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NEWS & LEGAL UPDATE



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The President's Message

Jack Li
President



We Are Together

I started my legal career in Shanghai, the city known as the Paris-of-the-East, in 1990. In the following year, 1991, the IPBA was founded in Tokyo as the world's first international lawyers organisation born in Asia. I remember that more than 500 leading business lawyers from all over the world attended its first Annual Meeting and Conference which was held in Tokyo. The stele in the countryside of Chiba has witnessed the Spirit of Katsuura from then on.

For three decades spanning from its beginning, the IPBA has brought its Annual Meeting and Conference to 17 famous cities and regions in Asia and the countries of the Pacific. Each time, such gatherings, after greetings and dinner with mingling, are so unforgettable. The common devotion to the law, legal practice and a shared passion for life make the time we spend together everlasting memories deep in my heart.

I served as a Vice-Chair of the Legal Practice Committee after the Beijing Annual Meeting and Conference, and as JCM for China after the 2017 Auckland Annual Meeting and Conference. More than three years from then, I have visited more than 30 countries and regions in which our members can be found. I discovered that every city has such a breath and vitality of life, which I think is in line with the energy from the IPBA. Our members come from 71 countries and regions, covering APEC member economies, G20 and BRICS countries. From East Asia to South Asia, from ASEAN to the European Union, from Australia and New Zealand to the United States and Canada, from England to Ireland and from Central America to Latin America, the IPBA logo is present and we have connections with each other.

In Hawaii, I listened to the deep personal emotion from the earliest IPBA founder members; in Budapest, I felt the deep passion of belonging from the only local female member. With the passage of time, the glorious flowers in spring will surely bring the solid fruits of autumn. Soon, the IPBA will move past 30 years. We are going to hold the 30th Annual Meeting and Conference in Shanghai next April. In April 2022, the IPBA will return to Tokyo, where it was born and founded for a grand commemoration of its 30th birthday. How many periods of 30-years will there be in one's life? I think that the IPBA is our common spiritual home as we are not only sharing legal business, perceptions and experiences, but also exchanging the joys and sorrows of life together. I would like to express my heartfelt thanks to all my brothers and sisters for your support and assistance.

I shall deeply remember our 2020 AGM which will be an unforgettable experience for life. On 7 June 2020, my brother and friend, Mr Francis Xavier SC, handed over his presidency to me. I would like to call him one of the most impactful presidents in IPBA history by noting that:

1. During his tenure, the IPBA created a more international, more imaginative and more powerful new logo.
2. He hosted the Singapore Annual Meeting and Conference, one of the most wonderful and memorable in the IPBA's history, with excellent keynote speeches, sub-forums and a wonderful party.
3. At the 2019 Osaka Arbitration Summit, he presided over the promulgation of the IPBA Practice Guidelines for Arbitration, which is of great reference value for members to practice international arbitration.

4. Every officers' meeting he chaired during his tenure was efficient and fruitful and he was decisive and full of leadership, especially during the COVID-19 pandemic.
5. He has a great deal of experience and earlier this year he became the President of CIArb, which I think is an honour for IPBA also.
6. We went to Beijing and Shanghai to visit the senior officers from the Ministry of Justice, All China Lawyers Association, Beijing Arbitration Commission, Shanghai Municipal Government, Shanghai International Arbitration Center and the Shanghai Bar Association. Together, we trekked the Great Wall before sunset and we went to Russia for the Eastern Economic Forum. I have witnessed his speeches so many times and I fully appreciate him.

As his successor, I would like to express my sincere gratitude to Francis for his tremendous contributions made to the IPBA during his presidency.

In addition to our President Francis, please allow me to also pay my highest respect to our outgoing Council Members. They are:

- the officers: Tatsu Nakayama, Nini Halim, John Wilson and Michael Cartier;
- the Jurisdictional Council Members: Emalia Achmadi and Bernhard Meyer; and
- the Committee Chairs: Beate Mueller, Hiroyuki Tezuka, Peter Chow, Michael Soo, Charandeep Kaur, James Jung, Barunesh Chandra and Anne Durez.

Thank you for taking the IPBA to great heights of success. Without your dedication and hard work it would not have been possible.

I will close by saying that this is an unprecedented moment for the whole world and the IPBA. The COVID-19 outbreak is spreading worldwide and due to the pandemic the Shanghai Conference has to be postponed, but we will never cease our steps to carry forward our work because of the abundant support and encouragement from all of you.

It is only in our difficult hours that we may discover the true strength of the brilliant light within ourselves. We should believe that solidarity is the most powerful weapon against the disease.

Please stay safe; may joy and health be with you and your family always.

Finally, please allow me to share with you the English lyrics of our first IPBA song:

*"You were born in Asia and
Grown up in the world
With different blood
But common pursuit
Spirit of Katsuura, heart to heart
Hand in hand in wisdom
Love and sincere forever
.....
We are the spirit, IPBA
We are the family, IPBA
We are forever, IPBA
We are together, IPBA"*

Brothers and sisters, as the first practising lawyer serving as the President of the IPBA, 177 years since Shanghai opened its port in 1843, I would like to sincerely invite everyone to come to my hometown Shanghai next April.

Jack Li
President



The Secretary-General's Message

Michael Burian
Secretary-General



Dear IPBA Members,

First of all, I hope that you and your families are all well and healthy in these uncertain times. We are conscious of the challenges that many of you face during this crisis and we are carefully monitoring the health and well-being of our members and staff while supporting each other where possible.

Furthermore, I want to thank all IPBA members and staff for their solidarity and the determination and patience with which they have been facing the enormous practical and technical difficulties that the COVID-19 outbreak has brought with it. The current situation demonstrates how quickly major difficulties can occur and so I want to express my recognition and gratitude.

While the COVID-19 pandemic is primarily a health crisis, its impact affects the global economy immensely. We are all struggling to absorb the shock, with jobs disappearing and businesses suffering. There has been a fundamental shift in our daily lives and we are still living with the fear that the worst could still be yet to come, especially in countries that were already facing substantial crises before the outbreak. This pandemic shows that we are only as strong as the weakest country.

Nevertheless, we are trying to maintain the IPBA procedures where possible. The Annual General Meeting (AGM) 2020 was held online for the first time on 7 June 2020. Thanks to extensive prior organisation, the voting process could be realised online through a poll system via Zoom. As already announced, Jack Li was elected president for the term 2020–2022. For the next two years, Miyuki Ishiguro will have the position of President-Elect and Richard Briggs the position of Vice-President. You can find a full list of the recently elected officers and council members on the IPBA website. I am looking forward to working with all of them in the future.

The IPBA Officers continue to monitor the situation carefully around the globe. As of July 2020, we fully intend to hold the IPBA 30th Annual Meeting and Conference in Shanghai, China from 18–22 April 2021 with the theme of 'Rethinking Global Rules – Opportunities and Challenges for the Legal Industry'. The postponement of the Shanghai Conference has pushed back the IPBA Annual Meeting and Conference in Tokyo to 2022. That theme remains unchanged from earlier: 'Wisdom for the Next 30 Years'. We will keep you updated by posting related information of both conferences on the IPBA website. If you have any questions regarding your registration, please contact the conference organiser by e-mail at delegates@ipba2020.com.

I wish everyone health, patience and strength during this difficult time. When we all continue to work together, we will overcome this pandemic and might even build a better future on a healthy planet!

Michael Burian
Secretary-General



Message to the Reader

Priti Suri

Chair – Publications Committee, IPBA



Dear Reader,

I hope you are doing well in these extraordinary times. Welcome to the June issue of the IPBA Journal, my first as Chair of the Publications Committee. The theme for this month's issue of the Journal is 'Key Legal Developments'. My intent is to stick to a themed approach, but often there are important and newsworthy legal developments which may not be aligned with any theme. Therefore, during my tenure we will aim to keep one edition focused on new developments across jurisdictions.

I am grateful I was able to use submissions made to my predecessor, John Wilson, who kindly had even edited them, but then it became necessary to shift the focus onto the COVID-19 pandemic in the March edition. In this edition's first interesting article, titled *Due Process of a Tribunal's Power to 'Gate' Witnesses in Arbitral Proceedings—A Judicious Approach*, Clarence Lun examines a decision of the High Court of Singapore which held that where witness testimony was essential to put forward a fundamental aspect of its pleaded case, then, notwithstanding procedural powers, a tribunal would jeopardise the right of a party to a fair hearing if it failed to allow such testimony. A court must be allowed to examine if the system has been utilised to defeat the parties' right to a fair hearing. Perhaps, a good reinforcement of the rights to a fair hearing.

In the second article, Ksenia Tarkova provides an overview of the *Russian Strategic and Foreign Investments Regime: Recent Trends for 2020*. She discusses new approaches followed by the Russian authorities, what activities are strategic and new policies influenced by the global environment and sanctions against Russia. She observes that theoretically the foreign investment regime may seem to be tougher, but the government rarely rejects an application. Approvals are given, albeit with conditions. In the present times of the

pandemic, and even otherwise, one can relate to such an approach.

The third article on a topical subject by Ajay Bhargav addresses *Cryptocurrency: The Journey and the Future* with a focus on how online currency will be considered in India. There is no statute that bans the use of cryptocurrencies. But multiple developments have occurred, including a ruling by the Supreme Court which lifts a ban on dealing with, and the provision of services regarding, these currencies. The article discusses the evolution of cryptocurrencies and endeavours to forecast future trends.

In addition, there are details about new IPBA leaders, officers and council members with photos and some interesting facts about them. A request for articles has already gone out for the September issue which will be on the theme 'Deal Making in COVID-19 Times: New Trends'. All the requirements for submissions have been provided. I am moved at the proactive response I have received so far and am reassured that our enthusiastic members will continue with their contributions. While health organisations and nations work tirelessly to contain the virus, everyone continues to experience in real time far-reaching implications unknown in the present century, both on businesses and personal lives. And, therefore, my Vice-Chair, James Jung and I both remain grateful for your timely and consistent contributions.

Priti Suri
Chair – Publications Committee of IPBA

IPBA Upcoming Events		
Event	Location	Date
IPBA Annual Meeting and Conferences		
30th Annual Meeting and Conference	Shanghai, China	April 18-21, 2021
31st Annual Meeting and Conference	Tokyo, Japan	Spring 2022
32nd Annual Meeting and Conference	Dubai, UAE	Spring 2023
IPBA Mid-Year Council Meeting & Regional Conferences		
2020 Mid-Year Council Meeting (IPBA Council Members Only)	Online	October 18-21, 2020
More details can be found on our web site: http://www.ipba.org , or contact the IPBA Secretariat at ipba@ipba.org		

The above schedule is subject to change.

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Since its humble beginnings in 1991 at a conference that drew more than 500 lawyers from around the world to Tokyo, the IPBA has blossomed to become the foremost commercial lawyer association with a focus on the Asia-Pacific Region. Benefits of joining IPBA include the opportunity to publish articles in this IPBA Journal; access to online and printed membership directories; and valuable networking opportunities at our Annual Meeting and Conference as well as 10 regional conferences throughout the year. Members can join up to three of the 24 committees focused on various of commercial law practice areas, from banking and finance, to insurance, to employment and immigration law, and more. We welcome lawyers from law firms as well as in-house counsel. IPBA's spirit of camaraderie ensures that our members from over 65 jurisdictions become friends as well as colleagues who stay in close touch with each other through IPBA events, committee activities, and social network platforms. To find out more or to join us, visit the IPBA website at ipba@ipba.org.



IFLR/IPBA Virtual Asia M&A Forum 2020 15–19 June 2020

by Frédéric Ruppert

The IPBA partnered with the International Financial Law Review ('IFLR'), a division of Euromoney Institutional Investor (Jersey) Ltd, to organise the Asia M&A Forum 2020. Amid the international sanitary and health crisis caused by the COVID-19 global pandemic, the Forum, initially planned to take place in Hong Kong in early March 2020, was rescheduled and relocated to June in Macau and was finally held as a virtual forum between 15 and 19 June 2020. The event drew 500 registrants from 20 jurisdictions.

The Forum followed the signing last November of an agreement between the IFLR and the IPBA to collaborate on the organisation of the Asia M&A Forum in the coming years. The agreement was amended last April to adapt to a virtual event format in 2020 or later if need be, depending on the evolution of the COVID-19 situation. While the Asia M&A Forum was initiated years ago by Wilson Chu, past Program Coordinator, past JCM for the US, past Regional Coordinator for North America and past Chair of the Cross-Border Investment Committee ('CBIC'), the IPBA as an organisation had over the years become less involved with the Forum. This year marks the return of the IPBA and its M&A arm, the Cross-Border Investment Committee, to work alongside the IFLR to support the Asia M&A Forum organisation.

As a matter of fact, the Advisory Board for the event had an all-IPBA cast: Wilson Chu, José Cochingyan (past Program Coordinator and past Chair of the CBIC), Shin Jae Kim (current Program Coordinator), Sara Marchetta and Frédéric Ruppert (current Co-Chairs of the CBIC)

IPBA members were in charge of, or panelists on, several sessions throughout the week: Areej Hamadah (IPBA member, Kuwait) gave a presentation on 'Corporate M&A in the Arab Gulf States', Sara Marchetta was on



a panel on 'Deal protection mechanisms' and the last session of the Forum, 'Deal making lessons learned from the COVID-19 crisis', was moderated by Frédéric Ruppert. Wilson Chu opened the Forum with Welcome Remarks and José Cochingyan gave the Closing Remarks.

Final word: special thanks to Michael Burian, current Secretary-General, who was also very instrumental in bringing the IPBA back to the Asia M&A Forum and managing the execution of the IPBA-IFLR agreement.



Frédéric Ruppert
Managing partner and founder of
FR Law - Avocat, France

Frédéric's practice mostly focuses on M&A and Private Equity and also extends to other corporate and business matters. A member of both the California and Paris Bars and a French and US citizen, Frédéric is a graduate of University of Law of Paris – Panthéon Assas and holds an MBA in Finance from California State University East Bay. Frédéric Ruppert is currently Co-Chair of the Cross-Border Investment Committee of the IPBA.

Due Process of a Tribunal's Power to 'Gate' Witnesses in Arbitral Proceedings— A Judicious Approach

In *CBP v CBS*, the High Court of Singapore held that where witness testimony was required for a party to an arbitration to put forward a fundamental aspect of its pleaded case, an arbitral tribunal would be in breach of that party's right to a fair hearing if it did not allow that party to adduce such witness testimony, even if it had the procedural power to do so.



Introduction

Under the International Arbitration Act¹ of Singapore, an arbitration tribunal's case management powers to ensure the 'fair, expeditious and economical' determination of a dispute is not unfettered. These powers are still subject to the rules of natural justice. In *CBP v CBS*² ('CBP'), the High Court of Singapore was concerned with the question of whether Rule 28.1 ('Rule 28.1') of the Arbitration Rules of the Singapore Chamber of Maritime Arbitration³ ('SCMA Rules') gave an arbitrator the procedural power to 'gate' witnesses (that is, to exclude that witness from presenting oral evidence) even in the event where one of the parties had insisted on the presentation of oral evidence of witnesses. The Court held that on a proper interpretation of Rule 28.1 it did not, but that even if it did, the arbitrator would still have been required to consider whether its rejection of hearing evidence from particular witnesses would amount to a denial of a party's right to a fair hearing, especially when that evidence was fundamental to that party's pleaded case.

Brief Facts

The plaintiff in this case (the 'Buyer') was a company incorporated in India engaged in the business of steel manufacturing and power generation. The defendant was a bank (the 'Bank') incorporated in Singapore. Prior to this dispute, the Buyer had entered into a sale and purchase agreement ('SPA') with a seller of coal (the 'Seller'). The receivables arising out of the SPA were assigned to the Bank, which proceeded to send to the Buyer a bill of exchange requiring payment of monies allegedly due under the SPA to the Bank by a certain due date. The Buyer failed to make payment by that due date. The Buyer later claimed that there had been a short delivery of coal to the Buyer, which the Bank denied (the 'Short Delivery Issue').

It was not disputed that, sometime later, on or around 2 December 2015 (the '2 December 2015 Meeting'), representatives of the Seller met with representatives of the Buyer to discuss the issue of the alleged outstanding payment and also the Short Delivery Issue. What was disputed, however, was whether a new oral agreement had been entered into between the Buyer and the Seller at the 2 December 2015 Meeting, wherein the Buyer and the Seller had agreed to a revised price of coal (that is, from US\$74 to US\$61 per metric ton (MT)) (the 'Revised Price Issue'). The Buyer insisted that such an oral agreement had been entered into at the meeting, whereas the Bank denied the same.

The Arbitration

In accordance with the SPA, the matter was referred to arbitration under the SCMA Rules and a sole arbitrator was appointed to hear the dispute. The arbitrator found that two of the main issues were the Short Delivery Issue and the Revised Price Issue. On the Short Delivery Issue, the arbitrator found that there was in fact evidence to show that there had been no short delivery of coal to the Buyer. On the Revised Price Issue, the arbitrator found that there was no evidence before him to make a finding that the parties had entered into a new agreement during the 2 December 2015 Meeting. However, the circumstances leading to the arbitrator's finding on the Revised Price Issue bears mentioning. Rule 28.1 of the SCMA states that:

Unless the parties have agreed on a documents-only arbitration or that no hearing should be held, the Tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral submissions.

The Buyer had intended to call seven witnesses, six of whom were present at the 2 December 2015 Meeting and four of whom were representatives of the Seller or were otherwise not the Buyer's representatives. It was intended that these witnesses would prove that the parties did in fact reach an oral agreement on 2 December 2015. However, the Bank argued that under Rule 28.1, where the parties had not 'agreed on a documents-only arbitration or that no hearing should be held', the arbitrator was still at liberty to decide whether or not parties would be entitled to call witnesses to present evidence. This, purportedly, was due to the use of the word 'or' in the second part of Rule 28.1, which appeared to say that the rule was disjunctive and the arbitrator could therefore choose whether to hold a hearing for the presentation of evidence by witnesses or to hold a hearing for oral submissions only. The Bank further argued that there was no necessity to call for witnesses to be called as the dispute turned primarily on the contractual interpretation of the SPA. Therefore, the Bank submitted that arbitration should proceed on a documents-only basis or alternatively that a hearing could be conducted for oral submissions only, without the need for witnesses.

The arbitrator accepted the Bank's arguments and directed that the Buyer was to submit detailed witness statements for the purposes of allowing him (the arbitrator) to rule on whether it would be a 'documents-

only' proceeding or if an oral hearing with the presentation of witness evidence was necessary. On prompting from the Buyer that Rule 28.1 did not appear to give him such a power (that is, to decide whether or not oral evidence may or may not be led), the arbitrator shifted his position and proceeded to state that the Buyer would be considered to have 'waived any right to submit witnesses in the event of an oral hearing should it fail to comply with his directions for [witness] statements'. The Buyer persisted in its objections to the arbitrator's directions as these were 'contrary to [the] interest of justice and law' and refused to provide any such witness statements pursuant to such a direction. Given the Buyer's refusal to comply with his directions, the arbitrator proceeded to hold an oral hearing without permitting the Buyer to adduce oral evidence from its witnesses. Then, in light of the Buyer's purported lack of evidence, the arbitrator subsequently found in favour of the Bank in respect of the Revised Price Issue.

Judicial Review

On judicial review, the High Court found that the arbitrator did not in fact have the remit under Rule 28.1 to decide to exclude witnesses if the parties did not agree to do so. It held that, on a holistic reading, Rule 28.1 was not concerned with the arbitrator's power to 'gate' witnesses. All that it said was simply that if parties did not agree to a 'documents-only' arbitration, then the arbitrator was bound to conduct an oral hearing. What would happen at the oral hearing depended on whether the parties wished to lead oral evidence or simply make oral submissions and the arbitrator did not have a discretion to direct otherwise.

Upon perusal of the relevant authorities, the High Court further went on to say that, in any event, an arbitral tribunal does not have 'free reign to reject witness evidence in the interest of efficiency'. Even if an arbitral tribunal had the procedural power to 'gate' witnesses, as is the case in many other rules of arbitration, this power was not an absolute one that allowed the tribunal to override the rules of natural justice. It could only be utilised if it is apparent that the intended witnesses' evidence were plainly irrelevant or repetitive. On the facts of this case, it was a fundamental aspect of the Buyer's defence that the parties had entered into a separate

oral agreement at the 2 December 2015 Meeting. If so, this would have an impact on the Bank's claim under the SPA. Therefore, the arbitrator's failure to allow the Buyer to adduce witnesses to give oral evidence had the prejudicial effect of shutting out the Buyer's defence. The arbitral award was accordingly set aside.

Right To A Fair Hearing

At the heart of this dispute lies a perennial issue in arbitration—the tension between, on the one hand, the principle of procuring a just, expeditious, economical and final determination to a dispute and, on the other, the principles giving parties the right to a fair hearing of their matter. To this end, national courts have

often recognised a tribunal's power to 'gate' witnesses and have declined to set aside arbitral awards on the grounds of that tribunal's decision to hear witness testimony (see, for example, the English Court of Appeal case of *Dalmia Dairy Industries Ltd v National Bank of Pakistan*,⁴ cited in CBP).

The courts of Singapore have similarly exercised a policy of minimal curial intervention in their approach to arbitrations by adopting a stringent approach to the question of whether or not an arbitral award should be set aside for breach of the rules of natural justice. In *Soh Beng Tee*,⁵ the Court of Appeal in Singapore held that in order to do so, the party alleging breach must establish the following four requirements:

1. to determine which rule of natural justice was breached;
2. to determine how it was breached;
3. to determine the way in which the breach was connected to the making of the award; and
4. to determine how the breach prejudiced its rights.

Indeed, the Court in that case perused the previous authorities from various jurisdictions and reached the conclusion that, although parties in an arbitration have a right to be heard effectively on every issue that may be relevant to the resolution of a dispute, this principle is circumscribed two principal considerations:

- a. the need to recognise autonomy of the arbitral process by encouraging finality so that its advantage

An arbitrator, said to be the master of its own procedure, should not be allowed to sacrifice concerns for due process at the altar of 'efficiency'.

as an efficient alternative dispute resolution process is not undermined; and

- b. having opted for arbitration, the parties must have taken and to have acknowledged and accepted the attendant risk of having a very limited right of recourse to the courts.

It is therefore of particular (and welcome) interest in this case that the High Court of Singapore accorded an interpretation of Rule 28.1 favouring considerations of fairness, in the sense of a party's right to be heard, above the need for expedience and economy in arbitration. To give a wider interpretation, as sought by the Bank, was to give the arbitrator a power that was not intended to be available to him. However, the Court went further to say that even if Rule 28.1 did in fact give the arbitrator the power to 'gate' witnesses, whether impliedly or otherwise, the arbitrator's conduct in refusing to allow the Buyer to present crucial evidence on a key aspect of its case was 'sufficiently serious or egregious so that one could say that a party has been denied due process.'⁶ This would be to utilise a procedural power to defeat the substantive rights of parties.⁷

The High Court's findings is, in the author's respectful view, one that strikes a proper balance between giving effect to the parties' interest in finality of a dispute and their interest in ensuring that the arbitral process takes place in a just and considered manner. An arbitrator, said to be the master of its own procedure⁸, should not be allowed to sacrifice concerns for due process at the altar of 'efficiency'. While a party who has freely chosen arbitration as its means for dispute resolution cannot later ask to take a second bite at the cherry when they fail in their claim, this is an entirely different situation where that same party has been arbitrarily and unjustifiably denied the chance to present their full case by presenting relevant witnesses for examination before the arbitral tribunal.

Moving Forward

As more potential disputants choose to resolve their dispute by arbitration rather than litigation, the courts must continue to be alive to situations where an arbitral tribunal may overstep its intended boundaries, even as the courts continue to adopt a policy of minimal curial intervention. Such disputants do not only choose their mode of resolution (that is, arbitration), they also choose their means of resolution by choosing the

system of rules they want to abide by. In doing so, they place their trust in the rules of their system of choice. A court must be allowed to examine if system has been utilised in a manner that defeats the parties' right to a fair hearing.

Where a party takes the position that the tribunal is empowered to 'gate' witnesses, and so exclude such evidence entirely, such a power must be clearly set out in the system of rules under which the tribunal is given jurisdiction to preside. Such a power, even where vested in the tribunal, is not a *carte blanche* to exclude evidence; the tribunal must exercise it in a manner that gives parties the opportunity to present and prove their case properly.

Notes

¹ Cap 143A, Rev Ed 2002.

² [2020] SGHC 23.

³ 3rd Edn, 2015.

⁴ [1978] 2 Lloyd's Rep 223, CA (Eng).

⁵ [2007] 3 SLR(R) 86, CA (Sing).

⁶ *Ibid* at [80].

⁷ *Ibid* at [76].

⁸ *Ibid* at [75].



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Russian Strategic and Foreign Investments Regime: Recent Trends for 2020

This article is devoted to the current topic of the ‘Recent Trends in Russian Strategic and Foreign Investments’ Regime’, whereby readers are provided with an overview of the new approaches followed by the Russian Government authorities, information about the qualification of activities as strategic in Russia, as well as the new policies influenced by the ‘international environment’ and sanctions against Russia. Moreover, such trends arise due to the position of ‘national leaders’ in certain industries of the Russian economy and these aspects are also described. The considered trends are illustrated by such high-profile cases as Bayer/Monsanto, Fortum/Uniper, Siemens/Alstom, Schlumberger/EDC, followed by official statistics of the Russian competition authority for 11 years.



Introduction

Attracting foreign investment has been a priority for the Russian Government since the country took its first steps towards developing a market economy in 1991. During the past few decades, consistent legislative and administrative measures have been taken to improve the investment climate and provide guarantees and protection for foreign companies undertaking business in Russia.

This trend remains effective and has been maintained by the Government within the period of mutual economic sanctions, since investment in Russia is encouraged and supported, despite the political alienation between Russia and European countries. Furthermore, the flow of investments from Asian countries—in particular, Singapore, the Republic of Korea and Japan—is currently increasing significantly year-on-year, and Russia considers Asian countries to be promising business partners in the field of mutual investments.

According to official figures, 2019 was the most successful for Russia in terms of investment activity, having regard to the entire period following implementation of the US sanctions against Russia. However, let us consider what are the recent trends in legislation and enforcement of the current regime for foreign investments in 2020, as discussed below.

New Approaches to Qualification of Activities as 'Strategic'

As a rule, the Federal Law 'On the Procedure for Foreign Investments into Companies of Strategic Importance for National Defense and State Security' no. 57-FZ dated 29 April 2008 ('Strategic Investments Law') is applied in the case of foreign investments in respect of Russian companies having strategic importance for national defence and state security. It establishes the procedure for securing clearances for such transactions, as well as the notification procedure for transactions implemented in different strategic sectors of the Russian economy.

The Strategic Investments Law defines 47 areas of business activities as having strategic importance for national security and defence, *inter alia*, activities in the natural resources sector, nuclear and radioactive materials, devices and waste; aviation and space; etc. Transactions in these areas, leading to establishment of control over Russian entities which are performing strategic activities, are analysed by the state authorities

and specifically scrutinised and may require securing preliminary approvals with the Government Commission for Control over Foreign Investments ('Government Commission') and Federal Antimonopoly Service ('FAS Russia'), acting as an intermediary between the applicants and the Government Commission in Russia.

Formally, the list of such strategic activities is closed. However, the recent practice of FAS Russia shows a trend of application of the concept of 'related business activities' to the statutory strategic activities directly listed in the Strategic Investments Law. FAS Russia interprets 'strategic activities' rather broadly, especially in the oil and gas sector.

In particular, one of the most illustrative examples of the application of such a concept is the Nabors/Tesco case¹. In that case, FAS Russia declared that 'running casing services for drilling'² is a 'strategic type of activity', since such activities performed by the Russian company, acquired within the planned transaction, comprise an integral part of a technological process for the geological study of subsurface resources and/or exploration and mining of mineral resources in subsoil areas of federal significance. Consequently, FAS Russia concluded that the company had strategic importance and therefore the parties to the transaction were obliged to clear the transaction according to the procedure established by the Strategic Investments Law. However, they had failed to obtain such a clearance decision in advance. In its turn, the Court confirmed the position of FAS Russia. As a result, the acquirer was fined and then the Court deprived it of its voting rights in this Russian strategic company.

Another important transaction is Fortum/Uniper,³ just recently approved by the Government Commission. In this deal, Fortum (being a Finnish state-owned energy company) planned to enter into agreements with Elliott and Knight Vinke to increase its shareholding in Uniper (a Russian subsidiary of Unipro Group), to more than 70.5 per cent. In turn, Uniper had a water utility which was not a principal business of the company's activity but was covered under the rules governing natural monopolies.⁴

The Strategic Investments Law considers certain business spheres of natural monopolies as 'strategic', and does not provide the designation, whether such activity should be principal or additional (supplementary). Moreover, the Strategic Investments Law establishes a 'negative list'

regarding limited admission/access of 'public' foreign investors (that is, foreign investors controlled by a foreign state or international organisation) to strategic business spheres, including certain areas of natural monopolies.

As a result, the Government Commission approved the deal, with remedies subject to a suspensive condition, due to the existing restrictions of the Strategic Investments Law. Thus, the parties may close a transaction only after the relevant amendments come into force. Needless to say, FAS Russia has already prepared the draft law to amend the Strategic Investments Law accordingly.

As can be derived from the latest enforcement practice above, the Russian regulators shall continue analysing transactions of foreign investors using a broad interpretation of the concept of 'strategic activities', paying specific attention to transactions in the oil and gas sector. Moreover, the current trend of clearing the deals with a suspensive condition is likely to continue, until the new set of amendments comes into force.

New Types of Remedies Applied by FAS Russia and the Government Commission

Previously, FAS Russia usually imposed structural (aimed at sale of part of assets, spin-off of companies, etc.) and/or behavioural (aimed at performing certain actions to ensure competition) remedies. Moreover, in Russian practice, behavioural remedies prevailed.

As the regulator's practice has evolved, it has increasingly created new types of remedies to meet the challenges of the modern economy and ensure competition in the markets in Russia. For example, in the Bayer/Monsanto case,⁵ to mitigate the identified concerns, FAS Russia decided to use a set of entirely new legal mechanisms, such as: (1) transferring technologies instead of traditional behavioural or structural remedies; and (2) instituting independent trustees to monitor the transfer of technologies and obligations imposed on the parties. According to FAS Russia, it applied such remedies because of the effects of big data, which should be regarded as a factor of increasing market power.

Moreover, FAS Russia also applied a new method for analysis of the effects of the transaction in the market, having stressed several times that the transaction had nothing to do with the markets, where the parties had overlaps in Russia (as in 'traditional' approach) and even on a global scale, but that it was about

knowledge, innovations, platforms, algorithms and technologies possessed by both companies, enabling them to influence the market conditions, create entry barriers to other participants and dictate terms for further development of the agro-industrial sector for future decades.

Another example of applying innovative approaches to remedies by FAS Russia is the Siemens/Alstom deal. Even though the deal was cancelled since the European Commission had blocked the merger, the Russian regulator had already been involved in the process and managed to conduct its in-depth analysis of the possible consequences of the merger of the largest suppliers of various types of railway and metro signalling systems, as well as of rolling stock. According to FAS Russia, the deal would have created the undisputed market leader and a dominant player, not only in Russia, but on a global scale, in the considered markets. Therefore, the transaction would have significantly reduced competition in business areas related to the possible transaction, depriving customers, including train operators and rail infrastructure managers, of a choice of suppliers and products.

Despite the fact that the activities of Siemens and Alstom did not intersect at all and therefore serious threats to competition did not arise, FAS Russia has thought through the issuance of remedies, bearing in mind the potential risks for competition due to the increasing market power of the combined entity in the future worldwide. As Mr Igor Artemiev, the Head of FAS Russia, stated, '... in fact, we are talking, most likely, about the in-depth discussion, the search for a competitive alternative, about issuing, of course, very strict remedies.'⁶

Another unique example of the Russian enforcement practice of issuing remedies is the Fortum/Uniper case, as described above. A suspensive condition is something new for the Russian market; thus, one should also consider this option while planning the timing for deals with a Russian nexus.

As can be seen from the above, FAS Russia is trying to adapt competition legislation and instruments of regulation reflecting the needs of the digital economy and expanding its interest to the global players, with a Russian presence, in all industries. The Russian competition authority plans to continue using its revolutionary approaches to market analysis and



Today, the Russian regulators have enough powers to order customised remedies, if necessary, to protect Russian national interests.

was required to agree that, if new sanctions were imposed that made EDC's business activities impossible, Schlumberger would have to transfer control of the company to Russian management, but leave its own proprietary technologies integrated into the company. In the end, Schlumberger withdrew its application and scrapped the deal.⁸

Currently, the Russian regulators support import-substitution police and try to improve the quality of products supplied and ensure further development of industries, by the remedies aimed at transfer of technologies and localisation of production. Hence, considering the existing political relations, it looks like this trend will continue.

elaborating remedies and assessing the impacts of digital platforms and network effects, not only in Russia, when considering transactions. In Russia, the transfer of technologies and innovations instead of traditional structural or behavioural remedies, monitored by independent trustees, would be used more frequently.

Influence of 'International Environment'

It is no secret that the international political processes have significant impact on the Russian economy. Thus, the sanctions regime affects the review of transactions and the remedies adopted by FAS Russia and the Government Commission. Today, the Russian regulators have enough powers to order customised remedies, if necessary, to protect Russian national interests. Indeed, for instance, the Government Commission's decisions have been influenced by the desire to protect Russian business from the impact of American and European economic sanctions, to prevent economic isolation, and to spur the replacement of foreign technology and imports with domestically-produced technology and products.

For example, in reviewing the Schlumberger/Eurasia Drilling Company ('EDC') transaction,⁷ FAS Russia, acting as an intermediary between the parties to the transaction and the Government Commission, closely cooperated with other industry regulators and explicitly linked its conditions for approval to the possibility of further economic sanctions on Russia. Schlumberger

Creation of 'National Leaders'

Another noteworthy trend in any discussion of the Russian foreign investment regime is the creation of 'national leaders' in certain industries of the Russian economy.

Having analysed the upcoming transactions in the Russian upstream sector, the Arctic Palladium Project, involving the development of the Montenegrin and southern parts of the Norilsk-1 field, (licences contributed by Russian Platinum), as well as the Maslovsky field (licenced by Nornickel), is on the frontline of this trend. In December 2019, FAS Russia successfully granted the application for creation of the joint venture between Nornickel and Russian Platina and on 6 February 2020 it became known that a shareholders' agreement had been signed. The joint venture still comprises just the original investors, however, it is planned to attract Middle Eastern investors with the participation of VTB and the Russian Direct Investments Fund ('RDIF'). As a result of the new project, Russia is expected to become the world's biggest producer of palladium.

Another series of transactions, also illustrative of this trend, is VTB's grain terminals project, as a result of which VTB has become the largest national owner of grain infrastructure in Russia. First, VTB acquired 50 per cent plus one share of the largest railway carrier of grain—Rustranskom ('RTK') and Mirogroup Resources. Later,

VTB also closed a deal to purchase the Novorossiysk grain terminal from PJSC NCSP, which amounted to 35.5 billion rubles. VTB Group sees great potential for the development of grain exports from Russia and, in particular, highly appreciates the possibilities of further increasing grain transshipment capacities at deep-sea terminals. The acquisition of PJSC NCSP has organically fitted into the VTB Group's infrastructure investment strategy, which includes various large transport and logistics infrastructure facilities. In turn, FAS Russia, being a responsible authority, has approved VTB's investments.

Conclusion

Summarising the foregoing, the current trends in Russia's national security regime are as follows:

1. Broader interpretation of activities of strategic importance (especially in respect of subsoil users) in the context of clearance of transactions with a Russian nexus.
2. Conduct of more in-depth analysis of deals with industry-related impacts by the Government authorities in Russia.
3. Applying the mechanism of transfer of technologies and innovations, instead of the traditional structural and/or behavioural remedies, to ensure competition in the markets and the creation of new market players in Russia with the ability to compete with the foreign producers.
4. Suspensive conditions in extraordinary cases, until the new set of amendments come into force, to avoid 'negative list'.
5. Assessment of the political situation and 'international environment' (including the sanctions regime) when considering remedies.
6. Creation of 'national leaders' in response to the challenges of the markets.

Even though the foreign investment regime in Russia appears, on paper, to be becoming tougher, in practice the Government Commission rarely rejects an application, although it may impose conditions. From 2008 up to 31 December 2019, FAS Russia received a total of 516 strategic investment notifications. Only 23 out of 282 notifications considered by the Government

Commission were rejected due to threats to national security and defence. For the remaining notifications submitted, clearance under the Strategic Investments Law was found unnecessary. A decision of preliminary approval of a deal was made in 259 cases (in 81 cases with the assignment of commitments).⁹

While the clearance process remains a challenge, foreign investors can complete their transactions with patience, proper planning and early and regular dialogue with the regulators.

Notes

¹ The Resolution of the Arbitration Court of the Moscow District of 12 August 2019 No. F05-14552 / 2018 in the case No. A40-72889 / 2018 (available in Russian only): see Case No. A40-53454/18-57-251, <https://kad.arbitr.ru/Card/2d1f2008-1b92-42b4-b101-f26751391563>.

² 'Running casing' is the process of screwing together pieces of pipe for oil drilling and lowering them into the drilling hole: see <http://www.drillingcourse.com/2017/10/rig-site-tips-running-casing-procedures.html>.

³ For more information on the Fortum/Unipro case, see the briefing by the Head of FAS Russia (Mr Igor Artemiev) after the meeting of the Government Commission: http://government.ru/dep_news/38343/ (available in Russian only).

⁴ Natural monopoly is a condition of a market, under which satisfaction of demand in this market is more efficient in the absence of competition by virtue of the technological peculiarities of the production process (because of a significant reduction of the cost per product as the output increases) and products produced by companies-natural monopolies cannot be substituted for in consumption by other products so that the demand in this market for the products produced is less dependent on changes in prices for that product.

⁵ The Decision of FAS Russia No IA/28184/18 and Prescription upon results of consideration of the application as of April 20, 2018 (available in Russian only), <https://kad.arbitr.ru>.

⁶ See https://www.mskagency.ru/materials/2709645?block_mode=iframe.

⁷ See <https://fas.gov.ru/publications/17404>.

⁸ See <https://www.vedomosti.ru/business/articles/2019/02/04/793265-schlumberger>; <https://www.reuters.com/article/us-schlumberger-edc/schlumberger-to-abandon-russias-edc-bid-if-approvals-not-met-soon-idUSKCN1PC1QI>; <https://russiabusiness.today.com/energy/schlumberger-to-withdraw-russia-edc-bid-if-no-approval-granted/>.

⁹ Official Statics of FAS Russia: <https://fas.gov.ru/news/29330>.



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Ksenia Tarkhova is a Senior Associate of Competition/Antitrust Practice in ALRUD Law Firm. Ksenia advises clients on all aspects of Russian antitrust legislation, participates in projects related to obtaining strategic/foreign investments and merger control clearances for transactions on the purchase and transfer of assets and shares (stocks) of companies doing business in Russia and also takes part in projects concerning cartel investigations.

Cryptocurrency: The Journey and the Future

Since the inception of cryptocurrencies in 2009, the acceptability and use has increased even as such cryptocurrencies evolve. Nowadays, this form of digital money has been started to be accepted by some entities including some nations. However, owing to concerns of certain governments on the deregulated form of cryptocurrencies, certain concerns have been raised. Keeping abreast with the acceptance of cryptocurrencies by various entities, national governments have started to adopt them as legal tender. The recognition of crypto currencies is most pronounced in Japan. Although India has not yet enacted legislation that bans the use of cryptocurrencies, there have been multiple developments in India around cryptocurrencies. With the recent judgment by the Supreme Court of India ('SC') that lifts a ban on the dealing with and provision of services with regard to cryptocurrencies, it is interesting examine how 'online currency' would be regarded in India. This article traces the evolution of cryptocurrencies and endeavours to forecast future trends.



Introduction and Evolution

A cryptocurrency is a digital asset designed to work as a medium of exchange that uses strong cryptography to secure financial transactions, control the creation of additional units and verify the transfer of assets. Cryptocurrencies use decentralised control as opposed to centralised digital currency and central banking systems. In other words, cryptocurrencies are digital currencies in which encryption techniques are used to regulate the generation of currency units and verify the transfer of funds, operating independently of a central bank. The decentralised control of each cryptocurrency works through distributed ledger technology, typically a blockchain, that serves as a public financial transaction database.

In March 2018, the term 'cryptocurrency' was added to the Merriam-Webster Dictionary, which defines it as any form of currency that only exists digitally, that usually has no central issuing or regulating authority but instead uses a decentralised system to record transactions and manage the issuance of new units and that relies on cryptography to prevent counterfeiting and fraudulent transactions.

According to Jan Lansky, a cryptocurrency is a system that meets the following six conditions:

1. The system does not require a central authority; its state is maintained through distributed consensus.
2. The system keeps an overview of cryptocurrency units and their ownership.
3. The system defines whether new cryptocurrency units can be created. If new cryptocurrency units can be created, the system defines the circumstances of their origin and how to determine the ownership of these new units.
4. Ownership of cryptocurrency units can be proved exclusively through cryptography.
5. The system allows transactions to be performed in which ownership of the cryptographic units is changed. A transaction statement can only be issued by an entity proving the current ownership of these units.
6. If two different instructions for changing the ownership of the same cryptographic units are

simultaneously entered, the system will perform only one of them.

The first decentralised cryptocurrency is considered to be bitcoin, which was first released as open-source software in 2009. Satoshi Nakamoto, the presumed pseudonymous person (or persons) who created bitcoin, is quoted to have said 'I've been working on a new electronic cash system that's fully peer-to-peer, with no trusted third party.'

The essential keystone leading to cryptocurrency was to create a secure and anonymous medium for transfer of currency from one entity to another and it has since been proclaimed as 'digital gold'. To promote anonymity, blockchain, the digital ledger of bitcoin transactions, was invented.

Blockchain is a continuously growing list that records every cryptocurrency transaction and secures each block using cryptography. Each part of the chain contains a timestamp and transaction data which is approved and stored on a peer-to-peer network. The main security benefits of a blockchain is that once a block has been stored, it cannot be altered, ensuring that any cryptocurrency ledgers can't be tampered with.

Since the introduction of bitcoin, several hundred other cryptocurrencies have entered the market. Initial Coin Offering ('ICO'), a fundraising tool for startups, makes it easier than ever to launch new cryptocurrencies. The first ICO was held in 2013 by Mastercoin. Since then, several cryptocurrencies have begun through this mode. Some of the most popular cryptocurrencies created through this include Ethereum, NEO, Litecoin and Dogecoin. Being alternatives to bitcoin, they are named and commonly known as altcoins (alternative variants of bitcoin or other cryptocurrencies). Altcoins are a more accessible alternative to bitcoin as they are sold at cheaper rates.

Cryptocurrencies have still not entered into day-to-day use despite the massive hikes in their price. Most of those who own substantial amounts of bitcoin are doing so as an investment, rather than looking to utilise cryptocurrency as a new way to buy things. This does not mean that one cannot buy things with cryptocurrency; in December 2013 a Tesla Model S was bought for 91.4 bitcoins and Starbucks, in some nations, is currently letting customers use cryptocurrency to purchase food and drink from their stores.



Blockchain is a continuously growing list that records every cryptocurrency transaction and secures each block using cryptography.

Jamie Dimon, CEO of JP Morgan has claimed that the original cryptocurrency is a fraud. In his words, 'The currency isn't going to work. You can't have a business where people can invent a currency out of thin air and think that people who are buying it are really smart.'

Despite a few outlets allowing the use of cryptocurrency to purchase goods, they have still not made their way into the banking sector. A surge in popularity is leading more and more people to invest in bitcoin and altcoins, but with a new currency on the rise, banks are starting to realise they need to adapt.

Impact of Cryptocurrency Crypto Impact on the US Dollar

The US dollar is the global economy's reserve currency. As a result, any turmoil or fluctuation in the US dollar raises concern in all parts of the world. The reason the United States continues to maintain dominance is the status of the dollar. The Treasury of the United States houses the assets of other central banks and is therefore considered a global central bank. This is an excellent example of a centralised system which has been drastically disrupted by cryptocurrencies.

Neither bitcoin nor any other cryptocurrency has recourse to or dependence on any other currency. This

changes everything: international trade, diplomacy, international relations, etc. The appearance of a decentralised currency seems the perfect way to de-dollarise the world's economy.

Coexistence of Two Currencies

According to Gresham's law, 'bad money drives out good'. Applying this principle, money with minimal real value (like paper for cash), competes with high-cost material money (such as gold coins or cryptocurrencies with expensive IT infrastructure behind them). The dominance of fiat currency is obvious and it is not going to vanish with the appearance of cryptocurrencies. Coexistence of two currencies will cause constant price-ratio fluctuation and competition until one supplants the other.

Price Inflation

If a country accepts cryptocurrency as legal tender, it must be a digital currency characterised by unlimited maximal supply and an unfixed coin emission rate correlated with real sector economic growth. Otherwise, the economy is left to wait for real price inflation or deflation, which represents a huge step backward. In fact, implementing any new technology can be fraught with the problems with inflation or deflation.

High Transaction Costs

Comparing the transaction costs of cash and cryptocurrency, fiat currency wins by a significant measure. The lower transaction costs are, the more actively the economy develops, which itself leads to higher profits and benefits. Until the blockchain is fully implemented, cryptocurrency transaction costs (the financial and time-related costs of using crypto instead of fiat, such as device usage, internet, and time for verification of transactions) will interfere with the development of cryptocurrency as a match for fiat.

No Need for the Middleman

The international money transfer system requires third parties, such as banks or SWIFT (Society for Worldwide Interbank Financial Telecommunication). Money transfer in the context of international business consumes time and fees. Some transactions with SWIFT take several days to be processed. Working on the blockchain platform, the transaction will be fast, secure and, if necessary, encrypted, to protect the confidentiality of the transaction. This is how it works in theory but taking into account the lack of technical expertise of the community, the process in practice is more chaotic and complicated. In fact, full blockchain-based payment system implementation requires much more than what an ordinary citizen can achieve.

Unemployment

In the beginning, financial and other service industries will experience huge job loss arising from the dependency on technology and less manpower to run the same. Since there will be no need for bank services, suppliers, etc., people will most likely lose their jobs. However, this will be temporary. Blockchain will provide new opportunities for employment and people will be able to retrain and become a part of our future, but it needs to be borne in mind that the newer jobs would be technology-oriented.

De-monopolisation

Increase in transaction costs will cause de-monopolisation, which will have a beneficial impact on the welfare and efficiency of the economy. The growth of transaction costs leads to an increase in enterprise growth costs versus the price for involvement of third parties from the market. This will be a chance for small and medium businesses to enhance their enterprises, while large ones will concentrate on capital-intensive production, where blockchain has no real tools for improvement.

Financial Fraud Elimination

Owing to the fact that all transactions are open and wallets are trackable, trade of illegal goods has seemingly fewer options for actualisation. On the public blockchain, any transaction to a wallet which is illicit will immediately be flagged and be considered money laundering. This can be caused by the human error as well as by fraudulent intention or action. However, it has more advantages than disadvantages; any fraudulent activity is rigorously tracked and eradicated.

International Approach

Background

In 2016, cryptocurrencies were on the minds of almost everyone in the world. There was almost no financial institution, government, or banking firm that wasn't researching the crypto market with a view of understanding its impact and consequence of cryptocurrencies for their fields. Some thought of investing in it, while a few started blockchain projects and others awaited to receive further information to then form an opinion. However, as it is still a young technology, only a few entities and individuals fully understand the principle of cryptocurrency and blockchain work.

A majority of the nations have not stated anything with respect to their stand on digital money, unlike some others, which have accepted it as a payment tool. The approach by various countries is discussed below.

Japan

Japan is the only country that has accepted bitcoin as legal tender, living up to its image of being one of the most innovative countries. There already are several bitcoin ATMs around Japan, but that's not even the best news. GMO Internet, a Japanese company, will provide the opportunity to receive salaries in bitcoin, if employees so wish.

Yoshitaka Kitao, CEO of SBI Holdings, has claimed that blockchain technology and bitcoin as legal tender will fuel a skyrocketing economy. He said that there is huge speculative demand for any cryptocurrency, especially bitcoin. This eventually increases its price. Fortunately for Japan, he expects a technological boom to happen in the coming years.

The United States

The issue about bitcoin legitimacy in the US hinges on the question: should it be regulated on the national level or

separately by individual states? For now, some states are more progressive in their relations with cryptocurrencies than others. For example, New York gave an official 'yes' to businesses built on the blockchain by issuing BitLicense in 2015. The State of Washington, for instance, started supporting money transfers in bitcoin in 2017. New Hampshire is making its first steps toward accepting bitcoin transfers. In Texas, the situation becomes somewhat more intense, where unlike New York accepting bitcoin as legal tender, Texas has banned it. California is somewhere in the middle. The State has been freezing the process over time.

Bitcoin legitimacy in the US is just a question of time. A good reason for this is that the Wall Street titan and securities and investment firm Goldman Sachs is moving towards allowing clients to sell bitcoin via one of their New York desks. This was foreshadowed by the fact that several hedge funds received donations from bitcoin millionaires. Therefore, by implementing acceptance, they are envisaging a future bitcoin price increase.

Germany

Germany is considered one of the most forward-thinking countries. In August 2013, the German Government announced that cryptocurrencies could be used for tax payment and trade. However, purchases paid in bitcoin must include a value added tax ('VAT'). Also, Bundesbank is offering the use of the term 'crypto token' instead of 'cryptocurrency' or 'digital money'. Crypto tokens don't have a status of foreign currency, but personal money.

The United Kingdom

With regard to bitcoin use, the UK is following a path similar to the German treatment of cryptocurrency. If you want to exchange bitcoin for fiat currency (pounds sterling, euro, dollar, etc.), there is no VAT included, unlike when a purchase is made with bitcoin payment. The same is true for receiving services.

The UK government has established a department called 'CryptoUK', which works to address issues regarding the crypto market. This body ensures security measures and is building an anti-money-laundering approach.

Singapore

The Monetary Authority is willing to protect the rights of cryptocurrency investors. They are referring to a set of rules that would be required in order to provide a

legitimate bitcoin investment process. Additionally, the authorities are willing to adopt laws that will play against money laundering and financial terrorism.

Additionally, the Singapore Monetary Fund and Singapore Exchange have established a partnership in order to allow financial institutions and corporate investors to establish a cryptocurrency exchange. This partnership will allow institutions using DvP (Delivery versus Payment) the opportunity to issue their token on different blockchain platforms legally. This move would include rights protection.

India

To date, there is no law that forbids or allows mining, investing or paying with bitcoin in India, but the Reserve Bank of India has warned citizens and judicial parties about bitcoin. This is not to say that bitcoin is illegal in India, as this is difficult to claim due to the absence of relevant laws. However, banks are not able to provide the exchange service.

In a recent judgment by the Supreme Court of India in a case between Internet and Mobile Association of India and the Reserve Bank of India, the apex court has allowed banks to handle cryptocurrency transactions from exchanges and traders.

Russia

In January 2018, the Russian Finance Ministry drafted a bill that would legalise 'digital financial assets' stored on blockchain networks as electronic securities. The bill would define the scope of regulations on cryptocurrency and would not prohibit trading. The bill would further define bitcoin mining as an entrepreneurial activity, which could require Russian bitcoin miners to register with the government. It may also create a ruble ICO investment limit for residents who are not registered as qualified investors.

France

Bruno Le Maire, the French Minister of the Economy, in January 2018 announced the creation of a group to develop cryptocurrency regulations. The group will be responsible for proposing guidelines and drafting regulations to prevent tax evasion, money laundering, financial crimes and terrorist activities. Le Maire said, 'We want a stable economy. We reject the risks of speculation and the possible financial diversions linked to bitcoin'.

Recent Trends in India

RBI Circular of 6 April 2018 Banning Cryptocurrency

The Reserve Bank of India ("RBI") issued a circular entitled 'Prohibition on Dealing in Virtual Currencies (VCs)' bearing no. RBI/2017-18/154 dated 6 April 2018 ('the Circular') whereby it decided that entities being regulated by it shall not deal in or provide services with respect to virtual currencies. The Circular states that entities regulated by the RBI are prohibited from 'providing any service in relation to virtual currencies including those of transfer or receipt of money in accounts relating to the purchase or sale of virtual currencies'.

In the Circular, RBI had said that in view of risks associated with virtual currencies, as highlighted by it in the previous public notices issued by it, entities regulated by the Reserve Bank:

... shall not deal in VCs or provide services for facilitating any person or entity in dealing with or settling VCs. Such services include maintaining accounts, registering, trading, settling, clearing, giving loans against virtual tokens, accepting them as collateral, opening accounts of exchanges dealing with them and transfer/receipt of money in accounts relating to purchase/sale of VCs.

The RBI also added that if entities it regulated were providing such services, they would have to terminate and exit from such relationships within three months from the date of the Circular.

A Bill Moved in the Parliament of India for the Banning of Cryptocurrencies

A bill entitled 'Banning of Cryptocurrency and Regulation of Official Digital Currency Bill 2019' ('Bill') has been drafted, however has not been presented for a vote before the Parliament of India, which aims to prohibit cryptocurrency and regulate the official digital currencies. As per the Bill, the object is that it is 'An Act to prohibit the use of Cryptocurrency, regulate the Official Digital Currencies and for matters connected therewith or incidental thereto', which shall extend to the whole of India.

The Bill prohibits dealing in cryptocurrency in any form. However, it provides that the Central Government in consultation with the RBI may approve Digital Rupee to be a legal tender, which would be governed by the

regulations notified by the RBI. It further empowers the RBI to declare any official foreign digital currency as foreign currency in India.

The Bill further provides for penalties for offences and breach of the provisions which may go as high as 10 years imprisonment and/or a fine of Rs. 50,00,00,000 (Rupees Fifty Crores only).

The Bill also provides for consequential amendments to the Prevention of Money Laundering Act 2002.

As mentioned, the Bill has not been presented before Parliament. Only once it has been passed by Parliament and notified in the Official Gazette would the final position of the Government be clearly manifested.

Judgment by the Supreme Court of India Allowing Cryptocurrency in the Case of Internet and Mobile Association of India v Reserve Bank of India

Among the parties that challenged the Circular was the Internet and Mobile Association of India ('IAMAI'), whose members include cryptocurrency exchanges. A three-judge bench of the Supreme Court of India comprising Justices Rohinton Fali Nariman, S Ravindra Bhat and V Ramasubramanian pronounced the verdict dated 4 March 2020.

The IAMAI, argued that the RBI did not have the jurisdiction to ban dealings in VCs. It was further argued that trading in VCs was legal. The chief arguments raised by the petitioner, IAMAI, were as follows:

- The RBI has no jurisdiction to act in the manner as it had in light of the Circular, as cryptocurrencies are neither 'currency' nor a 'payment system' regulated by the RBI. Simply because cryptocurrencies can be used in a manner akin to money, it does not change the basic legal characteristic of cryptocurrencies, which resemble tradable digital goods or commodities more than they resemble a form of currency and are, thus, outside the purview of RBI's usual scope of regulation.
- The Circular amounted to an arbitrary, unfair and unconstitutional restriction on a legitimate business activity. In the absence of a 'legislative' ban on cryptocurrencies that declares them res extra commercium, the use of and trade in

cryptocurrencies ought to be a legitimate business activity.

- The Circular effectively placed a complete ban on the use of cryptocurrencies and such a ban was unreasonable and disproportionate and based on an erroneous and flawed understanding that it was impossible to regulate cryptocurrencies.

The RBI maintained that actual cryptocurrency had not been banned but dealing in virtual currency and providing related services has been banned. The arguments advanced by the RBI were primarily:

- Widespread use of cryptocurrencies would fundamentally undermine India's credit system and monetary stability.
- The RBI had the right to regulate banking activity (which is what the Circular pertained to) as it saw fit.
- It was suspected that cryptocurrencies were capable of being used for illegal purposes.
- In any case, the RBI has the authority to make broad-based decisions on the economic policy of the country and the SC has traditionally shown deference to RBI's authority.

The RBI maintained that actual cryptocurrency had not been banned but dealing in virtual currency and providing related services has been banned.

The SC held that while cryptocurrencies do not constitute legal tender (either in India or in several other jurisdiction that the SC analysed), they can act either as a medium of exchange, a unit of account or a store of value (or some combination thereof). The RBI has the statutory authority to notify certain instruments as currencies. The SC observed that the RBI has not chosen to exercise this power with respect to cryptocurrencies. As a matter of fact, the RBI has specifically argued in the past that cryptocurrencies do not fall under the statutory definition of 'currency'. Nevertheless, the SC concluded that the manner in which cryptocurrencies are often used in India—as consideration for goods or services provided or as a facilitator of payment between parties—constitutes an activity that falls within the RBI's regulatory purview.

After concluding that the RBI did indeed have the power to regulate cryptocurrencies in India, the SC went on to

evaluate the Circular on its merits. While the SC rejected the argument that there had been no application of mind in the RBI's directives and that it did not find the Circular to be a colourable exercise of power, the SC ultimately concluded that the Circular was a disproportionate regulatory measure. The SC noted that the RBI is primarily responsible for the financial institutions it is mandated to regulate and that it had argued about the potential harms that cryptocurrencies could cause to these institutions. However, the SC held that the RBI had failed to actually demonstrate the damage that the use of cryptocurrencies had caused to such regulated entities, in light of the fact that cryptocurrencies were not actually banned under Indian law.

As a result, in prohibiting regulated entities from dealing with a sector that was not subject to a statutory ban and which had not demonstrably harmed such regulated entities, the RBI was held to have acted disproportionately and the Circular was set aside.

While the judgment does not itself hold that cryptocurrencies cannot be banned altogether, its analysis of cryptocurrency legislation in other jurisdictions suggests that an Indian regulatory framework for cryptocurrencies is worthwhile and that an outright ban may be uncalled for. News reports indicate that the RBI is also likely to seek a review of the SC's decision in this case, and that being the case, the matter is far from resolved.

Way Forward

Cryptocurrency represents the beginning of a new phase of technology driven markets that have the potential to disrupt conventional market strategies, longstanding business practices and established regulatory perspectives, to the benefit of consumers and broader macroeconomic efficiency. Cryptocurrencies carry ground-breaking potential to allow consumers access to a global payment system, anywhere any time, in which participation is restricted only by access to technology, rather than by factors such as having a credit history or a bank account.

The decision of the Supreme Court of India is an important development for the cryptocurrency sector in India. It removes regulatory restrictions on banks

from providing services to participants in the sector and makes cryptocurrency activities viable in India. It is anticipated that several operators of prominent cryptocurrency exchanges, many of whom had ceased Indian operations or moved to other jurisdictions such as Singapore, will contemplate a move back to India pursuant to the judgment. While it remains to be seen whether they do indeed return to Indian shores, considering that the RBI and the Indian Government remain sceptical of cryptocurrencies, this is still a highly encouraging development for activity in this sector and even generally.

For now, there remains some uncertainty about the future of the cryptocurrency industry in India, also in the context of the Banning of Cryptocurrency and Regulating of Official Digital Currency Bill 2019 which, as discussed above, proposes a ban on private cryptocurrencies and the criminalisation of their use. The Bill has not yet been brought to the Indian Parliament for a vote and is thus subject to revision. Further, the Bill proposes the creation of a 'digital Rupee' that the Central Government and the RBI would have a monopoly over, so the Government's general position on cryptocurrencies is clearly not as unfavourable as one would expect it to be. The consequent questions that arise are: whether this will extend to an acceptance of decentralised, non-Government cryptocurrencies and whether private players will be permitted to participate in an Indian cryptocurrency market that has significant scope for growth? Another interesting question that arises is in regard to the treatment of cryptocurrencies: whether the remittances in cryptocurrency would be considered as foreign currency receipts. Though there is a long way to go in this sphere, if any such payment mechanism is to be introduced, it would need legislative backing to be treated as an official tender.

The SC judgment sends a clear message to the regulators—banning technology is not the solution as bans seldom work; embracing and regulating it is the only way. Framing and implementing comprehensive and effective regulations on cryptocurrencies are one of the most challenging regulatory problems of recent times (with regulators across the world struggling with it).

In the end, it can only be said that the courts have kept pace with changing realities and consequently an Indian citizen can now park funds in a non-sovereign electronic currency. They can gift, will and even make payments

for international trade and commerce using the same. The need of the hour is for the Government to draw up efficient and elaborate rules for same. The discussion is no longer one of whether cryptocurrency will survive, but rather how it will evolve and when it will reach maturity.

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Ajay is a Senior Member of the Dispute Resolution Team. He specialises in Civil, Criminal & Corporate Litigation with over 20 years of experience.

Ajay's fora of practice includes Supreme Court, High Courts, Arbitration (International and Domestic), Quasi Judicial Tribunals like National Company Law Tribunal, National Company Law Appellate Tribunal and National Green Tribunal. He advises on Constitutional matters, Civil & Criminal matters, IPR laws, Employment Laws and on corporate-commercial disputes. He also advises on matters before the Investigation Wings relating to corporate criminal investigations and quasi criminal prosecutions (white collar crimes). Ajay is often consulted on M&A transactions to provide tactical and advisory support. He advises on preventive measures in commercial contracts.

Meet Some of IPBA's New Council Members



Richard Briggs

Hadeef & Partners, Dubai
Vice-President

Officer

What was your motivation to become a lawyer?

When I was a student, I did not know what I wanted to do. I studied law, one thing led to another, and I found myself at Clifford Chance as a Trainee Solicitor. I may not have lasted in this, but for the fact that I quite enjoyed the subject and practice of maritime law.

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

I consider myself fortunate to have had a very interesting career. I initially practised maritime and trade law in Dubai and the Middle East region, shifting more to litigation and arbitration in recent years. I have watched the UAE and the region both grow commercially and develop legally, which has been a rewarding experience. I have been involved in many of the important legal cases in the region for almost 30 years.

What are your interests and/or hobbies?

Reading and sports.

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

Initially, the pandemic was simply staying at home more and using more technology to make up for the lack of being at the office. However, the ongoing lack of international flights and the inability to move between countries has affected both my professional and personal life, particularly as my family are in different parts of the world. Life under lockdown is simply less fun.

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

I have never really practised in the UK despite being an English Solicitor.

Do you have any special messages for IPBA members?

Stay involved, interested and interesting ... and see you soon.



Riccardo Cajola

Cajola & Associati, Milan
Deputy Chief Technology Officer

Officer

What was your motivation to become a lawyer?

I come from a family of legal practitioners—my dad is also a lawyer—so I was born and raised in a legal-

minded environment. Besides, I have been always interested in regulating or solving the issues of others. I believe our profession is mostly about building up or making projects happen.

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

Many different professional experiences I would say. They range from a new foreign investment in our country creating new jobs; the internationalization of Italian businesses abroad, like in the recent years in the Asia Pacific region; or even to the rescue of cross-border businesses which would otherwise have been liquidated.

What are your interests and/or hobbies?

I like running, skiing, reading books and listening to any kind of good music.

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

In terms of legal practice, I believe we have anticipated a trend about 'smart working' which was about to happen anyway, so now we have most meetings with clients via digital platforms and court hearings as well. What is instead 'disrupted' is our possibility to travel by plane, particularly on long-haul flights, and that is an issue for lawyers dealing with international business.

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

When I was much younger—I mean until I was 25 years old—I was a composer and singer in a band as a hobby.

Do you have any special messages for IPBA members?

The IPBA is a great association where business, fellowship and friendship are cultivated altogether and that spirit should never change, no matter how much the IPBA grows.



Eriko Hayashi
ERI Law Office, Osaka
Deputy Program Coordinator
Officer

What was your motivation to become a lawyer?

When I was a child, I did not have a motivation to become a lawyer. There were no lawyers around me and I did not have a clear idea about what they did. I preferred spending time by myself, such as reading and thinking, to actively playing with friends. As I grew up, I was interested in literature and philosophy. However, when I chose what to study at university I realised that I needed to learn more about real society and interact with people to open my eyes and so I decided to major in law.

In the late 1990s, when I was in my third year at university, Japan was in the worst of the recession following the collapse of the bubble economy and I seriously started thinking about my career path. Fortunately, a good friend of mine was at that time preparing very hard to take the bar exam and strongly encouraged and motivated me to take the exam together and also helped me a lot.

Looking back, I have focused on how to overcome my weaknesses, cultivate my strengths, and adjust to the needs of society. There were people and events which inspired and triggered me at each stage of my life and becoming a lawyer is the consequence of all of these

things, which, without doubt, turned out to be the best choice for me.

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

I worked at Oh-Ebashi LPC & Partners, a leading Japanese law firm, for 18 years until I became independent last autumn. Fortunately, during that time, I was given an opportunity to serve as the head of Oh-Ebashi's Shanghai Office. When I arrived in Shanghai in 2009, which was the year after the Beijing Olympics and before the Shanghai Expo, Shanghai was full of energy and excitement. During the six years of my term, I met many interesting people, worked on challenging matters and enjoyed collaborating with great colleagues. I am very grateful that Oh-Ebashi gave me many wonderful opportunities, including participating in the IPBA since I was just a three-year associate, which also gave me one of my most memorable experiences as a lawyer.

What are your interests and/or hobbies?

I am interested in the substantive nature of what exists and what is happening. From such a perspective, I like thinking about the cause and effect of what is actually going on with people and their surroundings (that means, almost everything could be of interest to me!). In particular, I enjoy doing so while taking a walk with my dogs.

As for hobbies, unfortunately, I am not good at playing sports generally, but I enjoy playing ping pong. I enjoy spending time in nature, having a good time with people and appreciating art and music, rather than collecting things.

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

The emergency declaration was issued all across Japan for a period of approximately one and a half months and people were requested to stay at home and work remotely. A couple of months before the pandemic occurred, I moved from Tokyo to Osaka and started my own law firm. As a result, I was already well-prepared to work remotely and therefore, my professional life has largely not been disrupted by the pandemic.

Likewise, my personal life has become much more flexible since I became independent, so I was fortunate enough to be able to adjust to the lifestyle of 'stay home and keep distance' without serious trouble. However, as is the case for most people, it was hard not to see family and friends in person.

Also, while staying at home, I learned that so many people all over the world were suffering from the effect of the pandemic in various ways, not only physically, but also economically or mentally. I realised that there are so many serious social problems to be resolved. The philosophy I established for my new firm is 'Oneness, Altruism, Borderless, Wisdom, Open to Every Possibility'. I decided to do my best to contribute to the happiness of people by addressing the causes of such problems based on my philosophy.

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

During the pandemic, Mark Shklov from Hawaii, a good friend of mine (and of everybody), who joined

in drafting 'Sprit of Katsuura' as one of the founding members of the IPBA, kindly invited me as a guest to a live stream program that he hosts, 'Law Across the Sea' at ThinkTech Hawaii. It was a great opportunity to talk about my life and story. Please check 'A New Era in Life and Law ... with Osaka Lawyer Eriko Hayashi' on the program, if interested. I was a bit tense during the program and actually there was more to talk about, so I will be pleased to talk to any of you more in person at IPBA social occasions!

Do you have any special messages for IPBA members?

Since I attended the annual conference held in Seoul for the first time in 2004, I fell in love with the IPBA and have attended 14 annual conferences up to now.

As you know, the IPBA is not just a networking platform among business lawyers; it provides the best opportunities to build life-long friendships among people all over the world. You will not be surprised to know that new amazing stories are created anytime and anywhere during every annual conference.

I had worked as a Co-Chair and Vice-Chair of the Cross-border Investment Committee ('CBIC') for eight years until 2019 and, from this year, making use of such experiences, I will try my best to contribute to this amazing organisation in my new role as a deputy Committee Coordinator.

I am looking forward to seeing all in Shanghai next year. Needless to say, please do not forget that an amazing conference in Tokyo is following in 2022!



James Jung

College of Law, Sydney
Vice-Chair, Publications Committee

Officer

What was your motivation to become a lawyer?

I have always enjoyed problem-solving but was never an outstanding science or mathematics student while at school!

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

Being able to help the vulnerable while working as a government lawyer in New Zealand (and not having to worry about your billable hours).

What are your interests and/or hobbies?

Growing up in an island country (New Zealand), I have always been a huge fan of the ocean. Fishing, boating, kayaking and diving were always my favourite leisure activities on weekends and holidays (sadly, I haven't had the chance to enjoy any of these activities ever since the arrival of our children ...).

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

It has already been four months since I started working from home. At first, I found it quite challenging as we have two young kids. Our three-year-old would often pop up in the background of my business Zoom meetings and our one-year old would be crying in the background during teleconference calls. It took a good couple of weeks to get used to (and training our kids not to enter the room while dad is working) and now I feel very comfortable working from home and often feel that I am more productive than being in the office. More importantly, it has given me the privilege of spending more quality time with my family, for which I am very grateful.



Melva Valdez

Bello Valdez and Fernandez, Manila
Vice-Chair, Membership Committee

Officer

What was your motivation in becoming a lawyer?

Growing up, I was curious why the law profession was male-dominated and wanted to find out for myself if women could also become partners in a law firm. This curiosity pushed me to enter law school and eventually I worked in a law firm.

What are your interests/ hobbies?

I love to travel and to read. Fashion is also one of my passionate interests.

How has the pandemic disrupted your life (professional and personal) and how have you overcome the challenges?

I would rather view the pandemic as a time of realisation and not of disruption. On a professional level,

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

I actually met my wife Vicky through IPBA connections. Back in 2012, Auckland hosted the IPBA Mid-Year Council Meeting and Neil Russ (NZ JCM at the time) roped me into helping to organise the event. Little did I know that Vicky was one of his associates at the time and that Neil would play the ultimate matchmaker (thank you Neil!).

Do you have any special messages for IPBA members?

It is a very special organisation which places true value on friendships before 'doing business'. I have made genuine life-long friends through the IPBA and look forward to serving the organisation as a newly-appointed officer.

I realised that working from home is more productive since I don't have to grapple with travel time given the challenging traffic in Manila. I learned how to use technology without the assistance of my secretary so this pandemic transformed me from being a technophobe into a functional lawyer who can now edit work on my own.

On a personal level, I realised what are the essentials and what are excesses. Life is fleeting and one has to make the most out of it every day. Family, more than anything, is the priority. The pandemic did not disrupt my life but it allowed me to pause and reflect on what matters most. It showed me the path to clarity in all aspects of my life.

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

I do not know how to cook! Ha! Ha! Ha! I don't like to do household chores.

Message to IPBA members

To my IPBA family, let us keep the Spirit of Katsuura alive. Let us continue to support the organisation by inviting fellow lawyers to join our ranks. In the IPBA, we work hard and we play hard.



Kurniawan Tanzil

Makarim & Taira S., Jakarta
JCM, Indonesia

Membership Leader

What was your motivation to become a lawyer?

I had three options when I graduated from high school: architecture, accounting and law. I chose law over the others at the time because I wanted to anticipate globalisation. With law as my major, I thought I would be able to have local expertise because to be an Indonesian lawyer, one has to study in Indonesia and obtain a law degree from an Indonesian university.

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

Nothing in particular, I think each experience has contributed greatly to my career. I was lucky that I studied at the University of Indonesia, a well-respected state university, where I could meet people from various backgrounds. After I graduated from law school I was accepted at Makarim & Taira S., where I developed my career from a trainee until becoming an Equity Partner. One thing I like about law is that it is not always about laws and regulations, but also involves logic and common sense. I also like meeting a lot of people from various jurisdictions, particularly when I attend conferences organised by the IPBA.

What are your interests and/or hobbies?

I like travelling and reading books—particularly books about psychology and business. I also have an interest in architecture.

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

I am a family man so I enjoy working from home! Even though the distinction between working and non-working hours and days has become more and more insignificant, my life has somehow become healthier during these unprecedented times in the sense that I can have my meals regularly, I can exercise regularly, I can spend more time with my family, etc. Thanks to technology, we can do most work remotely. I guess the downsides are that we cannot meet people in person and we must always take extra precautionary measures when we go out (which sometimes can be stressful).

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

At first, people may find me to be a quiet person, but actually, I am a person who likes to talk. I am also a perfectionist.

Do you have any special messages for IPBA members?

Having been a member of the IPBA for over eight years, this is my first official role in the association. While I will try my best to be a good JCM, I also need support from other members, particularly from Indonesia, because together we can do more things. There are so many opportunities we can grab by being a member of the IPBA. Take care and stay safe.



Urs Zenhäusern

Baker McKenzie Zurich, Zurich
JCM, Switzerland

Membership Leader

What was your motivation to become a lawyer?

The truth is that I had no precise idea about lawyers

and their work. I chose to study law because almost everything else did not attract me. I thought that with a law degree I would keep all avenues open and could still wait for the big inspiration. Today I know: 'You Can Find Inspiration in Everything' (Paul Smith).

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

I could now mention some spectacular cases but what I really feel is somewhat special about a lawyer's life is that I very often do not know how my day will be; there are so many new and sometimes unexpected things

that can happen and have an impact on what I have to do.

What are your interests and/or hobbies?

I like sports, travelling, art and culture (for me this includes also visiting good restaurants and drinking good wine).

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

Apart from being prevented from travelling, my life has not been disrupted. I continued to work from our office in Zurich throughout the pandemic and did not

miss anything. In fact, it rather felt like a kind of semi-retirement: life was so quiet, not hectic and everything was slowing down.

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

During and after law school I was a professional tour guide working in many parts of the world and was sometimes considering giving up law completely.

Do you have any special messages for IPBA members?

No. Just, do what you really want to do and have fun.

Publications Committee Guidelines for Publication of Articles in the IPBA Journal

We are pleased to accept articles on interesting legal topics and new legal developments that are happening in your jurisdiction. From time to time, issues of the Journal will be themed. Please send: (1) your article to both **Priti Suri** at p.suri@psalegal.com and **James Jung** at jjung@collaw.ac.nz; (2) a lead paragraph of approximately 50 or 60 words, giving a brief introduction to, or an overview of the article's main theme; (3) a photo with the following specifications (File Format: JPG or TIFF, Resolution: 300dpi and Dimensions: 4cm(w) x 5cm(h)); and (4) your biography of approximately 30 to 50 words.

The requirements for publication of an article in the *IPBA Journal* are as follows:

1. The article has not been previously published in any journal or publication;
2. The article is of good quality both in terms of technical input and topical interest for IPBA members;
3. The article is not written to publicise the expertise, specialization, or network offices of the writer or the firm at which the writer is based;
4. The article is concise (2500 to 3000 words) and, in any event, does not exceed 3000 words;
5. The article must be written in English (with British English spelling), and the author must ensure that it meets international business standards;
6. The article is written by an IPBA member. Co-authors must also be IPBA members; and
7. Contributors must agree to and abide by the copyright guidelines of the IPBA. These include, but are not limited to
 - a. An author may provide a link on the website of his/her firm or his/her personal website/ social media page to the page of the Journal on which the first page of his/her article appears; and
 - b. An author may not post on any site an entire PDF of the Journal in which the article authored by him/her appears.



Jannet Regalado

Pilipinas Shell Petroleum Corporation,
Manila
Co-Chair, Corporate Counsel
Committee

Committee Chair/Co-Chair

What was your motivation to become a lawyer?

As a student leader at university, I actively participated in the discussion and education of students like me on issues confronting our country. A lot of the problems we encounter as a nation centre around the ills of our justice system, the inequality among the different classes and uneven access to law. On a personal level, my father was a judge and was an enabler in his profession and in the legal community and he definitely contributed to my dream to become a lawyer.

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

Learning from the most brilliant minds in the law firm I first worked for, being able to manage very complex and challenging issues and disputes, plus supervising a huge and multi-talented legal team in Shell, locally and regionally. My active participation in different legal organisations and being a professor of law in a top university in the country contributes to the never-ending

excitement that I get from breathing, practising and teaching the law in a grand manner.

What are your interests and/or hobbies?

Reading, singing, cooking, gardening, grocery shopping, movies and travelling.

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

Being too cloistered at home and not being able to share 'up close and personal' moments with some of my family members and friends poses a challenge. Working from home has benefits and downsides, because while you have more time to do other things at home and effectively multi-task, you miss seeing peoples' faces, expressions and the spontaneity that face-to-face engagement brings about.

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

I am a religious person and my faith is my haven of comfort.

Do you have any special messages for IPBA members?

Be steadfast, hang on and persevere. COVID-19 is but an episode. Humanity in all its frailty and beauty shall conquer it. History can attest to that.



Christopher To

Gilt Chambers, Hong Kong
Co-Chair, Corporate Counsel
Committee

Committee Chair/Co-Chair

What was your motivation to become a lawyer?

To assist those less fortunate in society.

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

Being able to elevate the status of the Hong Kong International Arbitration Centre as one of the eminent international arbitration centres in the world.

What are your interests and/or hobbies?

Reading, writing and teaching.

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

The pandemic has to some extent affected my day-to-day life in that social distancing has prevented me from interacting with colleagues and friends on a face-to-face basis. However, this has taught me to do things online more effectively. I am now doing arbitrations and mediations online, which I really enjoy.

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

I had a dream of being a commercial pilot. I almost made it but for my eyesight which prevented this from happening.

Do you have any special messages for IPBA members?

Get involved and participate as the IPBA is a close family

of friends who share knowledge and provide guidance when needed. Members and the secretariat of the IPBA are friendly and helpful.



Gmeleen Tomboe

Sidley Austin LLP, Singapore
Co-Chair, Energy & Natural Resources
Committee

Committee Chair/Co-Chair

What was your motivation to become a lawyer?

I don't quite remember why I decided to become a lawyer. I do remember that when I became one, a family friend that I hadn't seen in years exclaimed, 'Wow, that was already your dream when you were just seven years old!' Through the years, I have come to better appreciate the critical thinking skills that we develop as lawyers and this has been my motivation for staying in practice.

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

My most memorable experience was when I introduced a client to the firm for the first time. We helped them establish and finance a billion-dollar joint venture. It won Deal of the Year and I was very proud to receive the trophy on behalf of the team.

What are your interests and/or hobbies?

I like studying things that are not directly related to my practice. For example, I am currently taking an online course on management of luxury companies. I also like eating out and I usually plan my travels around restaurant bookings—I once booked a table at Noma in Copenhagen, months before I made plane and hotel arrangements and applied for a visa.

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

I miss personal interactions with colleagues and friends, so I have become extra careful in writing emails and social media posts to make sure that I am conveying the right tone.

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

I was an IPBA scholar in the 2013 Seoul conference and have attended every conference since.

Do you have any special messages for IPBA members?

The more active you are in the IPBA, the more you get out of it in terms of professional and personal enrichment.



Jihong Wang

Zhong Lun, Beijing
Co-Chair, Energy & Natural Resources
Committee

Committee Chair/Co-Chair

What was your motivation to become a lawyer?

I learned the importance of treating people equally from my own experience when I was little. Equality before the law is a goal that has been pursued by many, including

me, and that is why I chose the legal profession. Becoming a lawyer was a natural and ideal choice.

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

In May 2008 I was negotiating in Chengdu, Sichuan for one of my long-standing clients for an important business deal when the Sichuan Earthquake occurred. We ran all the way down from the building where our meeting was being held and survived. I never thought that being a lawyer could be dangerous! I returned to Chengdu to complete the negotiation the following week when there was still potential aftershocks. The client was impressed by my professionalism and trusted me more. That was

the most dangerous but unforgettable experience I have had thus far as a lawyer.

What are your interests and/or hobbies?

Dancing, badminton and fashion.

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

For the first half of 2020, competition among law firms has been fierce as there were fewer requests for proposals in the market due to the interruption of work on the clients' side caused by the pandemic. The legal market is recovering now as the social isolation requirement is lifted.

For a period of three months, my colleagues and I all have had to work from home but we were still busy as before. Now all of us have resumed work and life is becoming normal except that we do not go to public places such as restaurants, airports, unless our work requires us to.

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

I was a legal journalist for about ten years before I became a lawyer.

Do you have any special messages for IPBA members?

I look forward to getting to know more of you.



Alfred Wu
Norton Rose Fulbright, Hong Kong
Co-Chair, International Construction
Projects Committee

Committee Chair/Co-Chair

What was your motivation to become a lawyer?

I love the litigation side of the law. I have always been amazed by the way in which barristers debate legal issues in court. This was what inspired and motivated me to become a litigation lawyer.

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

My most memorable experience was to represent a client in a sovereign immunity case in Hong Kong. The case started off as an urgent Mareva injunction to stop a payment from being made. The matter was then appealed all the way to the Court of Final Appeal in Hong Kong. It dealt with a completely novel issue—an issue which came up for the first time following the return of Hong Kong to the sovereignty of China. It involved a broad and detailed look at how the issue of sovereign immunity is dealt with in different jurisdictions around the world. It was a fascinating experience having to interact with some of the top legal minds in the world on the issue.

What are your interests and/or hobbies?

Bicycle riding and photography are my hobbies. They enable me to take a real break from the hustle and bustle of life, to be on my own and rediscover myself.

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

The pandemic has been a major interruption to everyone around the world and I am not exempted of course. It has interrupted my work and my business. It has forced us to remain in lockdown and prevented family and friends to meet. It is especially tough when one has elderly parents who live far away and are vulnerable but one is unable to visit. It has provided an opportunity for all of us to reflect on how much we have taken life, as we know it, for granted and how easily and quickly things can change. While we are riding out the storm, we must remember to embrace change and be stronger and more adaptable going forward.

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

Before I became a lawyer, I was a geotechnical engineer in Ontario, Canada. I would be delighted to meet up with fellow Canadians in the IPBA community.

Do you have any special messages for IPBA members?

The IPBA is an excellent platform for cultivating a multi-jurisdictional network of friends and fellow professionals. I encourage everyone to contribute to it and make the most out of it.



Lidong Pan

Reiz Law Firm, Shenzhen/Guangzhou
Co-Chair, Intellectual Property
Committee

Committee Chair/Co-Chair

What was your motivation to become a lawyer?

I read some books about the legal profession in high school and I was curious and longed to join the profession. I felt that it would bring special pride to become an outstanding lawyer with the ideals of justice, professional legal literacy, careful thinking and eloquence.

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

I have represented clients and participated in the important series of IP cases involving the 'red can herbal tea' between Jiaduobao ('JDB') and Wang Laoji ('WLJ'), which lasted for more than ten years, including the well-known product packaging and decoration disputes, unfair competition disputes, trademark licensing arbitration cases and trademark infringement disputes. The value of claims of these disputes ranged from tens of millions to approximately three billion RMB. As a result of the series of cases representing JDB, I was invited by law schools, bar associations and other legal institutes like the IBA and IPBA to share my experience regarding the biggest IP claims in China.

What are your interests and/or hobbies?

I like to play basketball after work.

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

The social and economic fallout from the combination of the pandemic and slowing economies has affected most of us for some months. For our personal life, we are facing a health threat unlike any other in our lifetimes. For our professional life, the slowing economies affects our clients and, correspondingly, also affects us. But the spread of the virus will peak, our economies will recover. I tell myself and my team that we can take the opportunity to spend more time with our family, to upgrade ourselves, so as to provide better legal service for clients in the post-COVID-19 world.

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

I have been a member of the IPBA for more than ten years, made a lot friends, and had a lot joint projects and cases for mutual clients with IPBA friends. I will be happy to make even more friends here in the IPBA!

Do you have any special messages for IPBA members?

Every legal professional is contributing to this world when joining the IPBA. As well, I hope that every lawyer can realise his or her dream as an 'international lawyer' after he or she keeps attending IPBA events.



Amira Budiyo

Gateway Law Corporation, Singapore
Co-Chair, Next Generation Committee

Committee Chair/Co-Chair

What was your motivation to become a lawyer?

I did not grow up wanting to be a lawyer, but looking back, I was probably heading in that direction with the choices I made, which eventually got me enrolled into law school. By the time I was in law school, it was quite clear to my batchmates and I that there was only an upside to becoming a lawyer and practising for a couple of years at least.

Further, growing up with elderly parents also meant that I had to think about the future and how I could support them. My dad was retired before I could complete law school and that forced me to think about practical needs. Anyone who claims that the financial prospects are not a clear motivation would probably not be truthful. Of course, that should not be the sole motivation. Over the years, I have become convinced that being a lawyer is a useful way to serve and give back to the community around me. While in law school, I volunteered at the Family Justice Court as well as the Magistrate's Court during one summer vacation, where I was exposed to litigants-in-person who needed assistance on a variety of matters. I think that this experience solidified my interest and motivation to become a lawyer and I don't think I thought twice about it thereafter.

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

Every win is definitely memorable. The first praise that I received from a client is also certainly memorable. But my most memorable experiences as a lawyer have nothing to do with my cases, but the social aspect of it. I treasure the collegiate relationships I have with my colleagues and the friendships formed with my fellow lawyers that I meet at conferences. I also treasure the relationships formed with my clients, knowing that I can support them when they need me and that they in turn trust me enough that I am their first point of contact when things go south.

What are your interests and/or hobbies?

I have always been fascinated with the similarity and likeness in our different cultures and way of life and so it is a joy for me to learn through travelling the road less taken. On a lighter note, I currently love to sing karaoke and am endeavouring to pick up the Mandarin and Thai languages.

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

I am one of those that would get annual gym or yoga memberships but not go to the gym or the studio save for a handful of times in a year because either I got too busy and 'could not' leave the office in time for class, or the class that I could make it for did not interest me. However, during the time we have had to stay home or work from home, it dawned on me that it is possible to demarcate one's work and personal life and I can put a stop to work and start exercising (if I really wanted to). There is an endless suite of fitness programmes available and so the latter excuse would not work either. So I like to think that I am probably healthier now compared to before the pandemic.

In terms of professional life, it is expected that certain work will decline. Our fight-or-flight instincts are stronger now than before which means that I (and my fellow lawyers) have to think of alternative ways to find revenue and to undertake creative business development activities. It is still a work-in-progress on my part, but I believe that recognising and acting on it are the first crucial steps to moving on with the times.

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

If parallel worlds exist and I were not a lawyer, I sure hope that I would be a photo-journalist for National Geographic. If there is a National Geographic there.

Do you have any special messages for IPBA members?

That I would like to work with all members, especially the new generation of lawyers to make our IPBA a more meaningful and cohesive organisation, one that would support our aspirations and ambitions in both professional and personal spheres. Please do not hesitate to get in touch if you have any ideas on what you want the Next Generation Committee to focus on. But particularly if you are young and bold, we welcome you to join us.



Valentino Lucini

Wang Jing & GH Law Firm, Guangdong
Co-Chair, Next Generation Committee

Committee Chair/Co-Chair

What was your motivation to become a lawyer?

Helping people in need. As a lawyer you can really make a difference in a person's life. Seeing my clients' happiness when I help them realise their projects or after successfully defending their rights is all I need to keep going in this profession.

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

Without doubt, seeing a good friend of mine come out from jail and hug his son and wife after three months of detention for being suspected of drug smuggling in China. He risked the death penalty and we worked around the clock to prove his innocence. He was, together with another 14 people, framed by a common acquaintance.

What are your interests and/or hobbies?

I have so many. If I have to choose my favorite one, I would say baseball. I started playing it when I was six and never stopped. So, I consider it as my greatest love of all time.

How has the pandemic disrupted your life (professional and personal) and how have you overcome those challenges?

It has been very tough. When everything started I was in China and I lived through the first lockdown. Everything was closed and I couldn't go to the office. After a couple weeks though, the authorities allowed us to go back to the office and we started contacting our clients, tribunals and other authorities in order to resume our practice. We implemented rotations and working from home.

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

I love video games and I consider myself a tech geek! I learned programming (C and C++) during high school and I seriously thought of becoming a programmer before starting law school.

Do you have any special messages for IPBA members?

Pursue your passions and fight for the things you care about.

IPBA New Members

March - May 2020

We are pleased to introduce our new IPBA members who joined our association from March to May 2020. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

Argentina , Nahila Agostina Cortes <i>Allende & Brea</i>	Italy , Luca Chiang <i>Legance - Avvocati Associati</i>
Australia , Nadine Crimston <i>Alcon Laboratories (Australia) Pty Ltd</i>	Italy , Livia Maddalena Giavarini <i>MG STUDIO LEGALE</i>
China , Weisheng (Wilson) Wang <i>Wang Jing & GH</i>	Italy , Carlo Sala <i>studio legale avv. sala</i>
China , Yingjie Yang <i>Pinchuan law Firm</i>	Japan , Shin Tada <i>Panasonic Corporation</i>
China , Jie Yu <i>Guantao Law Firm</i>	Japan , Shuji Tonogai <i>Tonogai Law</i>
Fiji , Wen Fi Chen <i>Munro Leys</i>	Mongolia , Naranbulag Khukhuu <i>Anderson & Anderson LLP</i>
France , Motohiro Maeda <i>Three Crowns LLP</i>	Philippines , Love Amoroso <i>Waterfront Philippines, Inc.</i>
Hong Kong , Mariel Dimsey <i>CMS</i>	Philippines , Ricky Sabornay <i>Castillo Laman Tan Panthaleon & San Jose Law Firm</i>
Indonesia , Erline Herrmann <i>Adnan Kelana Haryanto & Hermanto</i>	Singapore , Chris Johnston <i>Blackrock Expert Services Group PTE. LTD.</i>
India , Gibran Naushad <i>The Guild – Advocates and Associate Counsel</i>	Switzerland , Peter J. Merz <i>FRORIEP Legal AG</i>
Italy , Annalisa Bellavia <i>Bellavia Law Firm</i>	Switzerland , David Suter <i>Kellerhals Carrard</i>

Members' Notes

Kieu Anh Vu, Vietnam



Kieu Anh Vu is the Managing Partner of KAV Lawyers, Attorney at Law in Vietnam. He is also a mediator, a trustee and a visiting law lecturer. On 12 May 2020 he was recognised as a listed arbitrator of the Southern Trade Arbitration Centre ('STAC') located in Ho Chi Minh City, Vietnam. Then in June 2020 he was promoted as the Deputy Secretary General of STAC. This is considered as a milestone in his career path in the field of ADR in Vietnam.

Stephan Wilske, Germany



Stephan Wilske published the article 'The Impact of COVID-19 in International Arbitration - Hiccup or Turning Point?' in the *Contemporary Asia Arbitration Journal* (CAA J.), Vol. 13 No. 1 (May 2020), pp. 7-44. This paper was supposed to be presented at the 2020 Taipei International Conference on Arbitration and Mediation (15/16 October, 2020) which was cancelled because of the COVID-19 pandemic.



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