. For example, some platforms do not necessarily require service providers to provide deposits and some platforms do not necessarily limit the competition of service providers or emphasise the attribution of intellectual property rights. Nevertheless, we still have to consider whether controlling one or some points can actually lead to overall management control in realising the platform enterprise's commercial purpose. For example, even if there are pre-conditions for the anchor's remuneration such as the minimum number of days of online broadcast (15 days monthly), the number of day averages (3,000 people monthly) and the length of time (80 hours monthly), such restrictions undoubtedly exclude the possibility of anchor to perform the same or similar work during the service period by using his/her skills. It is not that 'Only by one mobile phone, so you can work all over the world at any time'; instead, it is that 'you only have to work on *this* platform every day, even if you only need one mobile phone'. This kind of leverage effect on service provider control is particularly worthy of attention in the context of the current trend of oligopoly in various industries.

Court's Conversion: Balancing the Protection of Rights and the Development of the Sharing Economy

Considerations by the Court

In the case of employment identification, the judge first considers the individual's personal and organisational subordination, that is, how many 'administrative privileges' the platform enterprise has. For example, in the Manicurist case, the court found that the reasons for not constituting employment relationships were: (1) the two parties agreed that the

manicurist could choose the working time and working place independently and did not need to work in a special or fixed office space; (2) both sides recognised that the settlement method of the recognised service fee included the online payment by the customer. After the platform deducted the information service fee, it was paid monthly to the manicurist or the customer paid the cash directly to the manicurist. Therefore, the income of the manicurist was a part of the customer service fee instead of being paid from the platform; and (3) the business scope of the platform enterprise was the collection and release of business supply information, instead of the operation of nail business, so the nail service provided by the manicurist was not a component of the business of platform enterprise. However, in the cases in 2018, we saw a change of approach of some local courts, especially the Beijing courts. They mainly consider the fairness of the rights protection, the correspondence of rights and obligations and the risk resistance capacity.¹⁰

Fairness of the Rights Protection

Behind the fairness, there is in fact a hierarchy of values that are worthy of protection from the State. For example, when it comes to basic civil rights, such as labour safety and health or citizen health rights, the courts tend to protect the weaker parties in the dispute. However, if it involves claims such as double wages indemnity for not fulfilling to sign an employment contract, the court will treat it with caution. For example, in the Chef case, although the court found that the subordination was in line with the essential characteristics of the employment relationship, at the same time, based on the signed Cooperation Agreement, the chef's relevant labour rights were legally guaranteed, so the service provider was not supported for this indemnity.

Correspondence of Rights and Obligations

In addition to the fairness principle, the court sometimes considers the correspondence of the rights and obligations of the platform enterprise. For example, in the Online Taxi-Booking Driver case, the court of second instance held that the vehicle was owned by the platform company and the platform company also insured it. After the incident, the insurance company assumed the responsibility for claims and the original judgment found that the platform company did not bear the responsibility for claims nor was it required to in accordance to both law and common sense. The driver of the specific car was



be considered as having the same nature as wages.

In addition, the judgment standard of risk resistance capacity is directly reflected in the system design of labour management. In the Flash Courier case, the judge believed that as a company operating with new technology, it could fully utilise the advantages of information technology to achieve legal operation and management. The court cannot refuse to provide workers with basic rights relief because the relevant supporting system was still not perfect. Therefore, the responsibility of

reducing the risk of employment is directly allocated to the sharing economy platform enterprises.

operating according to the instructions of the platform company and driving the vehicles of the platform company. The car service and the payment of the fare were operated by the platform company and the proceeds were also owned by the platform company. Since the platform company enjoyed the rights, it should assume the corresponding liability for compensation. In the Flash Courier case, the judge even pointed out that platform companies cannot avoid assuming legal responsibility and social responsibility that should be borne by them only because they adopt new technical means and new business methods.

Risk Resistance Capacity

The application of risk resistance capacity first appears in the allocation of the burden of proof. For example, in the Chef case the court held that the platform company, as an internet company, had the ability and obligation to prove the specific 'cooperation' details with the chef in the business model based on the mobile internet and the cooperation process was fully compliant with the terms and conditions set forth in the cooperation agreement. Although the platform company insisted that remuneration be paid to the chef on the 15th of each month in the form of inventive reward and other cooperation expenses, instead of a salary. However, as a remuneration issuer, the platform company could not prove the calculation details and specific basis of the payment of the remuneration and that the reward policy had been delivered to or agreed with by the chef, so the remuneration should

Governance of Labour Disputes in the Sharing Economy Requires Every Social Subject to Hold Its Own Place

However, the change referred to constitutes only a very small number of the current overall number of judicial decisions. Based on the local judge's consideration of the local political and economic environments, as well as many other subjective and objective reasons, it is still difficult for the courts and arbitral tribunals to make long-term considerations as in the Flash Courier case. Therefore, the author is of the view that in labour-management disputes of the sharing economy, people should expand their horizons to pay attention to the distribution of rights and obligations of various participants, which are mainly reflected in the three levels of risk control, bargaining process and system design, as discussed below.

Risk Control in Platform Enterprises

Dispute prevention within enterprises is the main barrier to risks, but current platform companies generally have the *status quo* that they have not exhausted the existing labour and employment institutions subjectively or objectively. The Positive case was in an internet electronic equipment maintenance platform. When it was established in 2015, it also encountered many personnel management confusion problems that are often encountered by start-up platform companies. After the systematic employment design, the risk

management and control of labour employment of internet platform enterprises was completed through the outsourcing relationship, service relationship, labour dispatch relationship, and the application of special working hours under informal employment.¹¹ The systematic design of the employment model not only gives the service provider a sense of belonging, but also curbs the *status quo* of the service provider's 'stealing company's business', thus achieving a win-win situation for both labour and management, making the enterprise become one of the top enterprises in the industry.

Bargaining Process

Another reason for the frequent occurrence of labour disputes in platform enterprises is the lack of collective organisation and collective bargaining. The Positive case was in Shanghai at the beginning of 2018, when China's first online take-out riders trade union was established in the Putuo District of Shanghai. Five joint trade unions were set up, which had attracted more than 400 take-out riders to the trade unions at that time.¹² In addition, the advantage of the platform economy lies in a sound evaluation system and ubiquitous digital labour is providing channels for civil supervision. For example, the Shanghai Food and Drug Administration has piloted an internal reporting system for take-out riders, encouraging more than 30,000 riders in Shanghai to discover and report problem merchants on the online ordering platform.¹³ This system, however, shares the regulatory responsibility of platform companies to some extent.

System Design

Typical cases of system design are contained in the *Interim Measures for the Administration of Online Taxi Booking Business Operations and Services* jointly issued by the Ministry of Industry and Information Technology, the Ministry of Communications, etc., in 2016. This governmental rule has made detailed regulations in regard to online taxi-booking platform companies, the online taxi-booking driver and vehicle and the online taxi-booking operation behaviour. It has largely regulated the distribution of interests in the online taxi-booking industry in China and affected its development pattern. However, in other industries, the value distribution of the sharing economy has been seriously ignored and the corresponding institution design is extremely lacking. To understand the state of value distribution of the sharing economy, one needs to first analyse the spatio-temporal genealogy of digital

labour comprehensively and then analyse the formation and development model of the sharing economy platform. In addition, the special point for China is that the internet economy (or say, digital economy) and the cybersecurity issues it brings, are almost simultaneous with the issues of globalisation. One of the major features of its business model is to break through the boundaries of the 'atomic world' (country borders). In this 'bit world', the global ecology of the digital economy industry and the flow of value chains are equally worthy of attention.

In recent years, the internet economy has developed rapidly worldwide and has been continually impacting a country's current institutions of competition law, copyright law, privacy law, and labour and employment law. The platform economy lies in the development model of internet companies, while its risks and huge profits often occur at the same time. Therefore, the control over the systemic risks of the whole society that internet platform enterprises and the undertaking of internet companies for corresponding social responsibilities, should be more emphasised.

¹⁰ In such cases, for the existence of employment relationships is inconclusive, the courts assign the rights and obligations of both parties in accordance with the basic principles of civil law.

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IPBA New Members

March 2019 – May 2019

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

Australia , Justin Carter	China , Jiachi Gong <i>Jin Mao Partners</i>
Australia , Caroline Kenny QC <i>International Arbitrator</i>	China , Yanyu He <i>Sichuan Henghexin Law Firm</i>
Australia , Nathan Landis <i>IMF Bentham</i>	China , Henry Huang <i>Grandall Law Firm Shanghai</i>
Australia , Adrian Smith McCullough <i>Robertson Lawyers</i>	China , Chen Yi Sun <i>Jin Mao Partners</i>
Australia , Masatoshi Suzuki <i>Clayton Utz</i>	China , Fang Wang <i>Globe-Law Law Firm</i>
Australia , Liyao Wang <i>Finlaysons</i>	China , Guang You <i>Jin Mao Partners</i>
Bangladesh , Khurshid Jahan <i>IDCLA</i>	China , Deqiang Zhan <i>Shanghai Tiansun law firm</i>
Bangladesh , S M neoaz Morshed <i>The Justice Hub</i>	China , Jian Zhang <i>Shanghai Fangben Law Office</i>
Bangladesh , Al Amin Rahman <i>FM Associates</i>	China , Bowen Zhang <i>Jin Mao Partners</i>
Belgium , Walter De Brakeleer B.V.B.A <i>WDB Law Office</i>	China , Hai Miao Zhang <i>Shanghai Dong Su Law Firm</i>
Belgium , Nicolaj Alexander Kuplewatzky <i>Legal Service, European Commission</i>	France , Chaney Stanley <i>Chaney Stanley Avocats</i>
Canada , Marc-André Séguin <i>Exeo Attorneys inc.</i>	France , Bernard Teze <i>DS Avocats</i>
Canada , Sean Stephenson <i>Dentons Canada LLP</i>	Hong Kong , Cheng Yee Khong <i>IMF Bentham</i>
Canada , Francis Tourigny <i>Exeo Attorneys inc.</i>	Hong Kong , Eleanor Hughes <i>Skadden, Arps, Slate, Meagher & Flom</i>
Canada , Marina Tran <i>McMillan LLP</i>	Hong Kong , Hugh Alexander Tsun-Ting Kam
China , Pablo Cubel <i>Cuatrecasas Goncalves Pereira SLP Beijing Representative Office</i>	Hong Kong , Timothy Loh <i>Timothy Loh LLP</i>

Hong Kong , Rory McAlpine <i>Skadden, Arps, Slate, Meagher & Flom</i>	Japan , Yoshikazu Aoki <i>Creativity & InsightLegal Professional Corporation</i>
Hong Kong , Niels Schiersing <i>Arbitration Chambers Hong Kong & London</i>	Japan , Peter Cassidy <i>Higashimachi LPC</i>
Hong Kong , Winnie Tam SC <i>Des Voeux Chambers</i>	Japan , Mamoru Endo <i>Tanase Law Office</i>
Hungary , Orsolya Görgényi <i>Szecskey Attorneys at Law</i>	Japan , Shota Ito <i>Creativity & Insight Legal Professional Corporation</i>
India , Rajesh Begur <i>ARA LAW</i>	Japan , Yuka Kamio <i>Anderson Mori & Tomotsune</i>
India , Ajay Bhargava <i>KHAITAN & CO</i>	Japan , Ryosuke Kono <i>Oh-Ebashi LPC & Partners</i>
India , Aaron Kamath <i>Nishith Desai Associates</i>	Japan , Kie Matsushima <i>Anderson Mori & Tomotsune</i>
India , Suneeth Katarki <i>IndusLaw</i>	Japan , Masaki Minakawa <i>Nakamoto & Partners</i>
India , Somabrata Mandal <i>FOX MANDAL</i>	Japan , Shoko Miura <i>Kitahama Partners</i>
India , Anshuman Pande <i>Archeus Law</i>	Japan , Masaki Noda <i>Nishimura & Asahi</i>
India , Atul Pandey <i>Khaitan & Co LLP</i>	Japan , Kanayo Okai <i>Showa Law Office</i>
India , Arvind Kumar Ray <i>KHAITAN & CO</i>	Japan , Nobuhito Okiyama <i>Nagawa-okamura Law Office</i>
India , Neeti Sachdeva <i>MCIA</i>	Japan , Karl Pires <i>Shearman & Sterling LLP</i>
India , Seetharaman Sampath <i>Seetharaman & Associates</i>	Japan , Hiroaki Takagi <i>Nishimura & Asahi</i>
India , Siddharth Thacker <i>Mulla & Mulla & Craigie Blunt & Caroe</i>	Japan , Tatsuya Tanigawa <i>Nishimura & Asahi</i>
India , Reetika Wadhwa <i>S.S. Rana & Co.</i>	Japan , Jin Watanabe <i>Nagawa-Okamura Law Firm</i>
Indonesia , Dewi Djarot <i>Dewi Negara Fachri & Partners - DNFP</i>	Japan , Gustavo Raul Ytokazu Minami <i>Shift Energy Japan</i>
Indonesia , Fransiscus Rodyanto <i>SSEK Legal Consultants</i>	Korea , JungHwan Bae <i>Bae, Kim & Lee</i>
Italy , Manuela Cavallo <i>Portolano Cavallo</i>	Korea , Sanghoon Han <i>LEE&KO</i>
Italy , Naoko Konishi <i>Pavia e Ansaldo Studio Legale</i>	Korea , Michael Andrew Hay <i>HMP LAW</i>
Japan , Akitaka Anzai <i>Anderson Mori & Tomotsune</i>	Korea , Seok Hoon Kang <i>Yulchon LLC</i>

Korea , Hoodong Lee <i>BAE, KIM & LEE LLC</i>	Russia , Andrey Porfiriev <i>Egorov Puginsky Afanasiev & partners</i>
Korea , Sunghyun Ryu <i>Lee&Ko</i>	Russia , Natalia Prisekina <i>Pepeliaev Group</i>
Korea , Jin Dong Seo <i>HMP LAW</i>	Russia , Natalia Stenina <i>Pepeliaev Group</i>
Korea , Deok-II Seo <i>Kim & Chang</i>	Russia , Ksenia Tarkhova <i>ALRUD Law Firm</i>
Korea , Jeong Keun Yun <i>Yulchon LLC</i>	Singapore , Kate Apostolova <i>Freshfields Bruckhaus Deringer</i>
Luxembourg , Dirk Leermakers <i>Strelia SARL</i>	Singapore , Jamie Benson <i>Duane Morris & Selvam LLP</i>
Malaysia , Muhammad Belal Hossain <i>Orchid Asia Advisory SDN. BHD (1151339-K)</i>	Singapore , Wen Kwan Chow <i>Bird & Bird ATMD LLP</i>
Malaysia , Sze Jia Kho <i>Izad Kazran & Co</i>	Singapore , Anne Connolly <i>HKA Global (Singapore) Pte Ltd</i>
Malaysia , Siong Sie Khong <i>SKRINE</i>	Singapore , Hamish Egan <i>HKA</i>
Malaysia , Premjit Singh Kolwant Singh <i>Collectius Group</i>	Singapore , Gokul Haridas <i>M/s Tito Isaac & Co LLP</i>
Malaysia , Vince Eng Teong See <i>Eng Teong & Co.</i>	Singapore , Chien Mien Ho <i>Allen & Gledhill LLP</i>
Malaysia , Gian Chung Tan <i>Shook Lin & Bok Malaysia</i>	Singapore , Katina Hunter Sutcliffe <i>HJM Asia Law & Co LLC</i>
Mauritius , Sameer Tegally <i>Venture Law</i>	Singapore , Tito Isaac <i>M/s Tito Isaac & Co LLP</i>
Mexico , Fernanco Martinez Marcedo <i>CORREDURIA PUBLICA 67 / IP360, S.C.</i>	Singapore , Meryl Koh <i>Drew & Napier LLC</i>
Mongolia , Amarjargal Batchuluun <i>ME MGL Advocates LLP</i>	Singapore , Chun Kiat Loh <i>Rajah & Tann Singapore LLP</i>
Mongolia , Baigalmaa Tsookhuu <i>Melville Erdenedalai (M&E) LLP</i>	Singapore , Gary Low <i>Drew & Napier LLC</i>
Philippines , Jose Eduardo Genilo <i>ACCRA Law Offices (Angara Abello Concepcion Regal & Cruz Law Offices)</i>	Singapore , Arvindran Manoosegaran <i>IMF Bentham</i>
Philippines , Elaine Patricia Reyes-Rodolfo <i>Angara Abello Concepcion Regala & Cruz Law Offices</i>	Singapore , Ramesh Bharani Nagaratnam <i>RBN Chambers LLC</i>
Poland , Jan Rolinski <i>WKB Wierciński, Kwieciński, Baehr</i>	Singapore , Michelle Phang <i>Ashurst</i>
Russia , Elena Burova <i>Russian Arbitration Center at the Russian Institute of Modern Arbitration</i>	Singapore , Vanathi Ray <i>Joseph Lopez LLP</i>

Singapore , Johannes Louis Rothuizen <i>Loyens & Loeff Singapore LLP</i>	United Arab Emirates , Tomas David Bicknell <i>Pinsent Masons LLP</i>
Singapore , Bryan Tan <i>Nair & Co LLC</i>	United Arab Emirates , Liam Collens <i>Reckitt Benckiser</i>
Singapore , Steve Tan <i>Rajah & Tann Singapore LLP</i>	United Kingdom , Rupert Boswall <i>RPC</i>
Singapore , Yves Frans Y Van Brussel <i>Loyens & Loeff Singapore LLP</i>	United Kingdom , Sarah Chilton <i>CM Murray LLP</i>
Singapore , Jop van der Kraan <i>Loyens & Loeff Singapore LLP</i>	United Kingdom , Anneliese Day QC <i>Fountain Court Chambers</i>
Singapore , Amanda Yeo <i>HKA Global (Singapore) Pte Ltd</i>	United Kingdom , Joe-han Ho <i>39 Essex Chambers</i>
Spain , Conchi Bargallo Garcia <i>Cuatrecasas, Goncalves Pereira</i>	United Kingdom , Stephen Moriarty QC <i>Fountain Court Chambers</i>
Syria , Ahmad Kezbari <i>ALKUZBARI Advocates & Legal Consultants</i>	United Kingdom , Leigh-Ann Mulcahy QC <i>Fountain Court Chambers</i>
Taiwan , Chia Chi Chen <i>Titan Attorney-at-Law</i>	United States , Lawrence Foster <i>William S. Richardson School of Law</i>
Taiwan , Ching Yuan Yeh <i>Titan Attorney-at-Law</i>	United States , Glenn Melchinger <i>Dentons</i>
Thailand , Mark DAlelio <i>Legal ASEAN</i>	United States , James Mutchnik <i>Kirkland & Ellis LLP</i>
Thailand , Narit Direkwattanachai <i>NARIT & Associates Ltd.</i>	Vietnam , Youngdae Kim <i>BROSS & Partners</i>
Thailand , Surasak Vajasit <i>R&T Asia (Thailand) Limited</i>	Vietnam , Duong Le <i>INDOCHINE COUNSEL</i>
Turkey , Duet Kesriklioglu <i>Antroya</i>	Vietnam , Lan Pham <i>INDOCHINE COUNSEL</i>
Ukraine , Timur Bondaryev <i>Arzinger Law Firm</i>	Vietnam , Vu Phan <i>INDOCHINE COUNSEL</i>

Inter-Pacific Bar Association Scholarship Programme

The Inter-Pacific Bar Association (IPBA) is pleased to announce that it is now accepting applications for the IPBA Scholarship Programme to enable practicing lawyers to attend the IPBA's 30th Annual General Meeting & Conference to be held in Shanghai, April 20-23, 2020.

What is the Inter-Pacific Bar Association?

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

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

One of the highlights of the year for the IPBA is its annual conference, which has become the 'must-attend event' for international lawyers practicing in the Asia-Pacific region. In addition to plenary sessions of interest to all lawyers, sessions are presented by the IPBA's 23 specialist committees and one Ad Hoc committee. The IPBA Annual Meeting and Conference provides an opportunity for lawyers to meet colleagues from around the world and to share the latest developments in cross-border practice and professional development in the Asia-Pacific region. Previous annual conferences have been held in Tokyo, Sydney, Taipei, Singapore, San Francisco, Manila, Kuala Lumpur, Auckland, Bangkok, Vancouver, Hong Kong, New Delhi, Seoul, Bali, Beijing, Los Angeles and Kyoto/Osaka.

What is the IPBA Scholarship Programme?

The IPBA Scholarship Programme was originally established in honour of the memory of M.S. Lin of Taipei, who was one of the founders and a Past President of the IPBA. Today it operates to bring to the IPBA Annual Meeting and Conference lawyers who would not otherwise be able to attend and who would both contribute to, and benefit from, attending. The Scholarship Programme is also intended to endorse the IPBA's mission to develop the law and its practice in the Asia-Pacific region. Currently, the scholarships are principally funded by The Japan Fund, established and supported by lawyers in Japan to honour IPBA's accomplishments since its founding; the Host Committee of the Annual Meeting and Conference in Vancouver, Canada, 2014; and a generous donation by the family of M.S. Lin.

During the conference, the Scholars will enjoy the opportunity to meet key members of the legal community of the Asia-Pacific region through a series of unique and prestigious receptions, lectures, workshops, and social events. The program aims to provide the Scholars with substantial tools and cross-border knowledge to assist them in building their careers in their home country. Following the conference, the Scholars will enjoy three years of IPBA membership and will be invited to join a dedicated social networking forum to remain in contact with each other while developing a network with other past and future Scholars.

Who is eligible to be an IPBA Scholar?

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

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

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

Former Scholars will only be considered under extraordinary circumstances.

How to apply to become an IPBA Scholar

To apply for an IPBA Scholarship, please obtain an application form and return it to the IPBA Secretariat in Tokyo no later than **October 31, 2019**. Application forms are available either through the IPBA website (ipba.org) or by contacting the IPBA Secretariat in Tokyo (ipbascholarships@ipba.org).

Please send completed applications by e-mail attachment to:

The IPBA Secretariat

E-mail: ipbascholarships@ipba.org

What happens once a candidate is selected?

The following procedure will apply after selection:

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

The IPBA Secretariat

Roppongi Hills North Tower 7F • 6-2-31 Roppongi, Minato-ku • Tokyo 106-0032, Japan
Telephone: +81-3-5786-6796 • FAX: +81-3-5786-6778 • E-mail: ipbascholarships@ipba.org

An Invitation to Join the Inter-Pacific Bar Association

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

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

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

IPBA Activities

The breadth of the IPBA's activities is demonstrated by the number of specialist committees: 23. Each committee focuses on different aspects of business law, indicating the scope of expertise and experience among our membership as well as the variety of topics at our seminars and conferences. All IPBA members are welcome to join up to three committees, with the chance to become a committee leader and have a hand in driving the programmes put on by the IPBA.

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

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

APEC

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

Membership

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

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

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

Membership renewals will be accepted until 31 March.

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

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

Corporate Associate

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

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

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

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

- Annual Dues for Corporate Associates ¥50,000

Payment of Dues

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

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

IPBA Secretariat

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

See overleaf for membership
registration form



IPBA SECRETARIAT

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

IPBA MEMBERSHIP REGISTRATION FORM

MEMBERSHIP CATEGORY AND ANNUAL DUES:

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

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

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

Firm Name: _____

Jurisdiction: _____

Correspondence Address: _____

Telephone: _____ Facsimile: _____

Email: _____

CHOICE OF COMMITTEES (PLEASE CHOOSE UP TO THREE):

- | | |
|--|--|
| <input type="checkbox"/> Anti-Corruption and the Rule of Law | <input type="checkbox"/> Insurance |
| <input type="checkbox"/> APEC | <input type="checkbox"/> Intellectual Property |
| <input type="checkbox"/> Aviation 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
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Card Number: _____ Expiration Date: _____

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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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