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NEWS & LEGAL UPDATE



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The President's Message

Huen Wong
President



Dear Colleagues,

As I sit down to write this message in a rare moment of calm – not before a storm, I assure you – I reflect on the past few months since my last message to you.

Since beginning my term in May, I've travelled extensively to represent the IPBA at numerous associations' events: POLA (Presidents of Law Associations in Asia) in Goa, India; the IBA Annual Conference in Vienna, Austria; the UIA Annual Congress in Valencia, Spain; the AIJA Annual Congress in London, UK; and when I finally settled back home in Hong Kong I presented an award at the IFLR Women in Asia Business Law Awards.

The POLA Conference in September brought together the presidents of legal associations from around Asia to discuss matters of importance to all of us involved in the legal profession. Many of the presentations placed an emphasis on the theme 'Business, Human Rights and the Rule of Law', a topic which is so important to all legal practitioners around the world. The event was a huge success. At the UIA Annual Congress' Board of Directors Meeting, I was given the opportunity to speak about the IPBA. At the AIJA Annual Congress in London, from 1-5 September, I signed a two-year extension to our MoU that was first signed at the AIJA Annual Congress in Amsterdam in 2011, with the first extension signed at the IPBA Annual Meeting and Conference in Seoul in 2013. The two associations have many similarities, in particular the spirit of collegiality and camaraderie among members. In addition to a leadership presence at the respective conferences, we also proactively support each others' events and are considering collaboration on a joint event.

The IPBA also has MoUs with Lawasia, signed at the

IPBA Annual Conference in Vancouver, 2014; and the Korean Bar Association, signed in Tokyo in October last year. The IPBA considers collaboration with other like-minded organisations, to provide mutual benefits to our members. We don't find that a large number of MoUs that sit in a drawer with no action taken afterwards is beneficial to anyone. Efforts are made on both sides to nurture the relationship, with frequent communication and cooperation to support each others' events. For example, the 1st IPBA East Asia Regional Forum held in Seoul had the full support of the Korean Bar Association, with the President giving opening remarks at the event. We will continue these relationships and consider others as they are determined to be in line with the philosophy of the IPBA.

We have just completed our Mid-Year Council Meeting in Dubai. This was a historic occasion, as it was the very first time that the IPBA held an event in the Middle East. Many thanks go to the host committee comprising the IPBA Regional Coordinator for the Middle East, Richard Briggs of Hadeef & Partners; Alec Emmerson of Clyde & Co.; Ali Al Hashimi of Global Advocates; and Mohammad Al Suwaidi of Al Suwaidi & Co., for the use of their offices and their support of the meetings and the Regional Conference.

The Regional Conference held in conjunction with the Mid-Year Council Meeting brought in close to 100 delegates from all over the world. Organised by the host committee with the great support of leading members of the IPBA's Dispute Resolution & Arbitration Committee, delegates enjoyed cocktails the night before and attended the all-day conference entitled 'Arbitration at the Crossroads: Middle East, Africa, and Asia'. Read more about it on pages 8-11 in this issue of the *IPBA Journal*.

The IPBA leadership convenes twice a year. All organisations have different nomenclature for its leaders, with varying roles and responsibilities. For the IPBA, these leaders are the Nominating Committee, Officers, Membership Leaders, and Committee Chairs and Co-Chairs.

The Nominating Committee (the IPBA President from two years past, the Immediate Past President, the current President and the Secretary-General) considers candidates for future leadership positions in the IPBA, making their decisions by late summer for ratification by the Council at the Mid-Year Council Meeting. The general members vote for those nominees at the Annual General Meeting (AGM) held on the last day of the subsequent IPBA Annual Conference. All IPBA members are notified of the nominations 90 days prior to the AGM, and are given a chance to make new nominations 60 days prior to the AGM, per the IPBA Constitution. The nominations have never been contested, so we take this to mean that the members are satisfied with the selections made by the Nominating Committee. Please watch for the Notice of AGM to be sent to you by e-mail and post early in 2016.

The Officers (President, President-Elect, Vice President, Secretary-General and Deputy, Program Coordinator and Deputy, Membership Committee Chair and Vice-Chair, Publications Committee Chair and Vice-Chair, Committee Coordinator and Deputy) meet separately prior to the rest of the Council in order to go over IPBA finances and use of funds; policies such as relationships with other associations; IPBA practices; membership issues such as numbers in each jurisdiction, membership categories, and improving member benefits; Annual Conference planning; publications such as the *IPBA Journal*; committee leadership and activities; and our online presence via the IPBA web site and social media.

Membership Leaders include Jurisdictional Council Members ('JCMs'), At-Large Council Members and Regional Coordinators; they meet to go over membership issues in their own jurisdictions and to discuss ways to improve benefits for all members. JCMs are responsible for IPBA membership in jurisdictions with 25 or more members; the IPBA has 20 JCMs. The new IPBA

Constitution specifies that a 'jurisdiction' is one with an autonomous legal or economic system, which gives us more flexibility in determining which areas are eligible for IPBA leadership. The six At-Large Council Members support the JCMs in large jurisdictions such as India and Japan or are in charge of membership in a wider region. The Regional Coordinators – we currently have five – are nominated by the IPBA President and are also in charge of membership in an area that has the potential to increase IPBA membership.

Committee Chairs and Co-Chairs are responsible to lead the activities of their committees, focusing on sessions at the Annual Conference and local and regional conferences. They are supported by the Vice-Chairs, who are not Council members but still play an important role in the committee.

All IPBA members can join up to three committees on which to be active. If you would like to participate in committee activities, feel free to contact the committee leadership as shown on the IPBA web site, or contact the IPBA Secretariat for the information you need. Being active on your chosen committees is a good way to increase your profile and potentially be considered for a leadership position in the IPBA.

It is easy to get caught up in the rhetoric of a group to which one belongs without thinking about the meaning behind the words, but I can say unequivocally that all of the IPBA leaders truly believe in the benefit of being a member of the Association and adhere to the values of the IPBA. We demonstrate that commitment not only through our activities, but through our time and financial expenditures. My term as President will end at the Annual General Meeting in Kuala Lumpur on 16 April next year, so I have several more months in which to work in an official capacity. I will still be active as a member of the Nominating Committee for two years after that and for many years to come.

Huen Wong
President



The Secretary-General's Message

Miyuki Ishiguro
Secretary-General



Dear IPBA Members,

Holiday greetings to all of you!

It is natural at this time of year for us to take a look back over the past 12 months, reflecting on our accomplishments as well as considering what we can do to improve. This process is important for the IPBA, too, as it is for any association that wishes to thrive and grow.

One major task accomplished in 2015 by the IPBA was incorporation. As reported before, this has been discussed off and on since the IPBA was established, but the IPBA Council members chose to keep the status unincorporated for several reasons. In recent years, an increasing number of Council members expressed concerns about the difficulty they had convincing their firms to agree to have them commit their time and possibly the firm's financial resources to an association that was not a registered entity, and noted that this could be a deterrent for good candidates to step into council positions. After two years of focused effort, the association was incorporated in Singapore on 25 June 2015.

As Secretary-General, I am in charge of financial management for the association. I keep in constant contact with the Secretariat to oversee and approve how our funds are used, as well as monitor our income. Our main sources of revenue are membership dues and the annual conference surplus. Up until now, we've only been reporting our income and spending for the year at the Annual General Meeting held on the last day of the Annual Conference, but with the new IPBA Constitution the Secretary-General is now in charge of making an annual budget that gets approved by the Council. We also plan to present the budget to all members at the AGM.

At the Mid-Year Council Meeting in Dubai at the end of October, I presented our first budget proposal. The past

five years' income and expenditures were analysed, and from this a budget for 2016 was presented to the Council. This is a good practice for us to carry on, as it can give us a clear picture of what we need to do in order to bring the income up to a level that sustains our association in a healthy manner. This will drive our future plans and gives us new motivation to plan activities and projects for 2016.

We always keep an eye on jurisdictions that have the potential to see an increase in membership, particularly those close to being eligible for jurisdictional representation on the IPBA Council, which requires 25 members or more. I'm happy to report that Taiwan's membership reached eligibility earlier this year, and the members elected a JCM at the Annual Meeting and Conference in Hong Kong: Edgar Chen. Edgar has been a long-time member of the IPBA and was active on the Technology and Communications Committee, becoming Vice-Chair and then Chair from 2008 through 2013. There are now over 30 members in Taiwan.

In addition, we have had renewed interest from an IPBA member in Vietnam to lead the drive to get more members in that jurisdiction so that they can elect a JCM. This kind of enthusiasm is what helps keep the IPBA alive, healthy, and thriving!

We have also received interest from other potential jurisdictions – the Constitutional definition has been made more flexible to mean “ . . . one with an autonomous and distinctive legal system, or such other economic grouping as Council may decide” – to increase the number of members in order to have jurisdictional representation.

It's now membership renewal season, and if your membership expired on 31 December 2015 you will

receive a paper invoice reminding you to pay your dues for 2016. Several e-mail reminders will be sent as well. Please contact the Secretariat if you have any questions about your membership.

The Secretary-General's position is one of great responsibility and I strive to do what is best for the association, as do all Officers and Council members. The budget initiative will help us to develop plans for the year ahead and gauge how best to improve benefits for our members. We are already starting to see more activities on a local and regional level, such as the three events held last September in Seoul (IPBA 1st East Asia Regional Forum), Hong Kong (IPBA-CIC Construction Conference 2015) and Kuala Lumpur (IPBA ASIA-PAC

Arbitration Day). These programs were organised fully by our members and we anticipate that they will be held annually to become benchmark events in the region. Our Association depends on all of you in order to flourish. If you would like to develop a program for your jurisdiction or region, please don't hesitate to contact any IPBA leader or the IPBA Secretariat.

I hope that you had a very successful 2015 and that the new year brings you even more success, health, peace, and happiness.

Miyuki Ishiguro
Secretary-General

IPBA Members by Jurisdiction (as of November 30, 2015)

Jurisdiction	Number of members	Jurisdiction	Number of members	Jurisdiction	Number of members
Argentina	7	India	83	Peru	2
Australia	39	Indonesia	46	Philippines	63
Austria	4	Israel	2	Poland	1
Bangladesh	4	Italy	12	Portugal	1
Belgium	4	Japan	280	Qatar	1
Bolivia	1	Kazakhstan	1	Russia	9
Brazil	8	Kenya	1	Singapore	89
Brunei	1	Korea	63	Spain	5
Cambodia	4	Laos	2	Sri Lanka	20
Canada	66	Lebanon	1	Sweden	4
Chile	9	Luxembourg	6	Switzerland	46
China	65	Malaysia	74	Syria	1
Colombia	3	Mauritius	2	Taiwan	33
Costa Rica	1	Mexico	7	Thailand	23
Denmark	5	Myanmar	6	Turkey	2
Ecuador	1	Nepal	1	United Arab Emirates	9
Ethiopia	1	Netherlands	4	United Kingdom	55
Finland	1	New Zealand	26	Uruguay	1
France	23	Nigeria	1	United States	112
Germany	39	Pakistan	36	Vietnam	23
Hong Kong	140	Panama	1	Total	1581

IPBA Mid-Year Council Meeting and Regional Conference in Dubai 23-26 October 2015

At first glance, the Middle East seems an unlikely place to hold an event of the Inter-Pacific Bar Association. Although the geographical distance between the Middle East and the Asia-Pacific Region is great, the two regions have been closely linked for centuries by trade over both land and maritime routes, by old and new silk roads.

Past IPBA President Lalit Bhasin recognised the importance of the Middle East to the IPBA, establishing the position of 'IPBA Regional Coordinator for the Middle East' and appointing Richard Briggs of Hadeef & Partners, Dubai, in 2013. Just two short years later, the IPBA held this historical first event in the Middle East.



Host Committee Co-Chair Alec Emmerson, with Keynote Speaker Talmiz Ahmed.



The Regional Conference attracted close to 100 delegates, a great turnout for IPBA's first event in the Middle East.



Eckart Brödermann, Vice-Chair of the Dispute Resolution & Arbitration Committee, and Francis Xavier, JCM for Singapore.



Badaruddin Vellani, JCM for Pakistan; Sumeet Kachwaha, Program Coordinator; and Kirindeep Singh, Chair of the International Construction Projects Committee.



Corey Norton, Vice-Chair of the International Trade Committee, and Robert Rhoda, Moderator of the conference's third panel.



The Regional Conference had four sessions focusing on arbitration.

The Dubai host committee included Co-Chairs Richard Briggs of Hadeef & Partners and long-time IPBA member Alec Emmerson of Clyde & Co; Ali Al Hashimi of Global Advocates; and Mohammad Al Suwaidi of Al Suwaidi & Co. The IPBA thanks Hadeef & Partners and Clyde & Co for the use of their offices for meetings and to all supporting firms and members for their hard work in preparing for the weekend, as well as their hospitality to all delegates.

The Mid-Year Council Meeting began on a Friday, with the Nominating Committee convening to discuss future IPBA leadership. The candidates whose terms begin from next year have already been decided, but the committee is always looking ahead to the future for candidates to be nominated in the following years. This meeting was followed by a reception and dinner at the residence of Richard Briggs, who generously opened his home to council members and host committee members.

The next day was fully occupied by meetings of the Officers at Hadeef & Partners in the morning, and by the membership leaders and Committee Chairs at Hadeef and Clyde & Co in the afternoon. Following the meetings, the Council members piled into SUVs to take the requisite-when-in-Dubai ride into the desert to enjoy exotic entertainment, plentiful food and drink, and great conversation.



The Council members took an evening excursion to a desert camp for good food, drinks, entertainment, and conversation.



The entire Council met together on Sunday, holding productive discussions regarding the activities of the association since the last Council Meeting in Hong Kong in May and future plans for 2016. The logistics to complete the incorporation process are progressing, and new initiatives by council members demonstrate a fresh spirit in the IPBA that will surely mean growth and prosperity for the association in the years to come.

On Monday, a Regional Conference entitled: 'Arbitration at the Crossroads: Middle East, Asia, and Africa' was held. Thanks to the leaders and members of the IPBA Dispute Resolution



Speaker Omar Aljazy and delegate Omar Al Haloo of Hadeef & Partners.



The IPBA Council met to discuss the business of the association.

& Arbitration Committee, including Chiann Bao and Benjamin Hughes who could not attend, and Juliet Blanch, who was a speaker in the third panel. Close to 100 delegates attended the Conference held at the Jumeirah Emirates Towers Hotel. After the captivating Keynote Speech by Mr. Talmiz Ahmed, author and former Indian Ambassador to Saudi Arabia, the UAE and Oman, there were four panels with speakers and moderators from around the world, including Dubai, Paris, Singapore, Hong Kong, London, New Delhi, Seoul and more. The panels discussed various aspects of arbitration, including choosing the seat of arbitration, regionalisation and culture, managing complex and multi-party arbitration and whether arbitrators should or should not also be counsel. The purpose of the Seminar was to look at arbitration from a different perspective, and to approach it in a way which was different to other conferences. To this end, we hope we succeeded in creating a worthwhile event.



The weekend's event helped to promote the IPBA not just in Dubai but in the UAE and beyond, with several new IPBA members joining, and a promise from others to attend the IPBA Annual Meeting and Conference in Kuala Lumpur next April. We hope to follow the success of this inaugural IPBA event in the Middle East with more events in the near future.

Yong-Jae Chang, IPBA Membership Committee Chair, discusses membership issues with the JCMs, At-Large Council Members, and Regional Coordinators.

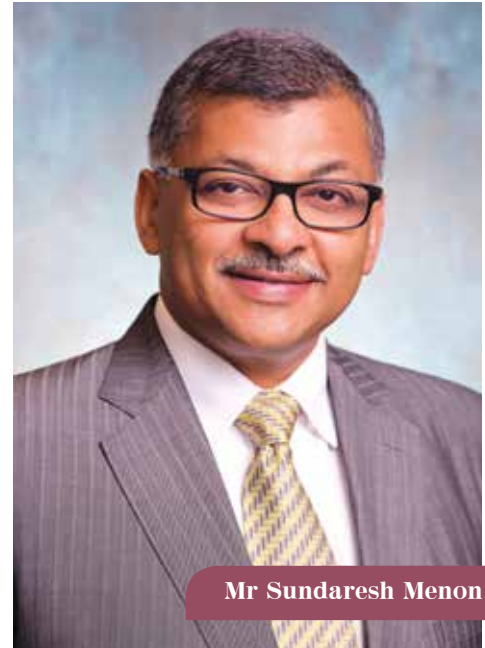
IPBA Upcoming Events

Event	Location	Date
IPBA Annual General Meeting and Conference		
26th Annual General Meeting and Conference	Kuala Lumpur, Malaysia	April 13-16, 2016
27th Annual General Meeting and Conference	Auckland, New Zealand	April 6-9, 2017
IPBA Mid-Year Council Meeting & Regional Conference		
2015 Mid-Year Council Meeting and Regional Conference	Brussels, Belgium	October 7-10, 2016
IPBA-supported Events		
Duxes's "Global Anti-Corruption Compliance Asia-Pacific Summit 2015"	Hong Kong	December 9-11, 2015
Kluwer Law International's "3rd Annual International Arbitration Summit"	Indonesia	December 10, 2015
InnoXcell's "APAC Symposium Australia Series"	Sydney, Australia	March 3, 2016
IFLR Asia M&A Forum	Hong Kong	March 2-3, 2016
IPBA Local and Regional Events: KL 2016 Promotional Tour		
IPBA Local and Regional Events: KL 2016 Promotional Tour	Taipei, Taiwan	December 4, 2015
	Hong Kong	January 8, 2016
	Tokyo, Japan	January 14, 2016
	Osaka, Japan	January 15, 2016
	New Delhi, India	January 21, 2016
	Mumbai, India	January 22, 2016
	Singapore	January 25, 2016

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

Interview with the Honourable Sundaresh Menon, Chief Justice of Singapore

On 30 September 2015, the Publications Committee of the IPBA, with the assistance of Yap Wai Ming and Lok Vi Ming, was honoured with an opportunity to conduct an email interview with the Honourable Sundaresh Menon, Chief Justice of Singapore for the *IPBA Journal*. The Honourable Chief Justice, Wai Ming and Vi Ming were classmates of the 1986 graduate batch of the National University of Singapore Faculty of Law. Below is a summary of the interview.



Mr Sundaresh Menon

Sundaresh Menon graduated with first class honours from the National University of Singapore Faculty of Law in 1986 and later obtained his Master of Laws from Harvard Law School. He is the Chief Justice of Singapore and a former Attorney-General of Singapore.

1. As the Singapore International Commercial Court ('SICC') was just launched on 5 January 2015, what are the features, functions and the goals of the SICC?

I begin with some observations on the transnational economic landscape in which we find ourselves today. The exponential growth of international trade has given rise to a corresponding increase in the number of transnational commercial disputes. These disputes are also more likely to be more complex, possessing as they do the potential to be spread out across multiple jurisdictions with divergent legal

regimes and also reflecting the growing complexity of transactions. The SICC was launched against this backdrop. It is an important component of the dispute resolution toolkit in Singapore that operates alongside and complements the other options forming part of a suite of dispute resolution services that Singapore offers, including international arbitration and professional mediation. Together, these offerings will be able to meet the complex needs of the international business community and they constitute a significant step towards the development of Singapore as a regional hub for dispute resolution services.

Let me briefly highlight three key features of the SICC.

First, the SICC is a division of the High Court of Singapore. This means that a judgment of the SICC is a judgment of the High Court. And such a judgment would be underpinned by all the key attributes of our judicial and legal system. These include speed, efficiency, integrity and transparency.

Building on the solid reputation of our judiciary, the second critical feature of the SICC is the appointment of international judges as judges of the Supreme Court of Singapore. This is one of the especially innovative features of the SICC. The 12 international judges who have been appointed thus far are all, save one, retired or serving judges from other jurisdictions including England and Wales, Australia, France, Austria, Hong Kong, Japan and the United States. All of them have deep commercial experience and what the SICC has done is to bring 12 leading commercial judges from around the world, pair them with the strength and competence of the Singapore judiciary and, as a court, make itself available to answer some of the needs of the international business community.

Third, the SICC possesses a strong international dimension despite it being a fully constituted municipal court. The SICC will typically adjudicate transnational commercial disputes that may have little connection to Singapore and where either one or both parties are international parties. Aside from the international judges, some other features that enhance the international flavour of the court include flexible court procedures that follow international best practices and foreign lawyers being granted relatively liberal rights of audience. The availability of foreign counsel representation should be of significant interest to some of your members as it presents a clear opportunity for foreign lawyers to be involved in international commercial work before the SICC.

Having outlined some of the key features of the SICC, I would like to describe one particular aspiration I have for the Court. Amidst a changing landscape where the channels for cross-border trade and commerce continue to deepen and multiply, transnational commerce can be inhibited by undue diversity between national legal systems, especially in Asia. After all, law is a fundamental instrument of

transnational economic integration; in particular, a drive to promote convergence across systems will likely bring down the transaction costs incurred by parties in significant ways. I believe that international commercial courts, such as the SICC, have a potentially important role to play in such respects as the convergence of substantive commercial laws, practices and ethics. Indeed, the SICC can be instrumental in providing an avenue for the advancement of the rule of law as a normative ideal in regional, and even global, commerce.

2. How does a foreign lawyer participate in the SICC cases? Is there any special qualification or limitation for a foreign lawyer to appear before the SICC?

Registration with the SICC is the essential prerequisite for a foreign lawyer's participation in cases before the Court. Registration is relatively straightforward. Essentially, to obtain full registration, you need to be a lawyer with five years' experience in advocacy before any court or tribunal, conversant in English, and without any blemish on your professional conduct. Registration is valid for a period of one year, and is renewable. More details can be found on the SICC website (www.sicc.gov.sg) where interested foreign lawyers can easily navigate the application process.

Once registered with the SICC, foreign lawyers may appear before the court in 'offshore cases', and also where the court has decided that a question of foreign law is to be decided on the basis of submissions instead of proof.

What is an 'offshore case'? As defined in the Rules of Court, an 'offshore case' is an action which has no substantial connection with Singapore (with the exception of actions in rem under the High Court's Admiralty jurisdiction). For further elaboration on this, interested parties should refer to the Rules of Court and SICC Practice Directions which are also available on the SICC website.

I turn to the second situation. Many of your members will know that in most common law jurisdictions, and generally in proceedings before the Singapore courts, issues of foreign law are regarded as issues of fact and are therefore subject to proof. This is not necessarily the case in proceedings before the SICC.

The SICC may, on the application of a party, order that any question of foreign law be determined on the basis of oral or written submissions (or both) instead of proof. Such an order was in fact made with the consent of the parties in a case before the SICC now. Under these circumstances, foreign lawyers who are suitably qualified may make submissions on questions of foreign law on behalf of a party.

3. While we note that disputes that are referred to the SICC may come from civil law countries and that Singapore adopts the common law system, will the judicial precedents from the Singapore courts also apply to and bind the SICC?

As I mentioned above, the SICC is a division of the High Court of Singapore. It follows that in the same way that the High Court is bound by the principle of *stare decisis* in relation to judgments of the Court of Appeal – the apex court in Singapore – the SICC would similarly be bound. This position is straightforward in relation to issues of Singapore law which have been decided by the Court of Appeal; it could, however, be rather more complex where issues of foreign law are involved. For instance, there could well be a situation where there is an existing Court of Appeal decision which makes certain findings on a particular issue of foreign law. The question then is whether the SICC is bound by that pre-existing decision of the Court of Appeal insofar as the relevant issue of foreign law is concerned. Should such a situation arise, it is conceivable that a party may submit that the existing Court of Appeal decision should not be applied because, for instance, the foreign law in question has evolved since the time of the existing Court of Appeal decision.

4. The Singapore Judicial College was launched this year. What led to your decision to institutionalise judicial training in Singapore? Which are the more important judicial qualities that this College would be expected to focus on?

When I assumed office almost three years ago, among the early priorities was a desire to institutionalise and pull together the various judicial education programs that had been developed over time. I considered that the time for this had come because judges today are faced with a vastly different operating climate. The people whom we

serve are more sophisticated and knowledgeable and have higher expectations. The legal issues that come before us have become more complex and frequently involve inter-disciplinary issues and cross-border transactions. We also have seen a trend of more litigants appearing in person. Each of these issues increases the challenges that judges face each working day. Judges today must not only be legal technocrats, they need the skills of a problem solver acclimatised to cross-cultural differences. In this environment, the need for continuing training and education for judges has become an imperative. After a period of study and reflection, I was convinced that the time had come to establish the Singapore Judicial College ('SJC') to develop and manage these efforts.

The progress made by the SJC since its official launch on 5 January 2015 has been nothing short of spectacular. Judges and judicial officers have benefitted from more than 40 judicial education programmes that have been offered by the SJC, recording an overall attendance exceeding 1,000, all in a span of less than 12 months. For its international outreach, almost 200 foreign judges and officials from more than 40 countries have attended one of the various programmes run by the SJC on case management, court technology and court excellence.

The SJC will leverage and build on the many streams of judicial education that have emerged over the past decade or so. It will develop and strengthen the curricula that will enhance the judges' ability to discharge our judicial functions by focusing on specific areas. These are: (1) Bench Skills; (2) Legal Development; (3) Judicial Ethics; (4) Social Awareness; (5) Judicial Leadership; and (6) Technology and the Sciences. These areas will be covered not only in induction and continuing training for our judges but will also extend to the technical assistance and educational programmes that we offer to judicial officers from other jurisdictions. Over the past decades, the Singapore Judiciary has done important and even ground-breaking work in a number of areas including organisational governance, the use of technology and effective and expeditious case management. The SJC will enable us to share some of the lessons we have learnt in these vital areas.



In addition to this, the SJC aspires to serve as an empirical judicial research laboratory with the aim of providing a test bed for innovation in judicial studies and practices. The empirical research will allow us to test and validate (or not) the assumptions that underlie new or existing policies and practices in the courts. We can experiment with new ideas and study the findings to identify areas for refinement and implementation.

The quality of justice depends on the quality of our judges. In this connection, the SJC plays a critical role in ensuring that our judges receive relevant and robust continuing education. Whether it is in the area of nurturing judicial temperament, or staying abreast of the rapid developments in the law, or developing empathy when discharging judicial functions, the SJC aspires to play its part in strengthening our judiciary.

5. **You are the first Singapore-born, first Singapore-educated and first non-Chinese post-independence Chief Justice of Singapore, a fact which is testament to Singapore's well-known policy of merit based appointments to key public positions regardless**

of race, language or religion. Chief Justice, how do you see the Judiciary performing a role in the maintenance of racial and religious harmony in multi-racial and multi-religious Singapore?

Meritocracy is indeed an integral part of Singapore's success and development and as a beneficiary of this commitment, I am not only deeply grateful for the opportunities I have had, I am also heavily invested in the ideals of meritocracy, the rule of law and racial and religious harmony. I believe it is important for Singaporeans to remain rooted to these notions which are embodied in our Constitution and encapsulated in the judicial oath of office.

Our rule of law assures that no one is above the law; that every Singaporean will have equality of opportunity and be able to pursue the ideals of our national pledge, relying on one's efforts and abilities rather than one's race, language or religion. The Judiciary, as the custodian of the rule of law, has to uphold this sacred trust. In Singapore's multi-racial and multi-religious society, maintaining racial and religious harmony is an especially important concern.

Our Judiciary has received international acclaim and affirmation for its efficiency, transparency and integrity. I believe that this continuing commitment to uphold the rule of law, to provide effective access to justice for all Singaporeans regardless of race, language, religion or socio-economic status will help to maintain racial and religious harmony in Singapore.

6. What are your thoughts about the future development of Singapore law especially in relation to Singapore's aspiration to lead in the convergence and harmonisation of commercial laws in Asia? How could this be achieved especially in Asia where there are more civil law countries than common law ones? Would there be a need for a convention between countries to achieve this and leave it to their legislative assemblies to ratify such convention if it materialises? How would you see the Singapore Judiciary and the SICC playing a role here? Do you think that IPBA can play a role here as well?

As I see it, this final block of questions essentially comprises three distinct strands coming under the central umbrella theme that is the convergence of commercial laws in Asia: First, how can the challenges facing such a process be overcome? Second, and in a related vein, how can various stakeholders contribute in this pursuit? And, third, what consequences might it entail for Singapore's own laws?

I turn to the first of these three 'Cs': challenges. It is broadly accurate to speak of Asia as being divided between the common and civil law systems but, if one looks at the region's legal map more closely, it appears more kaleidoscopic than neatly dichotomous because of the wide range of colonial influences that have shaped Southeast Asia's laws. High levels of heterogeneity thus make legal convergence in Asia a daunting task but also an undeniably necessary and purposeful one in an age of globalisation. Today, there is unparalleled intensity of cross-border trade and investment but it cannot be gainsaid that what would propel such economic activity even further forward is a supportive, seamless, transnational legal framework. After all, a newly borderless world starts off as an orderless one because of a lack of common legal standards; and the attendant uncertainty, as we know, can be a huge hindrance to trade.

So, how do we go about achieving convergence? In particular, do we need a multilateral convention? At one level, that would seem to be most convenient but I suggest that it would be unwise to await this as I see it, if anything, more as a long-term ambition. At present, it is difficult even to conceive of a multilateral convention because – unlike the European Union ('EU') which has a developed system of supranational governmental institutions and fashioned a cohesive body of EU commercial law since the Treaty of

Rome – we have neither such institutional frameworks in place nor any syncretic concept of 'Asian' or even 'Southeast Asian' law.

Top-down convergence is therefore unlikely to be viable for Asia in the short term, but what we can do is to channel the convergence of our laws incrementally and interstitially from the bottom up. This leads me to the second 'C': contribution. In particular, how can the courts in Singapore and the region and the IPBA contribute to the convergence of commercial laws in Asia?



(1) SICC – The SICC looks to foster convergence at two levels, the first of which touches on the dispute resolution process. Transnational litigation in municipal courts is often an unattractive proposition compared to international arbitration because of our varied local court procedures; but this dynamic can be altered if, inspired by the SICC, other courts in the region similarly created specialised commercial courts based on largely uniform procedures. With a broad network of such courts in place, confidence in the transnational litigation system as a whole can be built up and this could lead to the harmonisation of substantive commercial laws at the second, deeper level. With a steady stream of decisions emanating from such a network of specialist courts, there is the potential, over time, for a freestanding body of transnational commercial jurisprudence to coalesce and guide the conduct of business and trade. We are some way away from this but, in taking the first steps towards it, the SICC hopes to mark a trail that others might also find attractive.

(2) IPBA – The IPBA can undoubtedly play an invaluable role in harmonising commercial laws in Asia. With over 1,400 members across 65 jurisdictions, the IPBA has an extensive corps of practitioners who can bring to bear their localised specialities and sensitivities in facilitating convergence through the promulgation of 'soft law' norms and principles. For an excellent example of what the IPBA can aspire to achieve, one need only look at the International Bar Association's highly acclaimed Rules on the Taking of Evidence in International Arbitration which successfully harmonises civil and common law approaches to taking evidence in international arbitration. Indeed, the SICC's own document disclosure rules are modelled on precisely this privately-initiated instrument. Further, the IPBA can also look to collaborate with business communities and legal institutes to devise and draft industry-specific standard form contracts responsive to Asian interests. Ultimately, with a critical mass of members ideally situated across Asia and the world, and with no shortage of initiatives it can float or promote, the IPBA is well positioned to be a key player in the quest for convergence.

I come to the final 'C' in this series of questions: consequences. How will the pursuit of convergence affect the future development of Singapore's laws?

I believe that in the realm of basic commercial laws, a parochial outlook is no longer tenable in today's globalised world; to operate solely within one's jurisdictional silo is to be trapped in a different century. And this need to embrace a global outlook is even more imperative for Singapore given our active participation in the convergence discourse. For Singapore's courts, this means that they will increasingly have to be attuned to the decisions rendered in other jurisdictions to minimise divergence from the norms of international business where possible; and where a harmonised outcome cannot be reached, clear reasons should be given. Such multijurisdictional perspectives will no doubt be sharpened by the work of the Asian Business Law Institute ('ABLI') to be launched in January 2016. The ABLI hopes to provide the necessary thought leadership required for the convergence of Asian business laws and, in this endeavour, one can expect that Singapore's laws will increasingly be compared and contrasted with others around the region. As points of intersection and departure are teased out in the process, one hopes that meaningful convergence can eventually be proposed. Ultimately, this should benefit commercial judges and lawyers alike who increasingly find themselves operating on a transnational plane.



Yap Wai Ming

Yap Wai Ming is the immediate past Secretary-General of the IPBA and a partner at Morgan Lewis Stamford LLC Singapore.



Lok Vi Ming

Lok Vi Ming is a Past IPBA JCM for Singapore and senior counsel of Rodyk & Davidson Singapore.

Rising Waters

This article presents a discussion of the future of lawyers in a digital, divergent and differentiated legal environment that took place at the Australasian Legal Practice Managers Association ('ALPMA') Summit 2015 ('the Summit'). Drawing upon the three themes of what is 'digital', 'divergent' and 'differentiated', the author explores the potential challenges faced by firms and future lawyers.



Jordan Furlong¹ of Edge International spoke at the Summit about the climate change of law firms. Using ships as analogies and landscapes of the ocean, he time travelled 300+ Australasian lawyers, taking them from the harbour of yesterday to experiences of the rising ocean and tidal waves of today, to eventually reaching our future – the lighthouse – safely.

The notion of competing with nature is in many ways an excellent way to draw one's attention to issues faced by law firms. Having recently picked up sailing, the slings and arrows of currents and waves are hardly experienced without a sense of landing in the water. The new competition, according to Furlong, is just as expansive; it is the 'New law'. So what is it?

It is 'new law' services, expert applications, Artificial Intelligence ('AI') and everything in between, what could be called our blind spots. Have you heard of the new app that can allow you to do x, y and z? With speed-of-light trends in the legal services industry, it is likely that law firms are feeling the pressing need for their business models to evolve.² Dr George Beaton of Beaton Capital³ talked of tomorrow's firms, those that are digital, those that are divergent and those that are differentiated. So what does that mean?

Digital

Are you digital? That could be a new opening line to greeting a fellow partner or associate. We are talking LinkedIn, Twitter and Facebook, right? Wrong. It is looking beyond that, thinking of your own business model, plus strategy and how to win work, do work and manage it all. As Mark Harris would say, 'Part of the challenge of innovating and creating a new category is that there is no vocabulary yet to identify that category.'⁴ Axion⁵ is innovative and there is no doubt about it. Simply look at their website and one may mistake it for a fashion boutique or an evolved Facebook; however, that is precisely the kind of image they are trying to project. Lawyers whom you would consider as friends as opposed to those that are inaccessible, outdated, 'male, pale and stale'.⁶

That is when the rise of new law business models seems to be one step ahead. Riverview Law, Keystone Law, Legalzoom, JUDICATA and Lex Machina, will be discussed as case studies below.

Divergent

How are law firms different or how do they develop their differences? As lawyers have been sitting and pondering this question, Manhattan based IBM Watson Group is exploring a world of applications beyond the law, employing 2,000 employees with a \$1 billion research funding.⁷ They are



exploring the space of blind spots. According to Robert Weber, 'Watson won't replace the judgment of a senior law firm partner, but it could eventually handle tasks of senior associates. It would have encyclopedic knowledge and an inexhaustible work ethic.'⁸ Data analytics is already seeping into legal practices⁹ and many firms including Seyfarth Shaw are developing data analytic techniques to help advise clients.¹⁰

Case study 1 – Riverview

Riverview has a streamline informative website. They make an effort to direct a client's view to their DNA and culture explaining why they are different. How many firms make an effort to do that? They lay all their cards on the table and offer all that you can imagine: legal advisory outsourcing, in-house solutions, solutions prototyping consultancy, legal counsel, litigation and legal projects.¹¹ Interestingly, they are linked with a legal team including barristers and also operate virtually.

Case study 2 – Keystone Law

Set against a backdrop of birds flying in the blue skies, Keystone Law attempts to be the all-rounder providing in-house legal, law firm support and in fields as far ranging as marine and shipping. Keystone's punch line is 'Fresh thinking from our lawyers'¹² and whilst the scope of their work is broad, they appear to aspire to being the one stop shop.

Case study 3 – Legalzoom

'We've helped over 2 million people get the help they need'.¹³ Does that sound familiar? Sounds like Jack Ma's reference to 'helping people'.¹⁴ But it works. From starting your business to easily scrolling down to figure out which forms of company formation to consider, the choices are endless. Would you like a Limited Liability Company ('LC'),¹⁵ S-Corp, C-Corp, Limited Partnership ('LP') and Limited Liability Partnership ('LLP')?¹⁶ What's more is that you have the option of comparing the different forms of company formation online. Now that is innovation.

How about trademark registration? For £169 + US government filing fee,¹⁷ the client is provided with three things:

- (1) a US Federal direct-hit search of the federal database;
- (2) the client's application is reviewed for completeness and filed with the US Patent and Trademark Office ('USPTO'); and
- (3) the Client has 30 days to speak with a lawyer to help guide them through the process.

Why wouldn't anyone use Legalzoom? Whilst Legalzoom appears to be limited to setting up in the US at this point, there is nothing stopping this model going global. Williams of Ignition Consulting Group gave the audience at the ALPMA Summit 2015¹⁸ food for thought when he suggested that all the lawyers and non-lawyers in the room should give it try. Try Legalzoom and see how it compares, to your work and to that of others. It is tempting, testing and possibly unforgiving. Lawyers may find themselves experiencing a Catch-22 situation where, upon realising how wonderful a service they have, they may feel compelled to change, yet are equally unable to forgo their ivory tower upon which they have spent years, if not generations, building up. That is the reality of the modern-day lawyer.

Case study 4 – Judicata

Heard of crowd funding? Now imagine legal technology providing research and analytics tools to turn unstructured case law into structured data.¹⁹ Judicata is doing exactly that. Judicata aims to achieve three things:

- (1) provide precise legal research;
- (2) map the legal genome; and
- (3) empower lawyering.²⁰

Whilst it would be a great tool for lawyers, it is not limited to lawyers, so many clients could also actively and easily

search for case law, trends and hypothetically grasp precedents easier and faster than before. Is that a good thing? Let's rephrase: is that a good thing for lawyers? Whilst it may neither be good or bad, it certainly introduces the idea that clients could increasingly become tech and/or legal savvy to the point that knowing the law will no longer be enough and lawyers may find it increasingly hard to add value.

Case study 5 – Lex Machina

'The Winning Edge for Law Firms: Land New Clients. Win lawsuits. Close Transactions,' Lex Machina provides legal analytics for law firms, companies, consultants and specifically to lawyers, economists, merchant bankers, brokers, advisors technologists and think tanks.²¹ Describing themselves as a paradigm shift for lawyers, Lex Machina attempts to narrow the space in the gaps of knowledge for lawyers and would probably be very useful in the field of litigation, investigations and searches. As John Johnson of Fisher & Richardson states, 'Lex Machina's Legal Analytics allows me to uncover insights about judges, parties, and opposing counsel unavailable in traditional research tools. This enables me to get additional insight into my cases quickly and efficiently. It adds significant value for my clients.'²² This cross-disciplinary approach of analysing behavioral analytics is nothing new. Google and supermarkets predicting customer behaviour through discussions of Big Data²³ is a hot topic and was particularly so at the IBA conference 2013 in Boston, particularly in relation to privacy issues.²⁴

Ben Waber seems to suggest that through People Analytics,²⁵ we are likely to use knowledge in new and creative ways. This includes how firms organise people and radically change the way we work.

Differentiated

Williams advocates, 'Expand your Firm by Narrowing your Focus.'²⁶ Is he suggesting adopting a slash-and-burn technique, downsizing and getting rid of all your departments except for one? Yes and No.

He is suggesting a health check for law firms, looking at their strengths, refining and realigning your business model and getting paid for the value you create instead of the hours you work.²⁷ One cannot help but think this could be quite a solution for partners driven by growth, yet stuck in the old ways of doing things.

Williams invites us all to have a more reflective look at our firm's existence, by asking four questions:


- (1) What services do we provide that could be considered best-in-class?
- (2) Who do we best understand in terms of industries or categories?
- (3) How are we differentiated by our approaches and methodologies?
- (4) Why are we in business in the first place; what's our purpose as a firm?

This echoes David Smith's view of adopting technology and challenging your thinking.²⁸

Professor Gillian Trigg, heading up the Australian Human Rights Commission, spoke of the global legal profession and human rights, suggesting empowerment of ageism,²⁹ female leadership, human rights and businesses³⁰ as the latest issues facing businesses.

The 'BigLaw firms', with reference to large successful firms

in Australia according to Beaton, share a similar trend of what is the most important to clients in their assessment of a law firm's overall client service performance, namely how they think and feel about their overall client experience of a firm. Phrases like 'technical expertise', 'understanding the client's business and industry' and 'ease



Paid for the
value you create
instead of the
hours you work.

of doing business' are factors, which drive a client in choosing a particular firm. Second in place is 'cost consciousness'.³¹

It would appear that leadership strategies such as developing organisational intrapreneurship would develop buy-in not just from the customers, but also employees, associates, partners and senior management. Anthony Wright suggests that the new paradigm for legal practice success is 'The Intrapreneur'.³²

Pinchot³³ defined 'intrapreneurs' as 'dreamers who do. Those who take hands-on responsibility for creating innovation of any kind, within a business.' Koch goes as far as to say that they are the business world's new secret weapon.³⁴ So instead of losing associates and talent, think Bain & Facebook; they have employees who love their work place.³⁵ Other firms that have facilitated intrapreneurship include Google, Sony and 3M. How do they do it? Google is famous for allowing their employees to devote one day a week to their own projects. Whilst there is debate as to the value of such 20-percent time,³⁶ the art of simplicity and clarity comes from people like Steve Jobs, 'The main thing I stressed [is] focus'.³⁷

A discussion on the future of lawyers would not be complete without reference to Susskind.³⁸ By predicting the fundamental and irreversible changes in the world of law, we may choose to hold our breath as to what may come or dive deep and explore the unknown first.

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New Opportunities for Investors to the Russian Far East

The Russian Far East has significant importance for the country and the attraction of investments and improvement of the investment climate in the region is the top priority of the Russian government. Investors have been provided with new opportunities such as the possibility to use the advantages of the Advanced Special Economic Zones and Free Port of Vladivostok as well as to receive the measures of state support of infrastructure projects.



The Importance and Potential of the Russian Far East

The Russian Far East comprises the extreme eastern parts of Russia, between Lake Baikal in eastern Siberia and the Pacific Ocean. This region of 6,169,300 square kilometres occupies a significant part of Russian territory (36 percent). It is worth mentioning that according to the 2010 Census, the Far Eastern Federal District had a population of 6,293,129 (5 percent of the Russian population). Given the vast territory of the Russian Far East, 6.3 million people translates to slightly less than one person per square kilometre, making the Russian Far East one of the most sparsely populated areas in the world.

The Far East, without a doubt, has geopolitical and geostrategic importance for Russia. The reasons for this are the following:

- A strong resource base, in particular the territory has significant resources of diamonds, gold, natural gas and oil, timber, fresh water, seafood and other resources.
- A favourable economic and geographical location in Russia and the Asia-Pacific region. The Russian Far East has a

border with the countries with the fastest growing economies: China, Japan, and South Korea. The region has access to two oceans, the Pacific and Arctic Oceans with the Northern Sea Route being a shorter route to connect Northeast Asia with Western Europe, compared to the existing preeminent route that goes through the Suez Canal and the route around the Cape of Good Hope. The location of the Russian Far East makes it one of the most important sea gates of the country.

Creation of Advanced Special Economic Zones and Free Port of Vladivostok

Since the Far Eastern Federal District has significant transport and economical potential, improving the investment climate and creation of a powerful legal framework for investors in the Russian Far East are at the top of the priorities of the Government of the Russian Federation and the Ministry for the Development of the Russian Far East. One of the measures for achieving this goal is the creation of the Advanced Special Economic Zones ('ASEZ') and Free Port of Vladivostok ('FPV').

Generally, ASEZ and the FPV are the territories with special legal status. The government grants ASEZ and FPV investors tax and customs benefits to develop priority Russian industry sectors and regions.

The law regulating ASEZ was adapted in 2014 and came into force starting from the end of March 2015. As of today ASEZ may be established in the territory of the Far Eastern Federal District of Russia only and after 31 March 2018 it will be possible to establish ASEZ in other territories of the Russian Federation.

As of November 2015, three ASEZ are being actively developed, which are:

Komsomolsk ASEZ: within the boundaries of Komsomolsk-on-Amur and Amursk, four main residents (production of aircraft parts and wood processing), private investment amounting to 7.9 billion rubles, required budget financing of 1.2 billion, 770 jobs to be created.

Nadezhdinskaya ASEZ: three main residents in Nadezhdinsky district (transport and logistics centre, confectionery factory, food industry facilities for the production of semi-finished products), private investment amounting to 6.7 billion rubles, required budget financing of 3.9 billion, 1,630 jobs to be created.

Khabarovsk ASEZ: within the boundaries of Khabarovsk, nine main residents (bitumen plant, agricultural greenhouse complex, warehouse transport and logistics complex and airport), private investment amounting to 15.4 billion rubles, required budget financing of 2.4 billion, 2,574 jobs to be created.

Beside these, in accordance with the Russian Government Decree, six additional ASEZ were approved for development. Such ASEZ are the Mikhaylovsky ASEZ specialising in animal breeding and crop production; the Priamursky ASEZ specialising in the manufacturing industry and logistics; the Belogorsk ASEZ established for development of the agricultural sector; the Kamchatka ASEZ with tourism and the manufacturing industry as the areas for development; the Beringovskiy ASEZ specialising in mining operations; and the Kangalassy ASEZ being an industrial park.

ASEZ are created for 70 years and this term may be extended upon the Decree of the Government of Russia.

ASEZ residents can be a legal entity or an individual entrepreneur not participating in regional investment projects and not having branches and representative offices outside of the relevant ASEZ. The minimum amount of investments for an investor is 500,000 rubles (approximately US\$7,800). ASEZ provide residents with a number of advantages aiming to increase investment returns and reduce risks, in particular:

- (1) full exemption from the corporate property tax and VAT (for the first 10 years);
- (2) a maximum federal and regional profits tax rate which may be 5 percent in the first five years, and for the next five years the federal profits tax rate will be 2 percent and the regional profits tax rate will be at least 10 percent;
- (3) reduced rates of mineral extraction tax;
- (4) accelerated depreciation;
- (5) the rate of social security contributions is reduced to 7.6 percent (instead of approximately 30 percent) for the 10 years for those companies which become residents within three years from the establishment of the ASEZ.

Also residents of ASEZ are entitled to receive the following customs and social opportunities: preferential land use, including preferential rental rates (0.5 – coefficient of base lease rate for buildings, 0.4 – coefficient of base

lease rate for lands, 0.001 – coefficient of rate for lease of buildings, lands and other objects of infrastructure under lease agreement with the managing company), subsequent preferential repurchase of the land; a regime of a free customs zone; a one-stop approach for investors which means that all state and municipal services for investors including transport services, utility services, communication services are to be rendered through the managing company (multiservice centre), no audit without consent of the Ministry for the Development of the Russian Far East can be performed; a shortened timeline for obtaining approvals and authorisations, in particular it is proposed that the terms of property registration, obtaining electricity, dealing with construction permits in ASEZ will take significantly less time in comparison with the territories outside ASEZ.

Moreover, employers, that is, ASEZ residents, also have some additional incentives. These include the absence of the obligation to obtain work permits for foreign employees, no requirements as to the salary amount of highly qualified specialists, and some others.

The other opportunity for foreign investors is the Free Port of Vladivostok that continues the ongoing development process of Russian Far East. The FPV is an area of the Primorskiy region and includes 15 municipal entities in the south of Primorsky Krai, as well as key ports of the southern Russian Far East – from Zarubino to Nakhodka, covering an area of approximately 30,000 square kilometres.

The main goal of the FPV is to attract suppliers and investors, including those from the Asia-Pacific region and to achieve the transport potential of the Russian Far East. Among the preferences for economic progress are tax relief in respect of profits tax, corporate property tax; reduced rates of social security contributions, acceleration of licensing procedures; a simplified administrative treatment where the FPV provides residents with favourable conditions for port activities and an increasing attractiveness for entry of vessels:

- (a) free customs zones regimes which can be applied in the territories of the FPV such as sea ports and an airport with the surrounding areas, territories determined by the Supervisory Board of the FPV and territories of the residents;
- (b) an integrated one-stop border control point and 24/7 border crossing check-points;
- (c) exports and imports free of delays if an electronic

customs declaration is submitted;

- (d) the ability to store, demonstrate and sell rare items and luxury goods generally on the same basis as it can be done in Luxembourg, Singapore and Switzerland.

There are also other benefits, which may influence an investor's business, including a simplified visa procedure for those individuals who arrive in the FPV and leave the Russian territory within eight days (that is, an eight-day single-entry visitor's visa issued at the border).

Furthermore, applicable legislation allows persons with medical education obtained in foreign countries to conduct medical activities in the territory of the FPV which creates conditions for the establishment of foreign medical clinics. Additionally, the law entitles the Russian Government to stipulate licensing considerations for educational activities of entities in the territory of the FPV in order to create conditions for implementation of the best foreign educational methods and standards. This may lead to the establishment of new educational organisations, including foreign organisations, in the territory of the FPV.

An investor who is planning to start a business in ASEZ or in the FPV and to use the state-provided preferences, must obtain a special resident status beforehand (the process of obtaining the resident status includes filling in an application to local authorities and some other formal procedures). Obtaining the status of resident involves the steps described below.

First, the potential investor shall submit an application to the managing company regarding conclusion of an agreement on carrying out the activity in the territory of the ASEZ or the FPV. The managing company has 15 days to consider the application and to approve it or to provide the applicant with a reasonable refusal. Upon approval of the application, the managing company and the applicant or the subsidiary of the applicant enter into an agreement on carrying out the activity in the territory of the ASEZ or FPV. After concluding the agreement, the managing company registers the applicant in the Register of ASEZ or FPV residents respectively. Registration takes three days.

ASEZ and the FPV are managed by the JSC Corporation of the Russian Far East Development, a state-owned managing company. Shareholders' rights are exercised

by the Ministry for the Development of the Russian Far East. This managing company acts as a developer and is responsible for infrastructure functioning. Moreover, as mentioned above, the managing company exercises such functions as consideration of investors' applications, taking a decision on providing the status of resident, providing land and infrastructure to residents and rendering other state and municipal services for investors.

Other Opportunities for Investors

Investors having projects outside ASEZ are also entitled to apply for state support in the form of participation in the special program of targeted infrastructure financing. Thus, any investor whose project meets particular criteria may take participation in selection of the projects to be partially invested in by the Russian government for the purpose of building the infrastructure needed for that particular project.

At the time of drafting this article, the first selection of investment projects has been performed and the second selection has been announced.

The result of the first selection is that six projects will receive the first tranches of financing from the Russian Federation this year. The total amount of state support to the selected projects will be 13.8 billion rubles which allows investors to realise projects with costs of more than 128 billion rubles. Such projects are:

- building a coal refinery at Ingalinsky Coal Field
- building a coal terminal at the Vanino Port
- a complex investment project of a coal refinery at Urgalsky Coal Field
- an ore refinery at the Ozernovsky gold mine
- building an ore refinery at the Neryungri iron deposit
- development of gold mining in the Selemdzhinsky District

The criteria for selection of the projects to be financed by the Russian state are stipulated by the Decree of the Russian Government and include the following: added value to be created by the project; amount of the private investments to the amount of budget support; and of the taxes to budget expenses / private investments.



Development of the
Russian Far East is
one of the priorities
of the Russian
Government.

For the purpose of selection of the projects, the Ministry for the development of the Russian Far East announces the date when the procedure will be started and welcomes investors to submit their respective applications. The Ministry undertakes a preliminary consideration of the submitted applications, makes a preliminary selection and publishes the results. The selected projects shall be finally approved by a special committee.

Also, there is an opportunity to obtain funding for the project from the Far East Development Fund ('the Fund') which was created a couple of years ago but started activities only this year. The aim of the Fund is to provide financing to foreground investment projects in the areas of infrastructure and new production facilities. The size of the projects to be financed shall be 0.5 billion rubles and more. As of today, the Fund provides financing through long-term loans with an interest rate 10.5 percent which is much cheaper than receiving debt financing from banks.

Despite the fact that at the moment only three projects have been chosen, namely:

- (1) the railroad bridge connecting Russia and China across the Amur River (total investment of 10 billion rubles, including 2.5 billion financed by the Fund);
- (2) construction of roads to two gold mines (total investment of 12.4 billion rubles, including 2 billion financed by the Fund);
- (3) a garbage recycling facility (total investment of 0.9 billion rubles, including 0.3 billion financed by the Fund), until the end of 2015 the Fund proposes to select five more projects. Also 16 projects with total investments amounting to 293 billion rubles (including 24 billion worth of investments by the Fund) are under consideration.

Additional Assistance to Investors

As one of the purposes of creating the ASEZ and FPV is providing favourable conditions for conducting business in the territory of the Russian Far East, the Russian Government additionally established two state agencies with the authority to assist investors or potential investors in the Russian Far East.

The first agency is an investment agency which shall attract residents to the ASEZ and direct investors to other territories of the Russian Far East as well as provide support for exports. This agency is supposed to be a 'single

window' for those considering the possibility of investing in the Russian Far East.

The next is an HR development agency created for the purpose of determination of the main difficulties in providing the Russian Far East with human resources, performing an 'HR service' to the investment projects and investors and attraction of new residents to the Russian Far East.

Conclusion

Development of the Russian Far East is one of the priorities of the Russian Government. The Russian Federation always welcomes Russian and foreign investors and, moreover, encourages their development by offering various business opportunities. The ASEZ and FPV, with their advantages such as tax incentives and preferences, reduction of administrative barriers, free custom areas, as well as state financing of investment and infrastructure projects in the Russian Far East are, undoubtedly, attractive instruments for launching business in the Russian Federation and for being able to create unique possibilities for business development in the Far East.



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Sri Lanka Turns a New Chapter of Law Relating to Internet

This article focuses on the new developments in the law, incidents and its advantages in relation to the subject of the Internet in Sri Lanka and how they help Sri Lanka to achieve a higher rank in the IT sector among other South Asian countries.

Introduction

The 'Internet' plays a prominent role in the field of communication in the contemporary world. It contributes immensely towards the development of the knowledge, skills and attitudes of its users, which results in the socio-economic development of society. It is observed that the number of internet subscribers is increasing in myriads in almost all the countries in the world and Sri Lanka is no exception. According to the Annual Reports of the Central Bank of Sri Lanka in 2012 the quantum of internet users was identified as 6.71 percent out of the total population and by 2014 it had increased to 13.36 percent (both statistics are comprised of the usage of mobile internet connections). In other words the quantum of internet users in Sri Lanka has increased by 99.9 percent within the period of the last two years.

Considering the facts referred to above and also the remarkable development in the public services based on information and communication technology, Sri Lanka was exalted to a unique point in the United Nations E-Government Development Index ('UNEGDI') in the year 2014 – Sri Lanka occupied 115th place among 192 countries in the UNEGDI in 2012 and has managed to gain ranking to 74th place in 2014 (a ranking percentile of 38.5 percent). In implementation of its E-Government agenda, Sri Lanka, in its own evaluation is at the top out of 40 percent of countries in the world and occupies the first place among the counties in South Asia in the year 2014.

Sri Lanka's E-Government policies are geared towards access to the Internet, regardless of IT literacy levels, inclusive of all sectors of the population and supplying

services to everyone. As there has been massive growth in the numbers of internet subscribers, this has necessitated upgrading of the law on the issue of protection of subscribers of internet technology. The Sri Lankan government is taking steps to broaden the country's legal provisions with regards to the Internet so as to be on par with current international legal developments in this field and the following advantages discussed below will become available to internet subscribers in near future.




Sri Lanka Became a Contracting State on the Council of Europe Convention on Cybercrime

The Council of Europe Convention on Cybercrime (Budapest, 2001) ('the Convention') was the first binding international instrument to comprehensively address crimes committed on the Internet and other computer networks. It deals particularly with criminal copyright infringements, computer-related offences (fraud/forgery), content-related offences (child pornography), violations of network security, and a series of powers and procedures such as the search of computer networks and interceptions. As per the preamble of the Convention, its purpose is to pursue a common criminal policy aimed at the protection of society against cybercrime, especially by adopting appropriate legislation and fostering international co-operation. This Convention and its Explanatory Report was adopted by the Committee of Ministers of the Council of Europe at its 109th session on 8 November 2001. It was opened for signature in Budapest, on 23 November 2001 and it came into force on 1 July 2004.

As a result of the international recognition in law of cyber crimes in Sri Lanka, the Europe Council decided to grant it membership as a contracting state and that came into force from 1 September 2015. Sri Lanka is the first country

that received contracting state status in this Convention in South Asia.

In Sri Lanka, the offences committed in relation to computer and internet technology were laid out in the Sri Lankan Computer Crime Act, No.24 of 2007 ('the Act'). As provided in section 2(1) of the Act, it shall apply where (1) a person commits an offence under the Act while being present in Sri Lanka or outside Sri Lanka; (2) the computer, computer system or information affected or which was to be affected, by the act which constitutes an offence under the Act, was at the material time in Sri Lanka or outside Sri Lanka; (3) the facility or service, including any computer storage, or data or information processing service, used in the commission of an offence under the Act was at the material time caused in Sri Lanka or outside Sri Lanka; or (4) the loss or damage is caused within or outside Sri Lanka by the commission of an offence under the Act, to the State or to a person resident in Sri Lanka or outside Sri Lanka. In accordance with that section, at times Sri Lanka was unable to proceed with inquiries in connection with offences under the Act alone. This is because, in terms of section 2(1) of the Act, where various offences were committed in relation to the said matters outside of Sri Lanka, data or details required for those inquiries were out of Sri Lanka's legal reach. After Sri Lanka was recognised and became a contracting state of the Convention, it was empowered to proceed with such inquiries without any obstacles. Because the Convention serves as a guideline for any country that is developing comprehensive national legislation against cybercrime and as a framework for international co-operation between state parties to this Convention, it aims to address internet and computer crimes by harmonising national laws, improving investigative techniques and assisting co-operation among nations. Thus, if Sri Lanka wants to obtain any details or data from a country that is outside of Sri Lanka which is another member state of the Convention, it now has the right to obtain the same. As a contracting state to the Convention, the police and legal departments of the relevant contracting states are obliged to assist and contribute to other members applicable information for such inquiries.



Sri Lanka's
E-Government policies
are geared towards
access to the Internet.



It will pave the way
to help solve
the problem of
unemployment in
Sri Lanka.

As a consequence of Sri Lanka becoming a contracting state of the Convention, it receives certification and a reputation on an international level as a country protected from cyber crimes, which will attract leading business people in the world. It will assist development of the Sri Lankan economy and it will pave the way to help solve the problem of unemployment in Sri Lanka.

Sri Lanka Will Become a Contracting State of the United Nations Convention on the Use of Electronic Communications in International Contracts

The United Nations Commission on International Trade Law ('UNCITRAL') has initiated activities in formulating uniform legislative standards for the use of electronic communications in the trade sector since the late eighties. These initiatives resulted in the adoption of two UNCITRAL Model Laws; viz, the UNCITRAL Model Law on Electronic Commerce ('MLEC') in 1996 and the Model Law on Electronic Signatures ('MLES') in 2001. The aforesaid Model Laws were formulated by UNCITRAL at a time when certain technologies, such as Electronic Data Interchange ('EDI') were more widely prevalent than the Internet. The fact that the aforesaid business models failed to fully address the issues further complicated by technological advancement in the field, as well as the issues concerning the interpretation and application of other international trade law treaties in the 'Internet era',

compelled UNCITRAL to formulate a treaty specifically devoted to electronic commerce law. The United Nations Convention on the Use of Electronic Communications in International Contracts ('UN ECC') (New York, 2005) passed by the United Nations General Assembly on 23 November 2005 was the result of the situation referred to above. This Convention came into force on 1 March 2013.

As per article 1 of the UN ECC, it applies to all electronic communications exchanged between parties whose places of business are in different states when at least one party has its place of business in a contracting state. Generally, the UN ECC is trying to achieve different policy goals: removing obstacles arising from formal requirements contained in other international trade law treaties; providing a common substantive core to the law of electronic communications, thus ensuring a higher level of uniformity both in the legislative text and in its interpretation; updating and complementing the provisions of the MLEC and the MLES; and providing core legislation on electronic communications to those states not having any yet, or having partial and insufficient provisions.

Sri Lanka will become a state party to this unique convention from 1 February 2016 onwards. It is also the first South Asian country and the only country in Asia next

to Singapore to be a signatory to UN ECC. Sri Lanka's ratification of the UN ECC will ensure greater legal certainty for E-Commerce and E-Business providers who wish to use Sri Lankan law as the applicable law and will ensure international validity for such E-Contracts. It will also provide Sri Lanka with the latest electronic commerce legislation relevant to the Internet era, introducing some new provisions, and clarifying the functions of others.

The UN ECC aims to facilitate the use of electronic communications in international trade by assuring that contracts concluded and other communications exchanged electronically become valid and enforceable as are their traditional paper-based equivalents. The Sri Lankan Electronic Transactions Act No.19 of 2006 is primarily founded on the features of the UN ECC. As per the terms in section 2 of that Act, which describes its objectives as: (1) to facilitate domestic and international electronic commerce by eliminating legal barriers and establishing legal certainty; (2) to encourage the use of reliable forms of electronic commerce;

(3) to facilitate electronic filling of documents with the government and to promote efficient delivery of government services by means of reliable forms of electronic communications; and (4) to promote public confidence in the authenticity, integrity and reliability of data messages, electronic documents, electronic records or other communications. The core principles of the UN ECC which are non-discrimination, technological neutrality, functional equivalence and party autonomy, are the main policy principles forming the basis of the Sri Lankan Electronic Transactions Act. Further, the material of the scope of application of the UN ECC are the definitions of 'communication', and 'electronic', both of which are incorporated into the Sri Lankan legal context.

By becoming a signatory to the UN ECC, Sri Lanka will enjoy a number of benefits. To mention a few of them: it will give ultimate clarity and predictability to the legal value of the use of electronic communications in commercial activities within the country and with other contracting states as well as resulting in greater administrative efficiency. For instance, commercial

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**Balloon-Powered
Internet
for Everyone.**

Sri Lanka is the first country in the world that has entered into an agreement with Google to implement this project. As a result of the legal enforcement of this agreement dated 28 July 2015, the entire island of Sri Lanka – every village – will be covered with affordable high speed Internet using Google Loon's balloon technology. It will help Sri Lanka to connect with the world faster than ever before, which will in turn cause a rapid development in the fields of business, information, education, etc. A low cost on infrastructure and transmission, minimum harm to

environmental beauty, minimum environmental pollution and minimum harmful effects on human health are the most outstanding benefits of Project Loon compared with the prevailing technology. Under this project, 13 balloons will be placed above Sri Lanka within the next few months covering the entire country and internet service providers will have to connect their networks with these balloons. Each balloon is to cover an area of about 5,000 square kilometres, and all 13 are to cover approximately 65,000 square kilometres which is the total land area of the Island. The Project Loon pilot tests will begin in Sri Lanka in December 2015. The designing of the project will be completed within the next two years.

activities ranging from cross-border trade with other contracting states to payments made via mobile phones. Sri Lanka was the first in South Asia to launch the mobile cash service. Sri Lankan foreign employees, who comprise 8.7 percent of the total population of the country (according to the Annual Report of the Central Bank of Sri Lanka in 2014), are scattered around the globe and have become able to transfer their remittances home within a fraction of a second. These benefits are directly proportional to how far we make use of and comply with the provisions of the Convention.

Agreement Entered into Between the Google Company and the Government of Sri Lanka to Provide Internet services via 'Project Loon'

Project Loon is one of the special research projects which was successfully tested in New Zealand and Brazil in 2013, under the theme of 'Balloon-Powered Internet for Everyone' and was developed by the Google company ('Google'). In this project, specially designed balloons are used to connect people in rural and remote areas by providing them with internet service. Those balloons will be placed into the stratosphere at an altitude of about 20 km from the earth to create an aerial wireless network with up to 3G-like speeds. The sole objective of Project Loon is to launch sufficient balloons to give a total and uninterrupted internet facility at a low cost.



Joseph Theoga Rushan Fernandopulle

Joseph Theoga Rushan Fernandopulle is an Attorney-at-Law of the Supreme Court of the Democratic Socialist Republic of Sri Lanka. His practice focuses on the areas of intellectual property law, entertainment law and media law.

Mergers and Fair Value: What Does it Mean to a Dissenting Shareholder? A Comparison of Laws in the British Virgin Islands, Cayman Islands and Bermuda

Shareholders in a company that is the subject of a takeover and merger have certain intrinsic rights available to them in the event that they dissent to the merger, most notably a right to have their shares purchased at a 'fair value'. The meaning of fair value, as it is applied by the courts, is different in each jurisdiction and this article discusses the merger regime and explores the manner in which courts interpret 'fair value' in the British Virgin Islands, Cayman Islands and Bermuda.

Introduction

Carly Fiorina, a former CEO of Hewlett-Packard and a current (as at the time of writing) United States presidential candidate, once commented that 'A merger is hard to pull off under any circumstances. It's harder when everybody is against you.' This is particularly true when those against you are dissenting shareholders to whom a merging company will need to account for the 'fair value' of their shares.

This article explores the merger, consolidation and amalgamation regimes in the British Virgin Islands ('BVI'), Cayman Islands and Bermuda, and in particular focuses on the right afforded to dissenting shareholders in each of those jurisdictions to have their interests bought out at a 'fair value', and the meaning of that concept in each jurisdiction.

Although typically used synonymously, 'mergers', 'amalgamations' and 'consolidations' are afforded unique meanings as a matter of company law in the respective jurisdictions this article addresses. Broadly speaking, a merger is the process by which two or more existing companies merge into one of the constituent companies. A consolidation is the process by which two or more existing companies are consolidated into a new company, while an amalgamation (which is applicable to Bermuda) is the process by which two or more companies continue their operations as a single company (akin more to a 'merger' as described above). For simplicity, we have referred in this article to the concepts of mergers, consolidations and, in the case of Bermuda, amalgamations, generally as 'mergers', although each has its own nuanced meaning in the BVI, Cayman Islands and Bermuda.



Mergers are becoming increasingly common in the current competitive economic climate, where businesses are being forced to explore synergies with former competitors and often this can lead to a leaner, more efficient business as a result.

It is noted that legal advice should always be sought and the foregoing is intended only to be consumed for general information purposes.

The Statutory Framework

The principal legislation dealing with company law in each of the BVI, Cayman Islands and Bermuda is the BVI Business Companies Act, 2004 ('the BVI Act'), the Companies Law (2013 Revision) ('the Cayman Law') and the Companies Act, 1981 ('the Bermuda Act') respectively. All of the company laws in the BVI, Cayman Islands and Bermuda have a statutory framework by which mergers are governed and all provide flexible structuring mechanisms. Indeed, mergers in each of these jurisdictions are well used and continue to be a favoured method of takeover or consensual restructuring. Recent examples include Apex Partners' US\$1.6 billion buyout of Tommy Hilfiger Corporation and Essilor

International SA's US\$565 million takeover of NASDAQ listed FGX International Holdings Limited in the British Virgin Islands, Silver Wheaton's billion-dollar acquisition of Anani Investments Ltd from Glencore PLC for mixed cash and commission consideration in the Cayman Islands and Exor SpA's US\$6.9 billion dollar takeover of PartnerRe Ltd in Bermuda.

Mergers in the BVI, Cayman Islands and Bermuda can take place between companies incorporated in those respective jurisdictions or between a company incorporated in one of those jurisdictions and one or more overseas companies, provided that the laws of the overseas company permits the merger. BVI, Cayman Islands and Bermudian laws also allow a merger to take place between a parent company and its subsidiary, which means that often times the provisions are used in facilitation of a group restructuring. The effect of the merger will be that the merged entity (in the case of a merger) or the new entity (in the case of a consolidation) will hold all the assets and liabilities of the constituent companies and all of the rights, privileges, immunities, powers objects and purposes of each of the constituent companies will be transferred to it.

There is a great deal of flexibility available in the manner in which mergers are conducted and structured and typically mergers will allow shares to be cancelled, reclassified, converted into money or other assets, including shares, debt obligations or other securities in the merged or new entity. Indeed, even shares of the same class can be treated differently in a merger or consolidation plan such that some shareholders in the constituent companies are made shareholders of the merged or new entity while others may be bought out.

While minority shareholders that do not want the merger to go ahead, cannot, in either of the BVI, Cayman Islands or Bermuda, stop the merger, they can dissent and pursuant to statute insist upon a right built into each of the BVI Act, Cayman Law and Bermuda Act, to dissent and be bought out at a 'fair value'. Each jurisdiction has a system prescribed in the legislation to have the merging company agree on a 'fair value amount', which typically means that parties will have to spend approximately 60 days trying to agree to the 'fair value', failing which they may ask that the court appraise the 'fair value' of the dissenting shareholders' shares.

The manner in which the courts decide what constitutes 'fair value' will depend on the facts of individual cases and each of the BVI, Cayman Islands and Bermuda has taken a different approach to the issue as is outlined below.

Meaning of 'Fair Value'

For most people 'fair value' will have a natural meaning correlated to the 'intrinsic' value of the company in respect of which fair value is sought and a pro-rata share of that intrinsic value based on the shareholding that a person may have in the company. While there is no statutory guidance on what considerations are to be taken into account when determining 'fair value', the question has been considered by common law at length and 'fair value' in the legal context has a very distinct meaning. The question has been the subject of a recent body of case law in the BVI, the Cayman Islands and Bermuda, and while there are a number of overlapping principles of interpretation in each of those jurisdictions, there are key distinctions which need to be borne in mind.

The leading case in the BVI is *HRH Prince Faisal v PIA Investments BVIHC (Com) 2011/03*, which came before the Honourable Justice Bannister in the BVI Commercial

Court. The case concerned the valuation of a BVI-incorporated joint venture, whose business included owning and operating a number of high profile hotels in the United States and Europe, between HRH Prince Faisal bin Salman, a member of the Saudi Arabian royal family and Pakistan International Airlines Corporation ('PIAC').

The relationship between HRH Prince Faisal and PIAC was governed by a shareholders' agreement, pursuant to which, amongst other things, if either of the shareholders wished to sell its shares, the other shareholder would have a right of first refusal. The articles of the company were subordinated to the shareholders' agreement. Although starting the joint venture as equal partners, HRH Prince Faisal divested himself of the majority of his interest at an earlier stage (in November 2005), such that by 2007, when the events which were the subject of the proceedings took place, he was a clear minority shareholder, while PIAC was a clear majority shareholder.

In 2007, HRH Prince Faisal served on PIAC a notice of an intended sale to a third party of 7,200 shares in the company (approximately 1 percent of the issued share capital of the company) which triggered an ability for PIAC to exercise a right of first refusal at the price of US\$1,194 per share. PIAC however sought to amend the articles of the company such that it was no longer subordinated to the shareholders' agreement and so that it could avail itself of the merger provisions of the BVI Act in order to 'squeeze out' a minority shareholder.

PIAC accordingly served HRH Prince Faisal with a notice of redemption in relation to his minority holding pursuant to section 176 of the BVI Act, at a redemption price of US\$60 per share. Section 176 provides for a compulsory redemption of a minority shareholder, provided that, such redemption is sought by a majority of at least 90 percent of the votes of the outstanding shares. HRH Prince Faisal rejected the redemption price and thereby sought to avail himself of the statutory appraisal procedure in section 179 of the BVI Act, pursuant to which the parties must attempt to agree a 'fair value', failing which they must each engage an expert valuer (which valuers then engage a third valuer) to value the shares.

In that case, however, rather than engage separate valuers in accordance with the BVI Act, HRH Prince Faisal and PIAC entered into a protocol for the appraisal of the value of the shares. However, a valuation under the protocol also failed. In ensuing proceedings brought by

HRH Prince Faisal, the BVI court held that parties may contract out of the appraisal regime set out in section 179 of the BVI Act and significantly gave obiter guidance on the meaning of 'fair value'.

The Honourable Justice Bannister reasoned that 'fairness' depends on the individual case and what is 'fair' in one circumstance, may not be 'fair' in another. He conceded that the usual position in the case of 'fair value' in the context of being compulsorily redeemed is that no minority discount should likely be applied (and for these purposes the principles can likely be safely extended to where minority shareholders are 'squeezed out' by the statutory merger and consolidation procedures in the BVI), although he stopped short of making it a hard rule, as it will depend on individual cases. The principle consideration as to whether a valuation was 'fair' was to ensure that it does not 'favour one party at the expense of the other', and in applying that test (although he only made the comment in obiter), he stated that he was not convinced, 'in those circumstances (i.e., where HRH Prince Faisal deliberately turned himself into a minority shareholder), it is necessarily fair that he should be paid out on a non-discounted basis'.

The BVI approach of tackling the question of 'fair value' on a case-by-case basis, and without necessarily disallowing a minority discount even in cases of forced or compulsory acquisitions may be regarded as commonsensical and pragmatic as it allows a great deal of judicial flexibility in the context of cases which can be extremely fact specific. Notwithstanding that, it is fairly different to the approach taken very recently by the Cayman Court in *In the Matter of The Integra Group*, unreported (Jones J, 28 August 2015) (*Re Integra*). This is the first (and so far only) case in which a Cayman court has had to consider the meaning of 'fair value' in the context of a compulsory buy out of a minority shareholder.

The salient facts of *Re Integra* were that Integra was a London Stock Exchange-listed, Cayman incorporated provider of oilfield services in Russia. In 2013, the management of Integra sought to buy-out the outstanding shares of the company at US\$10 per share, representing an approximately 45 percent premium over the preceding 30-day trading average, and a committee of independent directors resolved that the offer was 'fair'. The deal was structured as a merger pursuant to section 233 of the Cayman Law, and a number of minority

shareholders, representing approximately 17 percent in aggregate of the issued shares of Integra dissented to the merger pursuant to section 238 of the Cayman Law, thereby triggering a statutory provision by which the surviving company and the dissenting shareholders were to agree on a price, failing which an application may be made to the Cayman court for 'determination of the fair value'.

In *Re Integra* the court ruled in favour of the dissenting shareholders and awarded them US\$11.70 per share. In terms of guiding principles when considering the question of 'fair value', the Cayman court held that no discount or premium should be ascribed to the forced taking of shares in a merger context and that the business needs to be valued as a 'going concern' and without any adjustment to value (whether higher or lower) which is attributable to the effect of the merger transaction (that is, a dissenting shareholder cannot avail themselves of a premium that may be ascribed to the value following the merger, but equally should not be burdened with a fall in value that may be ascribed to the merger). In particular, the Cayman court considered that valuation in circumstances of where a minority shareholder is a forced seller should be 'just and equitable'.

No direction as to preferred valuation methodology was given by the Cayman court, and as in the BVI, the appropriate valuation methodology will be fact and industry dependent. The mere fact that Integra was a listed company did not necessarily mean that one could accurately look at the average trading price as a gauge. In particular, the fact that Integra was not heavily traded and was not as liquid as other traded shares, would not make it appropriate to simply look at the traded price to ascertain value. The Cayman court, in that regard considered that the assessment of fair value may be proved by established valuation techniques that are generally acceptable in the financial industry and which would otherwise be admissible as valuation evidence in court. A key distinction between the BVI and Cayman Islands, however, appears to be that, while in both jurisdictions the matter will ultimately turn on individual facts, the starting point in the Cayman Islands is that no minority discount (or merger premium) will apply in ascertaining 'fair value', while in the BVI, the court approaches the question on a case by case basis and a disapplication of minority discount is not necessarily assumed. In reaching that conclusion, the Cayman court applied principles set out in an article

titled 'Dissenting Shareholders' Appraisal Rights in Cayman Islands Mergers and Consolidations', which suggested that the Cayman court should have no trouble in applying principles established in Delaware and Canada (given that the drafting of the Cayman Law was heavily influenced by those jurisdictions). That article proposed that:

... he [a dissenting minority shareholder] is thereafter deprived of his proportionate share of an active enterprise and is entitled to be compensated for it ... the Court should be guided by the following considerations: –

1.1 Fair value does not include any premium for forcible taking (i.e., expropriation of the shares);:

1.2 It is neither appropriate nor permissible to apply a minority discount when making the determination

While the question of 'fair value' has not been dealt with in Bermuda in the same level of detail as it has been in the BVI and the Cayman Islands, there have been cases

that have advanced through the Bermudian courts that have considered (albeit to a lesser degree) the question of what constitutes 'fair value'. Principally, the issue was touched upon in *Arthra Master Fund, LLC v Dufry South America* [2011] Bda LR 17, pursuant to which a dissenting minority shareholder, Arthra Master Fund, LLC, to a merger and amalgamation sought from the Bermudian court to, among other things, appraise the 'fair value' of its shares in the company pursuant to section 106 of the Bermuda Act. While the Bermudian court did not in fact appraise 'fair value' in that case (it simply ordered that expert evidence be obtained), and the matter does not appear to have gone further through the court in a reported judgment, the court did indicate that it regarded its role as being to 'determine whether its appraisal of the fair value is greater than the Defendant's assessment or not'.

In another case (in which the Bermudian court considered the question of 'fair value' in the context of a mandatory buy-out by a super majority (>95 percent) shareholder of a super minority shareholder, *Golar LNG Limited v World Nordic SE* [2011] SC (Bda) 10 Com, the court found that it should have regard to the 'market value' when considering 'fair value' and that while



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there can be no prescriptive rule regarding 'fair value' (it was described as 'as much of an art as a science'), the court will have to have as much relevant information as possible before it in advance of being able to make a decision. In that case the court was happy that a 'fair value' in a forced buy out context could be a range of figures which are 'fair' on the basis of valuation reports and that a minority discount should usually apply to reflect a 'fair value'.

Conclusion

As is hopefully apparent from the aforementioned, the BVI, Cayman Islands and Bermuda treat the question of 'fair value' and how it is best reached very differently. All of the jurisdictions examined in this article approach the issue on the individual facts, although each take a different starting position: a 'clean slate' in the BVI in which the court will be open minded as to the applicability of a minority discount; a valuation approach on the basis of no discount or premium attributable to the merger itself in the Cayman Islands; and a range of valuations applicable in which typically a minority discount will apply in Bermuda. Each jurisdiction has clearly sought to mitigate against the potential for

mergers being abused. There is no one correct way in which the 'fair value' can be assessed. The issue remains very live and is an extremely dynamic area of law, which will continue to challenge the courts and be built upon.



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Please note that the IPBA Publication Committee has moved away from a theme-based publication. Hence, for the next issues, we are pleased to accept articles on interesting legal topics and new legal developments that are happening in your jurisdiction. Please send your article to both **Maxine Chiang** at maxinechiang@chianglee.com and **Leonard Yeoh** at leonard.yeoh@taypartners.com.my. We would be grateful if you could also send (1) a lead paragraph of approximately 50 or 60 words, giving a brief introduction to, or an overview of the article's main theme, (2) a photo with the following specifications (File Format: JPG or TIFF, Resolution: 300dpi and Dimensions: 4cm(w) x 5cm(h)), and (3) your biography of approximately 30 to 50 words together with your article.

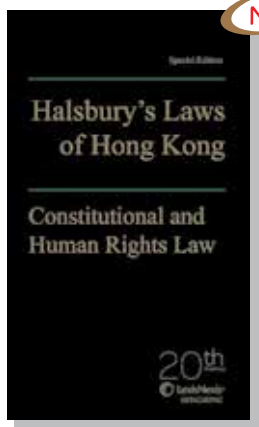
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September – November 2015

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Australia , Brett Williams <i>Williams Trade Law</i>	Korea , Sun Kyoung Kim <i>Yulchon LLC</i>
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Discover Some of Our New Officers and Council Members



Neil Russ

IPBA Leadership Position:
Jurisdictional Council Member for
New Zealand

What was your motivation to become a lawyer?

I was originally intending to become a marine biologist! One weekend, when part-way through a science degree, I went ski touring with two scientists and a lawyer, who suggested I try law. I did, and found law to be fascinating and very fulfilling.

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

When at Clifford Chance in London, I acted on the financing of the Trans-Tunisian pipeline. We held the signing ceremony in tents in the desert. Unforgettable. I have also enjoyed meeting lawyers from all around the

world at interesting locations, as part of the IPBA. Going back to a tent in the desert at the IPBA Council Meeting in Dubai was fun!

What are your interests and/or hobbies?

I have been doing triathlons for years, and nowadays I stick to the longer ones. I play golf, ski and enjoy fishing with family. I also have a soft spot for fast cars!

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

I was a youngest-ever manager of a popular fast food chain – it taught me a lot about dealing with people from all walks of life and about resilience!

Do you have any special messages for IPBA members?

The IPBA is an outstanding organisation for lawyers to grow their networks. I truly feel part of a global family. The more one commits to the IPBA, the more rewarding it becomes. Get involved with the committees! We look forward to welcoming all IPBA members to Auckland in April 2017!



Paolo R. Vergano

Partner, FratiniVergano, Brussels, Belgium
IPBA Leadership Position:
Chair, International Trade Committee

What was your motivation to become a lawyer?

I have always loved to do anything international and I fell in love with international trade law when I was doing my Erasmus programme at the University of Maastricht in Holland, having the privilege of studying under Professor Peter Van de Bossche. The idea of helping companies and

countries trade globally was something that attracted me and inspired me as a student. It still does, as a practitioner, after over 20 years of work.

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

The most memorable experiences have been litigating cases at the World Trade Organization in Geneva on behalf of clients, either companies or governments, and being part of teams negotiating international trade agreements around the world. Those undertakings require strategic acumen, negotiating skills, patience, passion and a deep understanding of the applicable law, of the facts and of the commercial contexts surrounding the dispute or the negotiations. It is a bit

like a game of chess and I always get very excited about being an active player in them. I love to plan and execute and my job is all about careful planning and methodical execution. The greatest reward is then seeing a satisfied client, who knows that you have done your best with passion and commitment. That is truly priceless to me.

What are your interests and/or hobbies?

I like to travel, even though I spend far too much time on airplanes and in airports these days, to discover new places, to read (especially history books and biographies), to visit museums and collect art, and to listen to jazz and classical music. Sports-wise, I love skiing, sailing and biking.

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

Like most Italians, I love to cook and I think that one day

I will try my luck opening a restaurant somewhere. After all, to be successful with a restaurant is just like being successful with a law firm: you need a lot of passion, hard work, attention to details, good ingredients/lawyers and happy clients. With the only difference being that happy clients leave restaurants with a big smile, while in law firms they still complain about the bills being too high.

Do you have any special messages for IPBA members?

As the current Chair of the International Trade Committee my message cannot be but to encourage as many colleagues as possible, from as diverse a background and jurisdictional origin as possible, to join our committee and contribute to making it an even more interesting place of legal discussion, professional bonding and personal friendship. Start by attending our sessions at the 2016 IPBA Conference in Kuala Lumpur and you will not be disappointed! I look forward to meeting you there.

Members' Note

Stephan Wilske, Germany

Stephan Wilske presented a paper entitled 'Sanctions Against Counsel in International Arbitration – Possible, Desirable or Conceptual Confusion?' at the 2015 Taipei International Conference on Arbitration and Mediation (6 & 7 September 2015) which will be published in the Contemporary Asia Arbitration Journal Vol 8 No 2 (November 2015).





An Invitation to Join the Inter-Pacific Bar Association

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

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

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

IPBA Activities

The breadth of the IPBA's activities is demonstrated by the number of specialist committees. All of these committees are active and have not only the chairs named, but also a significant number of vice-chairs to assist in the planning and implementation of the various committee activities. The highlight of the year for the IPBA is its annual multi-topic four-day conference, usually held in the first week of May each year. Previous annual conferences have been held in Tokyo (twice), Sydney (twice), Taipei, Singapore (twice), San Francisco, Manila, Kuala Lumpur, Auckland, Bangkok, Vancouver, Hong Kong, New Delhi, Seoul, Bali and Beijing attracting as many as 1000 lawyers plus accompanying guests.

The IPBA has organised regional conferences and seminars on subjects such as Practical Aspects of Intellectual Property Protection in Asia (in five cities in Europe and North America respectively) and Asian Infrastructure Development and Finance (in Singapore). The IPBA has also cooperated with other legal organisations in presenting conferences – for example, on Trading in Securities on the Internet, held jointly with the Capital Market Forum.

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

APEC

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

Membership

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

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

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

Membership renewals will be accepted until 31 March.

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

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

Corporate Associate

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

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

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

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

- Annual Dues for Corporate Associates ¥50,000

Payment of Dues

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

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

IPBA Secretariat

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

See overleaf for membership
registration form





IPBA SECRETARIAT

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

IPBA MEMBERSHIP REGISTRATION FORM

MEMBERSHIP CATEGORY AND ANNUAL DUES:

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

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

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

Firm Name: _____

Jurisdiction: _____

Correspondence Address: _____

Telephone: _____ Facsimile: _____

Email: _____

CHOICE OF COMMITTEES (PLEASE CHOOSE UP TO THREE):

- | | |
|---|---|
| <input type="checkbox"/> Anti-Corruption and the Rule of Law (Ad Hoc) | <input type="checkbox"/> Insurance |
| <input type="checkbox"/> APEC | <input type="checkbox"/> Intellectual Property |
| <input type="checkbox"/> Aviation Law | <input type="checkbox"/> International Construction Projects |
| <input type="checkbox"/> Banking, Finance and Securities | <input type="checkbox"/> International Trade |
| <input type="checkbox"/> Competition Law | <input type="checkbox"/> Legal Development and Training |
| <input type="checkbox"/> Corporate Counsel | <input type="checkbox"/> Legal Practice |
| <input type="checkbox"/> Cross-Border Investment | <input type="checkbox"/> Maritime Law |
| <input type="checkbox"/> Dispute Resolution and Arbitration | <input type="checkbox"/> Scholarship |
| <input type="checkbox"/> Employment and Immigration Law | <input type="checkbox"/> Tax Law |
| <input type="checkbox"/> Energy and Natural Resources | <input type="checkbox"/> Technology, Media & Telecommunications |
| <input type="checkbox"/> Environmental Law | <input type="checkbox"/> Women Business Lawyers |
| <input type="checkbox"/> Insolvency | |

I AGREE TO SHOWING MY CONTACT INFORMATION TO INTERESTED PARTIES THROUGH THE APEC WEB SITE. YES NO
METHOD OF PAYMENT (PLEASE READ EACH NOTE CAREFULLY AND CHOOSE ONE OF THE FOLLOWING METHODS):

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

- Bank Wire Transfer – Bank charges of any kind should be paid by the sender.
 - to The Bank of Yokohama, Shinbashi Branch (SWIFT Code: HAMAJPJT)
 - A/C No. 1018885 (ordinary account) Account Name: Inter-Pacific Bar Association (IPBA)
 - Bank Address: Nihon Seimei Shinbashi Bldg 6F, 1-18-16 Shinbashi, Minato-ku, Tokyo 105-0004, Japan

Signature: _____ Date: _____

PLEASE RETURN THIS FORM TO:

The IPBA Secretariat, Inter-Pacific Bar Association
Roppongi Hills North Tower 7F, 6-2-31 Roppongi, Minato-ku, Tokyo 106-0032, Japan
Tel: +81-3-5786-6796 Fax: +81-3-5786-6778 Email: ipba@ipba.org

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"Professionalism, competence and transparency" - Global Arbitration Review



BAC/BIAC Profile

The Beijing Arbitration Commission (BAC), also known as the Beijing International Arbitration Center (BIAC), was established in 1995 as a non-governmental arbitration institution, and became the first self-funded Chinese arbitration institution in 1999. It provides institutional support as an independent and neutral venue for the conduct of domestic and international arbitration and ADR proceedings. It is operated by a Secretariat headed by its Secretary General under the supervision of its Committee. The BAC/BIAC Arbitration Rules 2015 were unveiled on December 4, 2014, and came into force on April 1, 2015. The 2015 rules widely adopt UNCITRAL Arbitration Rules and further accept up-to-date international practice.

BIAC

Beijing Arbitration Commission
Beijing International Arbitration Center

Tel: +86 10 6566 9856

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Email: bjac@bjac.org.cn

Address: 16/F, China Merchants Tower,
No. 118 Jian Guo Road,
Chaoyang District, Beijing 100022, China



Hearing Room

BAC/BIAC Growth

- From 7 cases filings in 1995 to over 24,000 cases in total by 2014
- 1500+ new filings on average per year since 2005
- 600+ international cases in total
- Parties from various jurisdictions including USA, UK, Germany, Australia, Japan, South Korea, Singapore, Hong Kong and Taiwan, etc.
- The sum in dispute of around 11.1 billion RMB (approx. 1.8 billion USD or 1.7 billion EUR) per year on average since 2010 with a highest claim amount of 10 billion RMB (Approx. 1.62 billion USD or 1.48 billion EUR) in 2015

Recommended BAC/BIAC Model Clause:

All disputes arising from or in connection with this contract shall be submitted to Beijing Arbitration Commission / Beijing International Arbitration Center for arbitration in accordance with its rules of arbitration in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.