

IPBA Journal

June 2021

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NEWS & LEGAL UPDATE

Shanghai
Conference
Highlights



INTER-PACIFIC
BAR ASSOCIATION



IPBA
TOKYO 2022
20-23 APRIL

IPBA Annual Meeting and Conference in Tokyo 2022
Wisdom for the next 30 years



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The Inter-Pacific Bar Association (IPBA) established in April 1991 at an organizing conference held in Tokyo is an international association of business and commercial lawyers who live in, or have a strong interest, in the Asia-Pacific region. IPBA 2022 provides the collaboration of ASEAN countries, seeing a more integrated approach of doing business and creating opportunities across and even beyond its reach.

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The President's Message

Jack Li
President



We Are Forever

Dear Colleagues, Members and Friends, Brothers and Sisters,

There is no denying that it is a tremendous challenge for me, an IPBA member, to hold an Annual Meeting and Conference under the huge adverse effects brought about by the COVID-19 pandemic. However, thanks to the tireless efforts of numerous people, this event was eventually successfully held.

My first acknowledgements should go to the following distinguished guests who delivered speeches at the event: Mr Tang Yijun, Minister of Justice of the People's Republic of China; Mr Li Fei, Chairman of the Constitution and Law Committee of the National People's Congress; Mr Gong Zheng, Mayor of Shanghai; Mr Ban Ki-moon, the eighth Secretary-General of the United Nations and Chairman of the Bo-ao Forum for Asia; Mr Xiong Xuanguo, Vice Minister of Justice of the People's Republic of China; Mr Zhou Hanmin, Vice Chairman of the Chinese People's Political Consultative Conference Shanghai Municipal Committee; Mr Wang Junfeng, President of the All China Lawyers Association ('ACLA'); Mr Francis Xavier SC, our 29th IPBA President and former Chairman of the Chartered Institute of Arbitrators; and Mr Kevin Kim, Vice Chairman of the International Chamber of Commerce Arbitration Court.

Second, I owe a debt of gratitude to my family, the IPBA Secretariat and officers and other executives and staff from the ACLA and Shanghai Bar Association, together with my partners and associates, for their assistance and support. Without their understanding and hard work, the holding of this event would not have been possible.

Last but not least, I thank very much all the IPBA officers and members who attended the Conference online and for their not asking for a refund for their pre-paid registration fees so as to support this year's Shanghai Annual Meeting and Conference. They include, but are not limited to, our President-Elect, Vice-President, Secretary-General and Deputy Secretary-General, as well as other officers, JCMs, Committee Chairs and Vice-Chairs, and our IPBA members and friends. I also thank those officers and members who left half of their registration fee and those who did not attend the Shanghai Conference but expressed their support and assistance.

I cite Mr Ban Ki-moon's remark to conclude my acknowledgements: 'The rule of law is a common language of human civilisation. In the 30 years of the IPBA's history, it has strived to unite the excellent commercial lawyers around the globe with the scaled focus on the Inter-Pacific region in order to carry out legal research and provide legal services in many key areas. This includes but is not limited to cross-border investment, dispute resolution and arbitration, finance and capital markets, energy and natural resources, intellectual property rights, international trade, and maritime and aviation. This has made this impressive organisation notable in the global legal practice.'

I hope to see you in our IPBA's following events and wish you all the best.

Yours sincerely,

Jack Li
President



The Secretary-General's Message

Michael Burian
Secretary-General



Dear IPBA Members,

After my first few months as Secretary-General of the IPBA, I wrote that I was very proud to be part of such an extraordinary organisation. Now, as my term is drawing to a close, I can honestly say that I still am. I want to express my gratitude for two years of great friendship and cooperation. My sincere thanks go to all IPBA members who worked hard to keep our organisation alive in these challenging times. Many of our members put much time and effort into our organisation even though the global pandemic made it impossible for most of us to travel. I want to express my special thanks to Rhonda and Yukiko for continuously working hard to maintain our activities wherever possible as well as everyone who helped organise and reschedule past and upcoming events.

Only by working together and supporting each other did we manage to organise and implement several successful events during the last years, such as the Mid-Year Council Meeting and Regional Conference in Milan, the first online Annual General Meeting in 2020, as well as numerous webinars and online meetings. Unfortunately, it has been and still is not yet possible to meet in person again for our international members. Nevertheless, we managed to successfully hold the 30th Annual Meeting and Conference in Shanghai as a combined on-site and online event from 18 to 21 April 2021. A sincere 'thank you' to our President Jack Li, the organising committee and everyone who helped make this a special and successful event.

Another major event this year will be the IPBA Virtual Conference from 15 to 19 June 2021. It will be our first conference that is held completely virtually, with the theme 'Innovative Resilience in an Altered Legal Landscape'. This conference will feature a plenary session with a keynote by Professor Richard Susskind OBE, President of the Society for Computers and Law, Chair of the Advisory Board of the Oxford Internet Institute, founder

of remote courts worldwide and technology advisor to the Lord Chief Justice of England and Wales. Furthermore, there will be opening remarks from our President Jack Li, 36 concurrent sessions and many online networking opportunities, all culminating in the IPBA Annual General Meeting. We have selected an online platform that is easily accessible and that offers all participants the opportunity to connect to one another and attend different social networking sessions. Therefore, we are confident that the Virtual IPBA Conference will be a special and enjoyable event for everyone.

The IPBA Mid-Year Council Meeting and Regional Conference has been postponed and is now planned to take place later this year from 13 to 15 November 2021 in Jakarta, Indonesia, if the circumstances allow. Alternatively, we will hold the meetings and conference online. We remain confident, though, that with the progressing vaccination campaigns we will soon be able to hold our meetings and conferences in the usual in-person format.

For the future, I hope that we, as one global community, keep growing together. I am confident that, besides all the dreadful consequences, there will also be positive and lasting implications from this immense global crisis. It has taught us that all of us together sharing the same planet are only strong when we lift up the weaker among us. It has showed us what really matters: to keep everyone around us safe by behaving responsibly and respectfully. I wish everyone health, happiness and the strength we all need to overcome this pandemic.

Michael Burian
Secretary-General



Message to the Reader

Priti Suri

Chair – Publications Committee, IPBA



Dear Reader,

Welcome to the June issue of the IPBA Journal. Personally, it is hard to believe I have already spent one year as Chair of the Publications Committee and I am delighted to have enthusiastic response from members to our calls for articles, despite coping with the pressures of a virtual world.

The current issue is focused on the 30th Annual Conference in Shanghai which was postponed from April 2020 to April 2021 on account of the pandemic. Despite the deferment, continuing concerns on travel and in-country restrictions limited in-person participation. It was therefore decided to hold a hybrid event which permitted China-based members to attend physically and others to attend virtually. With keynote speeches from a varied range of people—including global and local Shanghai leaders, past IPBA President and several others—this edition of the Journal will provide a highlight of the discussions and presentations for those who were unable to attend. Thank you, President Jack Li, the organizing committee and others who ensured this event was held successfully.

Given the swift speed of the pandemic and the way it caught everyone offguard, IPBA, like several other organizations had to quickly move to a virtual world to come together and engage with each other while showcasing the strength, substance and legal aptitude of its members. In a span of 11 months, from May 2020 to April 2021, we conducted 19 webinars on extremely topical subjects, representing diverse jurisdictions and themes. You will find a brief summary of these webinars in the current issue. Unquestionably, we all miss the physical interactions, the camaraderie and the joy of meeting our IPBA family members at the different events, be it regional meetings or mid-year or annual conferences. But, given the constraints that continue to exist, none

of us can safely forecast when we will meet again and, therefore, these webinars are a great tool to learn about topical developments and engage with friends from around the world.

As you may recall, from the 100th issue in December 2020 we started a new feature titled 'Up Close and Personal' focused on IPBA women. We send questions to a chosen member and try to go behind the professional persona to know their personal interests and passions. The spotlight in this issue is on Varya Simpson, the IPBA's Chief Technology Officer. Varya is one of the reasons why I became active in the IPBA. I met her over a decade ago at the LA annual conference in 2008 in my capacity as Vice-Chair of Women Business Lawyers Committee of the IPBA where she was the Chair and, personally, there has been no looking back since. With her love for India, a shared intrinsic desire to travel around the world, and a common interest in Buddhism, we both have come a long way together but there were still pieces in her interview that were new for me. In her new role as CTO of the IPBA and a chief architect of the hugely successful virtual conference held in June, along with the erstwhile Program Coordinator, Varya seems to have that unique ability to adapt to any situation.

A request for articles has already gone out for the September issue which will be on the theme 'Corporate Governance & Ethics: The New Challenges'. It will be great to have articles from some new members and new locations, particularly from those who may not have written so far but have evinced an interest. IPBA has more than 60 jurisdictions represented in its membership and we would like to encourage as many as possible to contribute to the Journal. Both James Jung and I remain grateful for timely and consistent contributions.

Priti Suri

Chair - Publications Committee of IPBA

Correction

We apologize to **Mr. Bui Cong Thanh (James Bui)** for misidentifying his position and firm in the printed March 2021 issue of the IPBA Journal. It should have been **Managing Partner, PLF Law Firm, Vietnam**. The online version has been corrected and can be viewed on the IPBA website.



Bui Cong Thanh (James Bui)
Managing Partner, PLF Law Firm,
Vietnam

Mr Bui Cong Thanh is the Managing Partner of PLF Law Firm. He is also a member of the Vietnam Business Lawyers Club, Ho Chi Minh City Bar Association and Vietnam Bar Federation. He specialises in real estate and M&A deals related to enterprises operating in various sectors, such as services, retailing, manufacturing, technology and F&B.

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.edu.au; (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.

IPBA Upcoming Events		
Event	Location	Date
IPBA Annual Meeting and Conferences		
31st Annual Meeting and Conference	Tokyo, Japan	April 19-23, 2022
32nd Annual Meeting and Conference	Dubai, UAE	March 5-9, 2023
Special Event		
IPBA Virtual Conference: Innovative Resilience in an Altered Legal Landscape	Online	June 15-19, 2021
IPBA Mid-Year Council Meeting		
2021 Mid-Year Council Meeting and Regional Conference	Online	November 13-15, 2021
IPBA Webinars		
International tax law: tax management of impatriation and expatriation between France and Germany; a practical case	Zoom	June 24, 2021
Beyond furlough schemes - the impact of COVID-19 on employment and restructuring options in a globalized world	Zoom	June 28, 2021
IPBA Regional Events		
IPBA East Asia Forum	Tianjin, China	September 25, 2021
More details can be found on our web site: http://www.ipba.org The above schedule is subject to change.		

Join the Inter-Pacific Bar Association

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.





The IPBA as an association has held over a dozen individual webinars from September 2020 through to April 2021, exceeding our goal of 10 webinars by the time of the Annual Meeting and Conference in Shanghai. In addition, webinars in French, organised by the JCM for France, Frédéric Dal Vecchio, have been held four times already this year, with another planned for June. Committee leaders, membership leaders and IPBA officers organised sessions on a wide variety of topics, with expert speakers contributing to the discussions. All webinars were introduced with opening remarks from the IPBA President Jack Li. While we greatly desire seeing you all in person, it is not likely for the foreseeable future that we can meet. We are doing our best to provide you with interesting and active events and anticipate that there will certainly be more webinars in the months to come. Check the IPBA website frequently for the latest information.

The following is a brief synopsis of all the webinars held so far. In case you were not able to attend, or would like to relive your participation, videos of the webinars are available on the IPBA website.

Responding to the COVID-19 Pandemic **14 May 2020**

Organisers: Shin Jae Kim and Jan Peeters

Moderators: Shin Jae Kim and Jan Peeters

Speakers: Sara Marchetta, Sandra McCandless, Francis Xavier and Michael Butler

At the time of this webinar, the COVID-19 pandemic was in the early stages and it was thought that the impact would be short-lived. The optimistic panel members discussed how to get back to business while navigating changes to lifestyle when working from

home and social distancing, while at the same time managing one's clients and business.

International Trade in a Time of Crisis

8 September 2020

Organiser: International Trade Committee
Moderators: Tracey Epps and Jeffrey Snyder
Speakers: Raj Bhala, Devin Sikes, Ngosong Fonkem, Augusto Vechio and Shanshan Xu

This panel of speakers from the US, Argentina, China and New Zealand discussed the dramatic shifts in international trade law and policy since the IPBA Annual Meeting and Conference in Singapore (April 2019). They discussed how the COVID-19 pandemic has plagued international trade at the multilateral level, the free trade agreement level and the bilateral level, stimulating new thinking about the purpose of, and security surrounding, international trade, and catalysing yet further changes in cross-border supply chains.



Legal Professionals Working From Home Due to COVID-19: The New Normal?

24 September 2020

Organisers: Legal Practice Committee and Next Generation Committee

Moderators: Mark Lowndes and Julie Raneda

Speakers: Anne Durez, Daniel Tehyok Yi, Arya Tripathy and Hiroto Inoue

This webinar was held just as the COVID-19 pandemic was taking hold and addressed the challenges faced when working from home. Although it seems like the best world to be able to work from home, with the ability to free ourselves from long commutes, wear whatever we want and without the usual office interruptions, unforeseen challenges awaited us all. This webinar tackled issues on how to navigate the 'new normal'.

ICSID & UNCITRAL Draft Code of Conduct for Adjudicators in Investor-State Dispute Settlement

28 September 2020

Organiser: Dispute Resolution & Arbitration Committee's Investment Arbitration Sub-Committee

Moderators: Lars Markert and Kshama Loya

Speakers: Kevin Kim, Meg Kinnear, Corinne Montineri and Sylvie Talbet

This illustrious panel of experts from the IPBA DRAC-IASC and the International Centre for Settlement of Investment Disputes ('ICSID'), the United National Commission on International Trade Law ('UNCITRAL') and the Trade Law Bureau of Canada, discussed the then recently released 'Draft Code of Conduct for Adjudicators in Investor State Dispute Settlement'. Matters addressed included independence and impartiality; the duty to conduct proceedings with integrity, fairness, efficiency and civility; and how to create enforceable standards.

Recent Trends in Investment Control: A Global Perspective

22 October 2020

Organiser: Anselm Christensen, Cross-Border Investment Committee

Moderator: Jan Bogaert

Speakers: Anselm Christensen, Kosturi Ghosh, Hiroko Jimbo, Ben Smith and Zhang Ying

Foreign and economic policy has been shifting towards protectionism and COVID-19 has caused



some jurisdictions to implement stricter rules on foreign investment, particularly in the fields of health care and medical technology. This panel addressed the concept that, for many foreign investment control regimes, the boundaries of politics and security-driven investment control have become blurry, while other jurisdictions are only looking to implement an investment control scheme or are even taking the opposite approach, relaxing their rules to attract more inbound investment. Various views from the speakers' jurisdictions were discussed.

Outbound Investment from China into Benelux/ Europe – Legal Issues in M&A Practice

10 November 2020

Organiser: Bart Kasteleijn

Moderator: Bart Kasteleijn

Speakers: Chunqing Jin, Wendy Liu and Xiufang Tu

This webinar was presented primarily for lawyers and in-house counsel from China with a fairly advanced knowledge and experience in M&A and featured a panel of experts from the Netherlands, Belgium and China.

Construction Projects: Comparing Legislative Antidotes for COVID-19 Conflicts

9 December 2020

Organiser: International Construction Projects Committee

Moderator: Karen Gough

Speakers: Vyapak Desai, Helena Chen and Mirella Lechna

This webinar was the first in a series, and covered the legislative provisions enacted in China, India, Poland and the UK to manage the contractual fallout arising from the impact of the COVID-19 pandemic on construction projects.

How to Defend a Claim for Infringement of Invention Patents or What Countermeasures Can be Taken in Various Jurisdictions?

11 January 2021

Organiser: Intellectual Property Committee

Moderator: Lidong Pan

Speakers: Andreas Wehlau, Reinaldo Ma, Yi Wen, Jaewoo Kwak, Christopher Kao, Xiurong Wu and Masayuki Yamanouchi

This case study raised a scenario in which a competing Company A in Germany, Company B in China and Company C in Brazil were engaged in production of certain items. Company A claimed that the products of the other two companies infringed its invention patent rights and brought litigation against the others as well as their holdings in the USA, Japan and Korea. This was a great discussion on the intricacies of cross-border litigation pertaining to patent infringement.

COVID-19: A Curse or a Blessing for Women in Law?

14 January 2021

Organisers: Women Business Law Committee and Publications Committee

Moderator: Priti Suri

Speakers: Karen Gough, Olivia Kung, Parveen Mahtani and Sara Marchetta

The Publications Committee Chair, Priti Suri, in conjunction with a celebration of the 100th issue of the IPBA Journal with its focus on Women in Law, led a lively discussion on women who are forced to shift their workplace from office to home due to the pandemic situation, with the challenges faced and opportunities presented to provide opportunities for success.



The Changing Landscape of International Insolvency Law

19 January 2021

Organisers: Sebastian Kuehl, Frédéric Dal Vecchio and Alexander Gunning

Moderator: Dhinesh Bhaskaran

Speakers: Wayne Wang, Isabelle Smith Monnerville, Sven-Holger Undritz and Sidharth Srivastava

Insolvency is never the ultimate goal when establishing a business, but due to the impact of the global pandemic, it is sure to happen more often in all sectors of business. This panel of lawyers from Europe and Asia examined the complexities of cross-border insolvency, including recent changes that have been implemented to help ease the negative impact of insolvency.

Virtual Hearings in Construction Disputes

27 January 2021

Organiser: International Construction Projects Committee

Moderator: Matthew Christensen

Speakers: Alfred Wu, Dr Colin Ong QC and Marion Smith QC

This was the second in a series organised by the International Construction Projects Committee. A lively interactive session was held with members of the audience contributing questions and comments to the panel, discussing the challenges and opportunities arising from the conduct of construction dispute hearings by virtual means.

Recently Legalised Cannabis Industries: Growing Opportunities?

16 February 2021

Organiser: Cross-Border Investment Committee

Moderator: Santiago Gatica

Speakers: Barbara Miller, Robert L. Brown, Laurens Kasteleijn and Johann Espiritu

Uruguay was the first country to legalise both medicinal and recreational cannabis in 2013, with the legal sale of State-produced cannabis to registered consumers starting in 2017. Canada was next, legalising the adult use of cannabis for recreational purposes in 2018. Several states in

the US, along with Washington D.C., then did the same. This caused a rush of cannabis companies to create IPOs, with huge amounts of money flowing into the industry. However, with inconsistent regulations around the world, the industry is still volatile. The panel discussed the current state of various regulations; what makes cannabis transactions different from other business sectors; and the sensitive aspects to consider when working on a cannabis deal.

COVID Business Interruption Insurance: the UK Supreme Court Decision on Coverage

1 March 2021

Organisers: Insurance Committee and JCM for the UK

Moderators: Alex Gunning QC and Jimmy Yim

Speakers: Leigh-Ann Mulcahy QC, Rachel Ansell QC, Kieran Humphrey and Wang Ying Shuang

This webinar featured two QCs involved in the landmark test case on COVID-19 business interruption that was decided on 15 January 2021 by the UK Supreme Court. The judgment resolved coverage arguments arising from coronavirus issues under 14 types of policies issued by six insurers and will affect a substantial number of similar policies in the wider market. The approach taken by the Court is likely to be influential in other jurisdictions and hence of considerable practical significance to lawyers in the Asia Pacific region. The webinar accordingly provides a unique opportunity to hear from eminent voices in the insurance world on some of most significant issues presently affecting the market. (Video not available)

Use and Abuse of State Funding in the COVID-19 Era

4 March 2021

Organiser: Anti-Corruption and Rule of Law Committee

Moderators: Simone Nadelhofer and Lim Koon Huan

Speakers: Shaun Wu, Roger Best, Anuj Berry and Abraham Vergis

This panel from Hong Kong, India, Malaysia, Singapore, Switzerland and the UK discussed best compliance practices for companies and financial institutions in the face of the types of fraud and abuse of the programs that can be seen in countries after passing stimulus packages to address the economic recession caused by the COVID-19 pandemic.



EPC Contracts in Renewable Energy Projects: Challenges and Strategies

31 March 2021

Organisers: International Construction Projects Committee and Energy & Natural Resources Committee

Moderator: Miranda Liu

Speakers: Dr Po-Hsiang Ou, Peter Chow and Manoj Kumar

This panel, with speakers from Taiwan, India and Singapore, discussed the possible challenges and strategies in the course of drafting, negotiating and managing EPC contracts in renewable energy projects.



The JCM for France, Frédéric Dal Vecchio, organised a series of webinars held in French. His efforts resulted in several new members for the IPBA.

Intra-community VAT, Definitive Regime: Issues and Stakes

28 January 2021

Speaker: Guy de Cordes

Based on a complex regime, intra-Community VAT was established to facilitate trade within the 27 Member States of the European Union. After an exhaustive and technical presentation of all the regimes governing goods and services and their aftermath, the exchanges with the public focus on certain technical points, including fraud relating to intra-Community VAT, and more particularly on the precautions to be taken by companies in their commercial relations with suppliers or customers, given the solidarity mechanism in force.

The APEC CBPR (Cross-Border Privacy Rules): A Comparison With the European GDPR

11 March 2021

Speaker: Bénédicte Deleporte

As data protection has become a major issue, this webinar proposed to compare two data protection systems in two major areas of international trade: Europe and Asia. The European GDPR and the APEC CBPR have similarities in terms of fundamental principles, such as the accountability principle or the data security principle. However, there are significant differences between the two regimes, particularly in terms of implementation and the notion of privacy, which is not appreciated in the same way: while the GDPR is mandatory and focuses on the protection of individuals' data, the CBPR is a non-binding system

based on voluntary compliance and aimed at developing economic relations.

EU/Japan Business Relationships: New Perspectives

15 April 2021

Speaker: Anaïs Bove

Anaïs Bove shared her expertise on the recent entry into force of the EU-Japan Economic Partnership Agreement which promotes investment. This agreement is essential for companies, notably as regards customs duties or legal protection in Japan comparable to those in force in Europe for products from a specific European geographical origin, and provisions regarding intellectual property rights (trade secrets, trademarks, copyright, etc.). During the webinar, attendees enthusiastically shared their professional experiences in Japan.

Secondment in Question: Working Outside France and Foreigners Seconded to France

6 May 2021

Speaker: Claire Abate

This webinar addressed questions for employers and employees when seconded to France or when working abroad, and provided jurisprudential and practical solutions resulting from Claire Abate's experience. Claire also answered many questions about labour law and social security law as regards the legal differences in terms of secondment or expatriation, insisting on the respect of the formalities attached to these procedures.

The fifth webinar will take place on 24 June 2021. Titled 'International tax law: tax management of impatriation and expatriation between France and Germany. A practical case', it will be presented by our colleague Dirk Andreae-Nehlsen.

Highlights of Speeches Delivered at the Opening Ceremony and Keynote Session of 30th Annual Meeting & Conference of IPBA



Mr Jack Li

Mr Jack LI, President of IPBA

As a major international lawyers' association, the IPBA has gone through 30 years of glorious history, bringing lawyers from five continents together to provide legal support and services to various economic entities and winning wide recognition and praise from the international community. We believe that, with the strong support of all countries and regions and all walks of life and the joint efforts of lawyers, the IPBA stands ready to play a more important role in promoting international legal exchanges and the rule of law.

Mr Tang Yijun, Minister of the Ministry of Justice of the People's Republic of China

Since its establishment 30 years ago, the IPBA has been committed to the development of the legal industry in the Inter-Pacific region and has made positive contributions to the exchange and cooperation of lawyers in this region and the promotion of regional cultural exchanges, economic and trade cooperation and interconnection. We warmly welcome lawyers from all over the world to join Chinese lawyers in providing high-quality legal services and helping move economic globalisation toward a more open, inclusive, balanced and win-win direction.



Mr Li Fei



Mr Tang Yijun

Mr Li Fei, Chairman of the Constitution and Law Committee of the National People's Congress of the People's Republic of China

China has always been a staunch defender and active practitioner of multilateralism. As the first country to sign the United Nations Charter, China has joined almost all of the inter-governmental organisations and more than 500 international conventions and has basically achieved comprehensive compliance with international rules. The People's Republic of China faithfully abides by every treaty it has signed and makes every effort to implement any commitment it has made.



Mr Gong Zheng

Mr Gong Zheng, Mayor of Shanghai

Shanghai has become one of the regions in China with the highest degree of openness in the legal service market and has the highest concentration of representative offices of overseas law firms in China. Taking the holding of this annual meeting and conference as an opportunity, we will make every effort to promote the brand of Shanghai's legal services and accelerate the development of Shanghai into a highland of global legal service resources, of international commercial dispute resolution and of a law-based business environment.

Mr Xiong Xuanguo, Vice Minister of the Ministry of Justice of the People's Republic of China

As an old Chinese saying goes, a man is steadfast at the age of 30. I sincerely hope that this annual meeting and conference can build an interactive platform for international legal exchanges and cooperation and sincerely welcome everyone to care for and participate in the development of a Chinese international arbitration centre and to contribute your wisdom to building a first-class international arbitration institution and promoting international economic and trade cooperation for the benefit of the commercial entities in the Asia-Pacific region and the world at large.



Mr Xiong Xuanguo



Mr Zhou Hanmin

Mr Zhou Hanmin, Vice Chairman of Chinese People’s Political Consultative Conference Shanghai Municipal Committee

I have three observations to share with you. First, the next 30 years of the IPBA will take three major efforts in terms of the three important regional FTA rules. The three major regional free trade agreements are: the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ('CPTPP'), the United States-Mexico-Canada Agreement ('USMCA') and the Regional Comprehensive Economic Partnership ('RCEP'). My second observation is that the IPBA should contribute more to the competition and cooperation of relevant legal services. Third, I call on the IPBA to cultivate foreign-related legal service talent.

Mr Wang Junfeng, President of All China Lawyers Association

The rule of law is an important symbol of the progress of human civilisation. The rule of law provides the basic guarantee for economic and trade exchanges between countries and regions. The rule of law also represents the best business environment. We hope that the IPBA and other bar associations in the Asia-Pacific region will strengthen the cooperation mechanism, work together with lawyers in the region to jointly promote the exchanges and cooperation of lawyers

from all over the world, provide legal services and legal protection for the development of international trade and contribute to the building of a community with a shared future for mankind.



Mr Wang Junfeng

Abide by the International Rules and Create a Better Future

● ● Keynote Speech delivered by Mr Ban Ki-moon, Former Secretary-General of the United Nations, at the Opening Ceremony of the 30th Annual Meeting & Conference of the Inter-Pacific Bar Association



Distinguished guests, ladies and gentlemen, good morning!

I'm honoured to welcome you, virtually, to the beautiful city of Shanghai to attend the 30th Annual Meeting and Conference of the Inter-Pacific Bar Association. We are in Shanghai today to focus on the meaningful theme of international rule reform as well as opportunities and challenges for the legal industry.

Eight years ago, Chinese President Xi Jinping introduced the Belt and Road initiative. This international proposal

has been written into the United Nations legal documents. During my 10-year tenure at the United Nations, I witnessed China's great contributions to the international community and the power of Chinese wisdom. I agree with what President Xi Jinping said, 'The world today is facing the greatest change in a century'. I also agree with President Xi's prioritisation of multilateralism and economic globalisation, as well as the reform of the World Trade Rules and the construction of a community with a shared future.

Over the four decades of reform and opening-up policy in China, this country has played an increasingly important role in the international community. China has become the second largest contributor to the United Nations peacekeeping operations and has elevated its active role. China has also made important contributions and strong commitments on global climate change and social development. At the same time, China's remarkable success in extreme poverty reduction has gone a long way in facilitating the success of key UN sustainable development initiatives.

Under the great improvement of the rule of law, Chinese society has experienced significant changes over the past 40 years. In 1978, China only contributed less than two per cent of the world economy. However, today this country occupies the second position in the world. With a cumulative contribution of more than 30 per cent to the global economy, the development and achievements made by China are a result of the reform and opening-up policy, the governance of rule of law and the future-oriented policy making.

Distinguished guests, ladies and gentlemen. The rule of law is a common language of human civilisation. In the 30 years of the IPBA's history, it has strived to unite the excellent commercial lawyers around the globe with the scaled focus on the Inter-Pacific region in order to carry out legal research and provide legal services in many key areas. This includes, but is not limited to, cross-border investment, dispute resolution and arbitration, finance and capital markets, energy and natural resources, intellectual property rights, international trade and maritime and aviation. This has made this impressive organisation notable in global legal practice.

The financial crisis and the financial market turmoil, inflation and the international 'currency war' as a result of the crisis, have left a complex and profound





impact on the world economy. Facing these problems and challenges, the international community should strengthen dialogues and cooperation on the basis of mutual respect and trust. At the same time, it should at the end of it all jointly build a robust platform that is peaceful, secure, open and cooperative with the view towards establishing a multilateral, democratic and transparent system of global governance and an exchange platform for the rule of law.

The global governance framework of the United Nations, including the International Monetary Fund, the World Bank and the World Trade Organization, has provided rules and a mechanism for global governance, finance and trade. I am of the view that the global economic system should keep up with the times to improve its rules so as to ensure that the system becomes even more effective. The choice of cooperation or confrontation, open-up or close, mutual benefiting or zero-sum game are closely related to the interests of different countries and the fate of mankind.

Adhering to the rule of law and ensuring stable development means respecting the equal rights of all countries within the international framework of global governance. It also means insisting on the participation of multiple subjects in making rules, abiding by rules and jointly promoting the development and perfection of such rules. Strengthening global governance based on rules for stable development requires the following principles:

The first is to ensure participation in rule-making. An important goal of global governance is the common development of all mankind, the realisation of which needs common rules to guide, standardise and

guarantee. In the 'global village', the ability of countries to participate in international activities and maintain the international order may be different. The core requirement of rule orientation is to insist that the rules should be formulated jointly by the international community.

The second is to abide by the rules together. What supports the social order is the recognition of consciousness of the social members to the mutual expectation of the rules, the common observance and maintenance of the rules under the concept of identity, as well as the international order. Once the rules are ignored and trampled upon, order has the potential to collapse and harmful consequences could transpire in many aspects.

Finally, we should promote the rules jointly. The rule is the accumulation of experience and legislation can be advanced. However, once the rules are made, they will inevitably lag behind social change. This is even true for today's international environment, where existing rules are easily challenged by technological changes and economic and political environmental changes. Insisting on adherence to rule-oriented outcomes means that different countries shall participate in the legislation and improvement of the rules and gradually modernise the principles, norms, standards, policies and agreements, procedures, etc., in regulating international relations and order.

In this regard, we should strive to promote the liberalisation and facilitation of trade and investment. At the same time, we should advance economic globalisation towards a more open, inclusive, balanced and mutual-benefiting direction.

Distinguished guests, ladies and gentlemen. Let us join our hands to sow the seeds of cooperation and harvest the fruits of development. Let all peoples and nations come together to address inherently global challenges, including climate change and health crises. Let us ensure that all people, communities and countries can live better lives and make the world a better place for all people and the planet!

My sincere congratulations go to you all on the occasion of the 30th Annual Meeting and Conference of the Inter-Pacific Bar Association. I am confident that it will be crowned a great success! I thank you for your attention. Thank you.

A Multilateral Investment Court— A Mirage in the Horizon?

Keynote Speech by Francis Xavier



Distinguished guests, ladies and gentlemen,

I want to talk today about the biggest challenge facing the global treaty framework—what is the most appropriate method of resolving investor-host state disputes?

First off, I think we can all agree that municipal court or state court litigation is not the answer. State courts are not perceived as being sufficiently independent or neutral. And more importantly, state courts need to enforce state law—and municipal law itself may have been enacted in breach of treaty obligations. So, you have a disjunct there.

Now traditionally, and for the longest time, the platform adopted to resolve investor-host state disputes is that of *ad hoc* arbitration. Most treaties have a choice of *ad hoc* arbitration, first under the ICSID—main or Additional Facility Rules. And then you also have a choice of utilising UNCITRAL rules and finally the rules of a suitable arbitral institution. And we all are familiar with the widespread global backlash that has come about in recent years against the use of Investor State Dispute Settlement ('ISDS') in investment treaties.

I wish to make two points here.

The first is that there are many unmeritorious criticisms of the ISDS framework, such as that investors win most of the time, if not all of the time, and that developing host states bear the brunt of

large awards. Most of these and other similar criticisms have been adequately rebutted and addressed by a number of jurists. I need not do that here.

The second point I want to make is that certain of these criticisms are well founded, but the challenges can actually be resolved by careful treaty drafting. For instance, one criticism is that ISDS mechanisms prevent states from properly enforcing their environmental, health and other strategic legal frameworks. But this is a challenge that can be resolved by careful treaty drafting. If you take the Regional Comprehensive Economic Partnership Agreement ('RCEP') that was signed by 15 countries in November 2020, there is a clause which says that the RCEP provisions are not to be construed as preventing a state measure intended to preserve environmental, health or other regulatory objectives. Careful drafting can therefore in fact go a long way in resolving some of these issues, including the supposed regulatory chill effect of ISDS provisions.

I want to come back to the key question: is the traditional ad hoc private arbitration mechanism or platform a suitable one for resolving disputes between investors and host states? I would say that, for many reasons, it is not.

The ad hoc arbitration platform is obviously eminently suited to commercial disputes between private disputants. Looked at it from a larger perspective, many different ad hoc arbitral tribunals making decisions that are private and confined to their own sphere can and do result in contradictory decisions. When you have a number of separate ad hoc tribunals, sometimes construing the same provision in the same treaty, they do come to completely and diametrically opposed conclusions. And this often describes the landscape in investment treaty disputes settlement: contradictory decisions by different arbitral tribunals. Often times, the same point, same provision, but different results. So, this creates an unacceptable degree of uncertainty and engenders a lack of predictability that is not helpful.

Moving on ... Confidentiality and the private nature of international commercial arbitration is very attractive for private disputants. But when you have a public law dispute in an investor-host state scenario, it is



transparency that is needed. It is public accountability. And you have seen a big movement in treaty arbitration towards openness—ultimately resulting in the advent of the 2014 Mauritius Convention on Transparency, which came into force in October 2017. Simply put, the confidential nature of international commercial arbitration is not well suited to public law disputes affecting large swathes of citizenry and sovereign nation states.

Moving on to yet another point ... International commercial arbitration has grappled with a strong sense of unease over the mechanism of party-appointed arbitrators. There have been many criticisms of a perception of bias of arbitrators in favour of the appointing party. There are also a number of questions over the ethical conduct and responsibility of party-appointed arbitrators. This problem is particularly acute in treaty arbitration. In a celebrated study in 2009 by Professor Albert Jan van den Berg, he reviewed 34 ICSID cases where there was a dissenting opinion. And in all of those cases, the dissent was written by an arbitrator appointed by the losing party. This calls into question the very credibility and neutrality of the arbitrators in question.

Moving on to yet another front in terms of arbitrator performance in private arbitration. If one were to take the latest published survey, the Queen Mary University of London Survey of 2018 (the 2020 results are still not out), the second worst characteristic of international commercial arbitration was noted

to be weak arbitrator performance. This results from weak procedural rigour, time delays in issuing awards, simply being unprepared for hearings, and a whole host of other complaints resulting in delays in the arbitration process and costs being ramped up. This issue is particularly acute because there is no overarching supervisory or oversight authority in international commercial arbitration. Yes, you can set aside awards in very narrow circumstances, but that is very exceptional. To a large extent, therefore, arbitral tribunals are unsupervised and unregulated.

That brings me to the final point of the mismatch—the finality of arbitral awards. Arbitral awards are final, and there is little or no ability to correct errors of law or fact. So even if the arbitrator gets the law or the facts wrong, or both the law and the facts wrong, there is little recourse unless there was, say, a natural justice breach. Now, this doesn't sit well with the treaty dispute terrain, because you have party disputants who are sovereign states. The awards affect a large number of people and invariably, large amounts are at stake too. So how does one tolerate, in the face of that, incorrect awards? And so, it is understandable that there is a growing clarion call for reform.

Take China's submission in July 2019 to the UNCITRAL Working Group III. China basically made several criticisms of the current system. And it pointed out: one, the lack of an error-correcting mechanism; two, the lack of stability, predictability of arbitral awards; three, questioned the professionalism and independence of arbitrators; and four, criticised the lengthy and costly arbitration processes. These criticisms are increasingly being made by a number of other countries all across the world. The inescapable conclusion is that private commercial arbitration is not well suited to public law disputes in the form of investor and host state disagreement arising under investment treaties.

So, if municipal court litigation is unacceptable and ad hoc arbitration is ill-fitted, obviously the world needs a different solution. Without a viable solution, we would only be left with political or diplomatic channels to resolve such disputes. And I think we can all agree that relying on diplomatic channels will simply lead to the politicisation

of such disputes, which is not what we want. We want the de-politicisation of disputes. And we certainly don't want to go back to the dark days of gunboat diplomacy. So now, more than ever, the world needs a viable solution, especially when traditional capital-importing countries develop and become capital exporters.

There is again a growing voice across the globe recognising that perhaps the only viable option, and I would agree, would be the formation of a permanent multilateral investment court. With such a court, you have qualified independent judges, rule-based transparent proceedings, correctness of awards enforced by a suitable appeal mechanism, and finally, consistency and predictability of judgments. All of these characteristics are very sorely needed in the investor-host state dispute landscape.

There is a growing recognition that this will work. I want to give just two examples of permanent investment courts that are already in place. The first would be the South American trade bloc Mercosur. In 2004, four South American countries—Brazil, Argentina, Paraguay and Uruguay—founded a trade bloc. Crucially, in 2004, they also founded a permanent investment review court, called the Permanent Review Court of the Mercosur. I only managed to obtain the relevant court statistics up to 2019, which show that the court had issued six awards as of 2019.

The second example is the Arab states. The Unified Agreement for the Investment of Arab Capital in the Arab States, a treaty of 1980, has 19 signatory states in and around the Middle East. In 1983, they founded the Arab Investment Court. From the literature that I had access to, as of September 2018, the Arab Investment Court had issued six decisions and seven decisions were pending.

So, you do have real life examples of permanent investment courts which have been functioning well for a lengthy period of time. In recent years, the EU, which comprises 27 nation states, has been a vigorous advocate of a multilateral investment court. So, you have concrete proposals in a number of treaties entered into by the EU for the establishment of, not

International commercial arbitration has grappled with a strong sense of unease over the mechanism of party-appointed arbitrators.

a multilateral investment court in the first instance, but a bilateral investment court. This is provided for in the 2016 EU-Canada Comprehensive Economic and Trade Agreement, the 2018 EU-Singapore Investment Protection Agreement and the 2019 EU-Vietnam Investment Protection Agreement, all of which call for the formation of a bilateral investment court.

So it could work, but the reality I have to accept is that looking at the deliberations of the UNCITRAL Working Group III, which was formed by the United Nations in July 2017 to propose much needed reform to ISDS provisions, there is as of now no global consensus on the formation of a multilateral investment court.

The reality is that we are not going to see a permanent multilateral investment court anytime soon. The question then is: is there an intermediate measure that we could adopt?

One intermediate measure that is gaining ground is that of a standing appellate court mechanism. As of today, we have about 3,300 treaties all across the world. About 25 of them call for an appeal mechanism. So, you have an ad hoc arbitration, but if there are errors and if the tribunal gets it wrong, you have recourse to a standing appeal mechanism. The 25 treaties include the 2014 Canada-South Korea FTA and the 2015 China-Australia FTA. More recently, the 2018 Mexico-EU FTA calls for the establishment of a permanent appellate arbitration court. But as of today, whilst the mechanism of a standing appeal mechanism is also gaining ground in other major jurisdictions such as China and Singapore, to date there is no actual appellate mechanism in place, although it is a work in progress.

So, pending the establishment of an appeal mechanism or a multilateral investment court, the latter being a long-haul process, we are left with a highly fragmented world. So, let us look at some of the recent developments on this front.

First, of course, there are the proponents of a multinational investment court and I have given you examples of that.

Second, I have given examples of an intermediate solution and the proponents of a standing appellate mechanism.

And then, third, you have the traditional approach, which is the ad hoc arbitration platform in the form of ICSID main or Additional Facility Rules, UNCITRAL Rules or the rules of a suitable arbitral institution. The traditional approach continues to be utilised in a number of new treaties, the January 2020 Japan-Morocco BIT being an example.

Now, a new fourth variant is emerging—the January 2020 India-Brazil BIT completely lacks ISDS provisions. There are no investor-host state dispute resolution mechanisms in the Treaty. Rather, what it focuses on is dispute prevention mechanisms in two forms: one, through the establishment of an ombudsman; and two, by the establishment of a joint investment committee that will seek to resolve disputes between investors and host states. But one criticism that can be made very heavily on the mechanisms in place in the India-Brazil BIT is that it provides investors with no direct recourse to remedies. This is an access to justice issue.

The fifth variant, which is again a very recent development, brings us back to the Regional Comprehensive Economic Partnership ('RCEP') signed in November 2020 by 15 nations. You have all 10 ASEAN countries plus five—Japan, China, South Korea, Australia and New Zealand. These 15 countries form a trade bloc that captures one third of the world's population and one third of the world's GDP. RCEP, which is likely to come into force at the end of this year, simply has no ISDS provisions. Unlike the India-Brazil BIT, parties were in agreement that ISDS provisions are required, but were not able to agree on what form the ISDS provisions should take. So, the treaty provides for a timeframe of between two to three years after its coming into force for the parties to work together to agree on an acceptable ISDS framework. And some of you may recall that in November 2019 India in fact pulled out of the RCEP because of concerns over the fact that some form of ISDS would be incorporated.

In concluding, when one looks across the globe, the reality is that until we can arrive at a universal consensus on a permanent solution, the world we live in will continue to be highly fragmented in its approach to investor-host state dispute resolution. The resultant patchwork of divergent fora and the disharmonious development of law will remain an inevitable feature of the terrain.

Thank you very much.



Current Developments and Challenges in Investor-State Dispute Resolution

Keynote Speech by Kevin Kim

Good morning, good afternoon, good evening, depending on where you are.

It is an honour to be a keynote speaker at the plenary session of the IPBA 2021 Conference before a distinguished audience such as yourself. Today I will try to scratch the surface of the topic 'Current Developments and Challenges in Investor-State Dispute Resolution'.

I hope that I am able to present some statistics and observations so that they complement the conference theme and help initiate some meaningful conversations during the conference.

The five broad sub-topics we will touch upon are:

1. a birds-eye view of Bilateral Investment Treaties ('BITs') and the current number of trends in the new

- Investor State Dispute Settlement ('ISDS') cases;
2. the remote hearing and technological leap in managing investor-state disputes;
 3. new trends in the dispute settlement mechanism in BITs;
 4. the institutionalisation of the ISDS mechanism; and
 5. diversity in the ISDS mechanism.

I will now begin my first sub-topic, 'A Birds-eye View of the Evolution of BITs'. The BIT regime has seen a sea-change since it first began in 1959. Today, there are over 2,897 BITs globally and over 390 other treaties with investment provisions in them. China itself is an active player with over 138 BITs out of which at least 126 are in force. Reportedly, this number is only second to Germany. China is also a signatory of the ICSID Convention since 1990 that came into force for China in 1993. Separately, China also has signed a trilateral investment agreement with Japan and South Korea in 2012. This is in addition to at least 13 Free Trade Agreements ('FTAs') containing investment provisions that China has signed. The generational changes of China's BITs are reflective of the global trends while some are exclusive to China. For example, several countries where the investments under the Belt and Road Initiative ('BRI') are being made do not have a BIT with China, thus requiring alternative means to resolve disputes under the BRI. The other issues are more pervasive globally. Since ISDS provisions exist in a variety of forms around the world, there are a wide range of interpretations by decentralised tribunals. As a result, while the downside is a lack of precedents, the upside is the flexibility that it affords to tribunals to apply the provisions in varying cases. A few new developments that would be interesting to watch are the dispute settlement mechanism in the upcoming China-EU BIT and China-US BIT. As for the number of cases in the preceding year, the International Centre for Settlement of Investment Disputes ('ICSID') in its 2020 newsletter reported a record number of 58 new cases that were filed in 2020 under the ICSID Convention as well as the Additional Facility Rules. This is an impressive number for a year when the whole world was virtually shut due to the COVID-19 pandemic. It is to be noted that this statistic is just of the ICSID caseload and does not include non-ICSID investment disputes.

I will now move on to my next sub-topic, 'Remote Hearings'. I will begin this with a very interesting fact. According to the ICISD's official data, 60 per cent of its 200 hearings and sessions in 2019 were held by



videoconference. Yes, you heard that correct. I am not talking about 2020 but about 2019, that is, the pre-COVID world. Thus, the ICSID was far better prepared than any other courtroom to handle disputes and hearings remotely. It was already ahead of the curve when others were scrambling to get used to video hearings. However, it should come as no surprise that the ICSID conducted the majority of its hearings and sessions through video conferencing even before. Given that the parties, counsel, experts in an ICSID hearing are spread around the world, it was natural for them to adapt to a hybrid model of conducting the hearing and other sessions. The pandemic only gave the ICSID additional reasons to further modernise its video conferencing resources to make it better than before. I am looking forward to an update from the ICSID as to how it performed on video-conferencing and online hearings in 2020.

Moving to my third sub-topic, 'New Trends in ISDS Mechanism'. As many of you might already know, the investor-state dispute settlement mechanism seems to be undergoing a process of churn. The UNCITRAL Working Group III and the ICSID working papers are the most prominent examples. There is an attempt by the states, as well as the arbitration institutions, to explore a possibility of investor-state mediation which may either replace or operate parallelly with the arbitration. While the UNCITRAL Working Group III is still discussing these ideas, there is at least one example that has sought to introduce this concept in the BIT. This example is the India-Brazil BIT. In 2020, India and Brazil caught the international law community's attention with the signing of their BIT. Interestingly, the India-Brazil BIT does not

contain investor-state arbitration as a mechanism to resolve disputes. The India-Brazil BIT adopts the Brazilian approach to BITs which brings dispute prevention to centre stage with the adversarial form of dispute resolution being a secondary consideration. This trend is also seen as setting the stage for a fresh narrative. One thing is clear from these developments—that the ISDS landscape is evolving rapidly with several ideas floating around, all of which may have something new to offer. Many may call this process the democratisation of the ISDS system. The pros and cons of these reforms can be debated and discussed to achieve a point that serves the larger interest of the community comprising the states as well as the investors.

**The investor-state
dispute settlement
mechanism seems to be
undergoing a process
of churn.**

I will now move to the next topic, 'Institutionalisation of ISDS'. There have been several discussions and even efforts to establish multilateral institutions to resolve investor-state disputes. Promoters of such an idea usually give the examples of the International Court of Justice ('ICJ') or the World Trade Organization ('WTO') as a reference point on what such institutions may look like. While it is true that the ICJ and WTO have worked with relative efficiency so far, it is also true that it has been with some teething issues. The school of thought that favours the current system over institutionalising the ICSID, uh, I am sorry, the ISDS system argues that investor-state disputes are very different from state-state disputes and therefore institutionalising it may further complicate the problems. They also warn that a multilateral institution will bring its share of issues such as making the ISDS process political and driven by non-commercial interests. The other school of thought also has compelling points. One of them is a strong precedence-based system that will give more clarity and certainty to the ISDS system. It will also contribute towards a strong jurisprudence to the field of ISDS that would have more authority and will help the investors and states alike.

I will now get to the final and most important theme of my keynote, 'Diversity in Investment Arbitration'. When I talk about diversity, I refer to two kinds of diversity: gender diversity and racial diversity. Both kinds of diversity are essential in bringing richness to the ISDS system. Unfortunately, 2020 was not the best year in terms of gender diversity. According to the ICSID Fiscal

Year 2020 Statistics, only 14 per cent of the appointed arbitrators, conciliators, and ad-hoc committee members were women. This is a steep drop from the 24 per cent in the year before that. However, all hope is not lost as it was still a positive year for racial diversity. Over 44 nationalities were represented as arbitrators, conciliators and ad-hoc committee members. This was the highest number in a single year at the ICSID and calls for some reason to celebrate. The investment arbitration community must be conscious that the most common source of information about arbitrators is word of mouth, which could be seen as a barrier to diverse arbitrators who are new entrants to the field. Therefore, we need to do more as a community to address the diversity issue proactively.

So, finally, I would like to conclude on a positive note and thank the IPBA for holding this event. While change is inevitable, we must be conscious that history has a habit of repeating itself. Therefore, we must be careful of any steps that might turn the clock back. We certainly do not want years of hard work and progress in the field of ISDS to come back to square one. What we need now is an open-minded discussion. Only that will ensure that the challenges to the ISDS system are met holistically.

Thank you very much for the opportunity and I wish the conference a grand success!

To Promote Prosperity with Financial Rule of Law

Keynote Speech by Zhang Ning

Distinguished guests and friends,

Good afternoon!

I am very pleased to participate in the financial forum of the 30th Annual Meeting and Conference of the Inter-Pacific Bar Association. Finance and the rule of law are twin brothers. As a financial person who has been engaged in financial work for more than 40 years, and also being a person of the rule of financial law, I have witnessed the fast development of the financial market under the guidance of the rule of law. To some extent, it is not easy to complete the development of the West for hundreds of years.

In 1993, the Ministry of Justice and the China Securities Regulatory Commission established the Securities Lawyer System and selected the first batch of 18 securities lawyers in Shanghai. Among these 18 lawyers were the President of the Shanghai Bar Association, the Vice President of the All China Lawyers Association and the President of the Inter-Pacific Bar Association. At that time, I was invited by the leaders of the Shanghai Municipal Bureau of Justice to teach the first batch of securities lawyers, known as the First Lesson of Securities Lawyer. Some of them still keep the notes of the lectures in that year, which is impressive. In 2009, the Shanghai Lawyers Association, Law College and Jin Mao Partners, organised a seminar on Lawyers' Practice in the Capital Market. I gave an opening speech to 606 lawyers. Many of the trainees have now become a new force

in capital market legal services. In this financial forum, excellent financial lawyers and financial practitioners from home and abroad came together from all corners of the country. Director Chao Kejian, who worked for the People's Bank of China, specially came to Shanghai from Beijing, and it was full of friends to participate in the grand event.

In the more than 40 years since the reform and opening up, with the transition from a planned economy to a market economy, China's financial industry and financial market have undergone tremendous changes, and remarkable achievements have been made. Over the past 40 years, China has established a systematic and complete financial organisation system. It has initially established the People's Bank of China to carry out macro-control and separate supervision by the China Banking and Insurance Regulatory Commission and the China Securities Regulatory Commission. State-owned commercial banks and other new-type commercial banks as the main body, policy banks, non-bank financial institutions and foreign-funded financial institutions coexist, with complementary functions and a coordinated development of a new financial institution organisational system to establish and continuously improve various financial factor markets, such as currency, securities, futures and gold. It can be said that the financial institutions and financial markets owned by countries with a complete market economy system in the world have basically been established in China. Financial institutions are not only very complete



Over the past 40 years, China has established a systematic and complete financial organisation system.

in type, but also very large in number, which greatly meets people's growing financial needs. It is particularly important that, except for policy financial institutions, other commercial financial institutions have basically implemented a shareholding system, established a modern corporate management system and conducted strict management in full accordance with market economic rules. The operational efficiency of the institutions has been significantly improved and they can be better adapted to and serve economic and social development. It took China more than 40 years to go through the experience of more than 100 years of some developed markets. Although the time is short, we are still marching on relatively fast, keeping up with the international pace and progressing relatively smoothly.

In December last year, my book on The Rise of Securities, focusing on the 30-year history of the securities market, received enthusiastic comments. The 30-year development of the securities market is also a history of the rule of law throughout. With the continuous prosperity of China's securities market and the continuous innovation of related businesses, non-litigation legal affairs are also increasing and the number of financial securities lawyers in my country is also increasing linearly. In this leap-forward development, to be honest, Chinese lawyers have played the role of gatekeepers in capital and financial markets and have contributed to the capital market, especially the securities market, with their professional ethics and professionalism.

Looking forward to the future, as the level of marketisation, rule of law and internationalisation in our country continues to improve, the 'Decisions On Several Major Issues Concerning Upholding and Improving the Socialist System with Chinese Characteristics, Promoting the Modernisation of the National Governance System and Governance Ability' of the Fourth Plenary Session of the 19th Central Committee of the Party puts forward an important concept of governing the country. The development of the rule of law, the optimisation of supervision and the overall economic environment in the securities financial industry and financial markets will be further improved. China's listed companies and capital markets will play an increasingly important role in the process of economic development.

In this context, the legal industry will usher in a new round of rapid development. Chinese lawyers should gradually improve their own service quality, while actively participating in various subdivision levels of economic reforms internally and opening up new subdivision areas. The financial blue ocean market should continue to deepen communication and exchanges with financial legal practitioners in various countries and regions. Lawyers should seize the opportunities of the times in the international legal affairs market and actively participate in the external legal service business.

The financial industry is colourful due to the rule of law and splendid due to exchanges. Let us have in-depth exchanges and be practical, and continuously improve the level of financial markets, financial institutions and financial securities lawyers. With financial mutual learning and prosperity, let us work to promote the financial market and financial institutions to moving steadily and march on in the direction of legalisation, marketisation and internationalisation.

Thank you all!

This keynote speech was delivered at the financial forum of the 30th IPBA Annual Meeting and Conference by Madam Zhang Ning, a well-known financial expert and arbitrator, the former Director of the Shanghai Regulatory Bureau of the China Securities Regulatory Commission, the former Chairman of the supervisory board of the Shanghai Stock Exchange, member of the 4th/5th Shanghai Arbitration Commission.

Highlights from the IPBA Annual Meeting and Conference in Shanghai



Presentation of speech certificate in the financial session



Jack Li in the opening ceremony



Sara Marchetta and Jack Li in Shanghai



Panel of Legal Safeguard of Free Trade Zone of China



Panel of morning session



Panel of Multiple Perspectives on Foreign-Related Rule of Law



Panel of Rule of Law Concerning Foreign Affairs Under the Background of the Belt and Road Initiative



Mr Ma Yi



Panel of financial session



Some delegates in Shanghai



Some delegates in Shanghai

Up Close and Personal: Varya Simpson



Tell us about your years growing up, such as interests, hobbies and causes that you are passionate about. What are some of the childhood experiences that shaped you?

I grew up with a close-knit group of girls on my block in a suburb of New York City. They remain my best friends, although now spread across the United States. The support and friendship of this community of accomplished women and their families has sustained me throughout my life. The power of these connections also encouraged me to develop new circles of people along my path, including my wonderful friends in the IPBA.

Growing up near New York City, I had the opportunity to visit the headquarters of the United Nations on a number of occasions. This exposed me at an early age to the existence of other countries and cultures. I was awed meeting people who had traveled abroad and dreamed about being able to experience the wonders of far-off places. My fascination with the traditions of other people continues to this day and is evidenced by my love of travel.

Why did you choose to work in the law? Describe your career trajectory.

I took a very unusual path to law. My father was an unhappy solo practitioner so I had little initial interest in following in his footsteps as an attorney. Foreign languages captured my imagination. I was amazed that people around the world could express themselves

in such different ways and I studied French, Latin and Russian in secondary school. I finally had a chance to spread my wings in college when I took my first plane flight from New York to India to spend my junior year abroad. I had never stepped outside my own culture and suddenly found myself in a very different world, living at the women's hostel at Osmania University in Hyderabad, studying Sanskrit, Telugu and learning Bharata Natyam from a traditional dance teacher. This was at a time when it took two weeks for a letter to travel from the US to India and long-distance 'trunk calls' were not affordable. I loved it all.

I went on to UC Berkeley where I did graduate work in Asian Studies, received a Fulbright Fellowship and went back to India to study Tamil in Chennai. I discovered upon returning to the US that I did not like teaching and decided to leave academia. It was Berkeley soon after the 60's and I decided with my friends to explore various spiritual paths. What I learned from those valuable experiences was to live in the moment and that we are all connected through our common humanity.

Having given up any expectations of a career, over the next decade my jobs included being a fast-food worker, summer camp custodian, public library clerk, designer of plumbing systems for an engineering firm, a position on the San Francisco Chronicle newspaper staff, director of a non-profit, and a temporary secretary. I married an incredible musician/artist and had two children. We lived happily but spent a period of time homeless, staying in

the basements and extra rooms of friends. I tried to get a full-time job as a secretary (I typed 100 wpm!) but was told by an employment agency that I did not have a 'corporate image' and would not be hired.

In order to provide more opportunities for my children, I decided it was time for a change. I took the LSAT, applied only to the nearest law school and entered Boalt Hall at UC Berkeley as the oldest member of my class. I was very naive about what lay ahead, but figured that as a lawyer I would earn at least as much as a secretary and do more interesting work. I enjoyed every minute of law school and graduated as Class President. After spending time flipping hamburgers and washing toilets, going to law school was a pleasure. Sitting at my desk in a beautiful office at a large law firm in San Francisco working on the closing of major bond transactions, I would look around and laugh at where life had taken me. A very unlikely corporate lawyer, I have never regretted my decision to enter law.

What is the biggest challenge you have faced to date and how did you overcome it?

I am facing the biggest challenge right now. My beloved husband has advanced pancreatic cancer. Taking care of his physical needs while trying to adapt to the psychological and emotional changes in our lives is extremely difficult. I cope and find physical and mental respite by walking at least four miles daily and currently by working with my IPBA friends on the Virtual Conference. Weekend visits with my children and grandchildren provide great support and comfort. I try to live in the present.

You are enormously passionate about the IPBA. What does the IPBA mean to you and what do you think other people should know about the IPBA?

Since 2008, I have been organising special events for my IPBA women friends at our annual conferences. When I sit at a table surrounded by talented IPBA women from many countries, of many colours, of many religions and from many different backgrounds, I am filled with joy and happiness and, most importantly, hope for the future. If we can join together with camaraderie and appreciation for each other, why can't our governments do the same? If we can clasp each other's hands in friendship, why is it not possible to find a global solution to climate change and the end of violent warfare so that our great-grandchildren can live in peace and

beauty? That is what the IPBA is for me—a means to recognise our similarities and applaud our differences in a divided world.

People should know that it is possible to become more involved in the IPBA by joining a committee. Please reach out to the Chair of a committee and indicate your interest. In addition to bringing your business cards to an IPBA event, bring your genuine interest in meeting others with whom you would not otherwise have a chance to speak. While most members join initially with the hope of networking for future legal work, what they come back for is the friendship and community. The IPBA is an extraordinary opportunity to develop relationships with talented lawyers from all over the world.

Have you faced gender-related challenges in your career? If so, what have they been and how have you overcome the adversities?

Because I entered law later in life when my children were in school and I had a spouse who was willing to take on childcare responsibilities, I did not face the very difficult choices many working women have to make between career advancement and caring for young families. I fortunately also bypassed the earlier significant gender-based challenges faced by young women lawyers in the US. Nevertheless, I have often been the only woman around a large closing



table and sensed that my presence changed the conversation. It was sometimes uncomfortable but always interesting.

One of the most fulfilling IPBA events I participated in was the first Women in Law in India conference which Priti Suri and I organised in New Delhi. I became aware at that event of the many different kinds of gender-based challenges women lawyers encounter around the world related to their customs and traditions. The struggle for work equality goes on everywhere but it is becoming easier, especially in law, where women are now far more visible in the legal landscape.



Since you are such a global traveller and citizen, what advice or tips can you provide women lawyers on managing a work/life balance and overcoming professional challenges?

Be true to yourself. Recognise what is important to you in your life and go for it. For some it will be obtaining a certain level of recognition at work and for others more quality time with family. Once you have a sense of what you want to achieve, maintain a long-term perspective. Don't let others dictate expectations and goals. Be creative and collaborative in problem solving to become a valued member of the team. Also, challenge with diplomacy, a difficult trait to learn. Last—always take all of your vacation. You have earned it!

As the Chief Technology Officer of the IPBA, what issues have you faced in organising IPBA's virtual conference in June 2021?

When I first accepted the position of Deputy Webmaster, I thought I was signing up to maintain our website. But technology has quickly changed, especially with the pandemic. This year I definitely earned the new title of CTO. In looking for a provider for our virtual conference, I had to quickly learn a whole world of new concepts.

The biggest issue was not being able to accommodate everyone's time zone. As the majority of our members are in Asia, we chose time slots that worked both in Asia and for varying locations elsewhere in the world. But all the presentation times could not work for everyone. I

will need to attend leadership meetings on the last day from 2am to 7am! This is a big challenge for me—staying awake all night. It also highlights the real advantages of an on-site conference when everyone is in the same time zone as we hope will occur next year in Tokyo. And then we can see each other in person once again.

Although Rhonda and I worked on many of the moving parts that make up the whole, it was Shin Jae Kim and Jan Peeters who had to take on the bulk of the work organising the many presentations at the virtual conference while my deputy Riccardo Cajola volunteered to handle the sponsorships. It was definitely a team effort, led by our Secretary-General Michael Burian, and it was a sharp learning curve for all of us.

Finally, some quick questions...

What is a motto you live by?

'If it is not disappearing, it is not real' said by Shunryu Suzuki Roshi. Everything is transitory so enjoy every minute—but help others along the way.

What would you say to your 20-year old self?

Cherish time with your family. And buy Apple stock when you first hear of it!

Cats or dogs?

Definitely cats—although I am allergic to them.

If I could be a superhero, I would be...

Ruth Bader Ginsburg—what a woman!

IPBA New Members

March 2021 to May 2021

We are pleased to introduce our new IPBA members who joined our association from March 2021 to May 2021. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

Argentina , Juan Sonoda <i>BERETTA GODOY</i>	China , Hua Yang <i>Grandall Law Firm (Beijing)</i>
Australia , Gwynette Govardhan <i>College of Law</i>	China , William Yao <i>Jin Mao Partners</i>
Brazil , Vivian Fraga <i>TozziniFreire Advogados</i>	China , Zehao Yu <i>Jiangxi huabang law firm</i>
Chile , Elina Mereminskaya <i>Wagemann Lawyers & Engineers</i>	China , Yinying Zhang <i>Beijing Hengdu Law Firm</i>
China , Lee Fong Chia <i>Rajah & Tann Singapore LLP</i>	Germany , David Windhövel <i>CMS Hasche Sigle PartG v. RAe u. StB mbB</i>
China , Difei Hu <i>Hua Bang Law Firm</i>	France , Claire Abate <i>AC LEGAL AVOCAT</i>
China , Hong Jiayu <i>Anhui Tianhe Law Firm</i>	France , Benedicte Deleporte <i>Deleporte Wentz Avocat</i>
China , Ling Li <i>Junzejun Law Offices Changchun Office</i>	France , Olivier Fachin <i>FACHIN LAW OFFICE</i>
China , Shu Li <i>Junzejun Law Offices Changchun Office</i>	Hong Kong , Yang Liu <i>Hill Dickinson Hong Kong</i>
China , Wei Lu <i>Reiz Law Firm</i>	India , Ravi Kant Garg <i>RKV & Associates</i>
China , Xi Lu <i>Kingbird Law Firm</i>	India , Ritika Gambhir Kohli <i>DSNR Legal Advocates and Solicitor</i>
China , Fanqin Meng <i>Global Law Office</i>	Japan , Yuka Minoda <i>Oh-Ebashi LPC & Partners</i>
China , Linda Qiao <i>Rajah & Tann Singapore LLP Shanghai Representative Office</i>	Japan , Toshiyuki Sawai <i>Oh-Ebashi LPC and Partners</i>
China , Liujin Sun <i>Winfull law firm</i>	Japan , Chié Nakahara <i>Nishimura & Asahi</i>
China , Zoe Wang <i>Yingke (Shanghai) Law Firm</i>	Korea , Jeonghye Sophie Ahn <i>Yulchon LLC</i>
China , Xiaobo Wang <i>Duan & Duan Law Firm</i>	Mexico , Juan Carlos Hernandez <i>Basham, Ringe y Correa, S.C.</i>

Mexico , Vidaur Mora <i>Rivadeneira, Treviño y de Campo S.C.</i>	Switzerland , Nathan Kaiser <i>SIX Digital Exchange Ltd.</i>
Malaysia , Pei San Ooi <i>Kuek, Ong & Associates</i>	Switzerland , Sabine Katrin Neuhaus <i>Kellerhals Carrard</i>
Netherlands , Tom de Wit <i>Louwers IP Technology Advocaten</i>	Switzerland , Marius Stucki <i>Altenburger Ltd legal+tax</i>
New Zealand , Pip England <i>Chapman Tripp</i>	Thailand , Julian Male <i>Synercorp International</i>
Philippines , Marie Antonette de Guzman <i>Cummins, Inc.</i>	United Kingdom , Samuel Choi <i>Tesco Plc</i>
Philippines , Jennifer De los Santos-Beloso <i>Cummins, Inc.</i>	United States , Joe Jones <i>Law Office of D. J. Jones PLLC</i>

Members' Notes

Priti Suri, India



In June 2021, Priti Suri, Chair of IPBA's Publications Committee, was awarded 'Managing Partner of the Year' by IDEX Legal Awards, one of the most credible and respected awards in the legal fraternity in India. She is founder and managing partner of PSA, a business law firm in New Delhi and Chennai, India. With 35 years' experience over three continents, Priti advises domestic and international clients on the full range of corporate, commercial, cross-border transactions and M&As while working closely with the boards and senior management of the firm's clients.



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