

IPBA Journal

September 2017

No **87**

NEWS & LEGAL UPDATE



INTER-PACIFIC BAR ASSOCIATION





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General Inquiries:
Lien Dimzon
IPBA 2018 Manila Project Lead
+63 2 847 - 3500 local 304
info@ipba2018manila.com

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Publisher Paul Davis

Editor Kieran Colvert

Editorial Kiri Cowie
Julie Yao

Design Portia Le

Advertising Sales

Jennifer Luk

E: jennifer@ninehillsmmedia.com

Frank Paul

E: frank@ninehillsmmedia.com

T: +852 3796 3060

**ninehills
media**

Ninehills Media Limited

Level 12, Infinitus Plaza,
199 Des Voeux Road,
Sheung Wan, Hong Kong
Tel: +852 3796 3060
Fax: +852 3020 7442

Email: enquiries@ninehillsmmedia.com
Internet: www.ninehillsmmedia.com

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The President's Message

Denis McNamara
President



Dear Colleagues,

During the Auckland Conference and subsequently, I have been asked on occasion what, if anything, does the IPBA do in the period between the annual conferences?

The short answer to the question is: a lot. In this discourse I will endeavour to summarise much of the 'what and why'.

I begin with the IPBA Secretariat, based in Tokyo.

The Secretariat has always been and is always likely to remain in Japan. It is the depository of all history for the IPBA and is very capably managed by Rhonda Lundin, with Yukiko Okazaki handling membership and finances. In addition to being the depository of knowledge for the IPBA, the Secretariat has the responsibility of administering the accounting for and collection of annual membership dues; maintaining the database of members; liaising with the Membership Leaders and Committee Chairs throughout the year; supporting the Officers in their respective areas of responsibility; and dealing with the myriad of enquiries that are directed to them by past and present members, as well as from persons interested in becoming members. In addition, they are responsible for completing the annual accounts for IPBA Limited and dealing with all statutory requirements. Their responsibilities also include regular e-mail communications to IPBA members; maintenance of the IPBA website in conjunction with the Webmaster; production of the annual printed IPBA Membership Directory; assisting the Scholarship Committee in administering the Scholarship Program; and planning the twice-yearly Council meetings. Because IPBA Officers and other Council members serve the association for limited periods of time, the main role of the Secretariat is to ensure consistency of policy and process without deviating from the founding spirit of the Association.

One of the busiest administrative committees at this time is the Nominating Committee, comprising the President

from two years past, the Immediate Past President, the President and the Secretary-General. In addition, the Committee Coordinator gathers committee leadership recommendations for nominees from the Committee Chairs and Co-Chairs and presents them to the Nominating Committee for consideration.

The Nominating Committee will make its decisions for nominations by the end of September and put forth its proposals to the Council at the Mid-Year Council Meeting in London for the filling of various roles on the Council (Officers, Membership Leaders and Committee Chairs and Vice-Chairs), as well as look to the future agenda for meetings of the IPBA at both annual Council meetings and the Mid-Year Council Meeting. This is quite a major job and the Committee is conscious of the need to strike a balance from among the various jurisdictions that are represented in the IPBA. In carrying out its task under the Chairmanship of Past President Huen Wong, the Committee has been teleconferencing at least once a month since the Auckland conference.

The next major area of activity is the work of the host committees in the jurisdiction hosting the Annual Conference or the Mid-Year Council Meeting. From my experience of organisation for the Auckland conference, I can quite safely say that the busiest committee of all at the present time will be the Manila Host Committee preparing for the 2018 conference in March. In addition to organising the venue, entertainment and meals and so on for the conference, the Committee also has to liaise with each of the Committee Chairs to put together the program for the conference. Bear in mind that there are 23 committees and many of them will want more than one session in addition to sessions held jointly with two or more committees.

Another group of members that is exceptionally busy between annual conferences is the Committee Chairs and Vice-Chairs—arranging topics, organising speakers, liaising with other committee chairs and the cost

committee. It is important that members who are asked to present at a session keep the relevant Committee Chair informed of their preparedness to do so. The quality of the conference sessions is dependent on the work of the Chairs and Vice-Chairs.

Please assist the Manila Host Committee where you can. This can be done by registering for the Annual Conference if you have not done so already, and for those who may be speakers, please respond to any request that the Committee may make of you for information such as your CV.

Potential speakers at the Manila conference are reminded that there are 'IPBA rules' relating to speaking arrangements. One of the most important is that, except in emergencies, no person should take any more than one speaking slot. This is to give as many members as possible a chance to participate in a meaningful way at the conference, as well as provide a wider perspective on the topics presented.

Not only are the two years prior to the annual conference crucial for planning, after the dust settles post-conference, it generally takes two to three years for the special purpose vehicle that was set up to run each conference to finalise its accounts, pay taxes, pay creditors and then be wound up. At this time, the final stages are in train for the Kuala Lumpur and Auckland conferences, while the activities of the host committee for the Mid-Year Council Meeting in London and the Manila Host Committee are in full swing.

Next is a number of local and regional events that take place between annual conferences; several of these are becoming annual events. Since the Auckland conference in April this year, and up until the time of the London Mid-Year Council Meeting in November, local and regional events have been held in Düsseldorf, Geneva, Seoul, Kuala Lumpur, and Danang. The Asia M & A Forum, held in conjunction with the IFLR in Hong Kong each spring, sees more than 500 delegates and has been running for more than 10 years.

At present there are 23 IPBA Committees, each focusing on a specific legal practice area. New committees can be created when there is a perceived need.

The creation of a new committee requires members who are interested to put forward a proposal to the Officers, who study it and bring it to the Council for approval, initially on an *ad hoc* basis. Most recently, the APEC Committee became a regular committee in 2016, while the Anti-Corruption and the Rule of Law Committee shed its *ad hoc* status this year.

The Membership Committee Chair, Anne Durez, is keen to foster the creation of a Young Members Committee. What constitutes 'Young' is still up for discussion: some consider 40 to be young, others, 45. Currently, lawyers 35 years old and under pay discounted membership fees under a 'Young Lawyer' category, so a consistent number across the board needs to be decided. Anne will be interested to hear from members who are keen to support this initiative.

The IPBA has a number of memoranda of understanding with law associations, both national and international. On the international front, the IPBA enjoys good associations with the AIJA, UIA and Lawasia. In addition, it is an associate member of the POLA (Presidents of Law Associations in Asia). I and other IPBA leaders have represented the Association at all of the annual conferences of these organisations. The IPBA will also be represented at the upcoming IPBA Conference in Sydney.

In the past few months, the IPBA has been approached by local bar associations. Meetings are also held with representatives of these individual national law associations. Meetings held, or to be held, in the period until the London Mid-Year Council meeting include with the national bar associations that were at POLA: the Japan Federation of Bar Associations—on the side lines of the Lawasia Conference—the German Bar Association, the French National Bar Council, the Iranian Central Bar Association and the American Bar Association. In addition there have been various one-off meetings arranged by individual Bars, for example, the 110th anniversary of the Hong Kong Law Society. An interesting aspect of these meetings is the commonality of topics under discussion. For example, regular topics include artificial intelligence, legal professional privilege (and its erosion), lawyers as protectors of human rights, and the progress of alternative dispute mechanisms in particular countries.

The IPBA will also be represented at the Opening of the Legal Year event in London and the Opening of the Legal Year for the Paris Bar.

The meetings and activities outlined above are very important in terms of keeping members informed and supported as well as arranging and imparting knowledge to lawyers of the workings of the IPBA.

I look forward to the Mid-Year Council Meeting in London and also urge members to register for the 2018 Annual Meeting and Conference in Manila before the Early Bird Deadline of 30 September!

Denis McNamara
President



The Secretary-General's Message

Caroline Berube
Secretary-General



Dear IPBA Members,

It is an honor to address all IPBA members with the current Secretary-General's message.

The IPBA Journal

I want to address first a topic which is very close to my heart: the IPBA Journal. As some of you know, I used to be the Chair of the Publications Committee. We had a good momentum, even producing a special edition for the 25th anniversary of the IPBA back then. Every Chair has had his or her own goals for the Journal, and during my term I wanted to have the IPBA Journal be a source of legal information but also a forum where members, new and more senior, would share their knowledge and their successes, giving visibility to the amazing members we have. The reason why the IPBA Journal is special to me is that my active involvement with the IPBA derived from an article I had written back in 2009 on bankruptcy laws in China, which was published in the IPBA Journal. Jerry Libby, IPBA Past President and now a close friend, had read my article in the IPBA Journal and when I met him for the first time at the Manila Annual Conference in 2009, he remembered it and asked me if I wanted to get more involved with the IPBA. I was eventually elected as Vice-Chair of the Publications Committee at the IPBA Singapore Annual Conference in 2010 and the rest history! I am now lucky enough to be the Secretary-General of an association I truly cherish.

As many of you know, the current Publications Committee is looking for articles to publish in the IPBA Journal. Unfortunately, the number of articles submitted this year is down by 50% since last year. This is very disappointing. We encourage all members to submit articles! It is a great way to contribute to the association, share your expertise and also give you visibility in the legal community. The Journal issues are posted to the IPBA web site, where articles can also be read online, so there is a bigger outreach to the legal community outside of the IPBA. It is also a wonderful opportunity for

younger members to contribute to the association as, more often than not, they may not have the financial resources to attend annual conferences given the time and costs involved. Save for the time spent on writing an article, it is a great business development initiative giving you exposure and showcasing your knowledge—it could also lead to speaking opportunities at our annual conferences, as people will recognize you as an expert in the field you write about.

As an incentive for our members to write articles, the Publications Committee has instituted a 'Best Article Prize' competition, with a winner chosen from among articles published in the year's issues and announced at the following annual conference. Some of you may recall that a 'Best Paper Prize' competition used to be held at the annual conference, but in recent years speakers submit PowerPoint presentations instead of topical papers, so contributions to this competition also declined.

If you wish to contribute a shorter article on legal developments in your jurisdiction, share news of an award or special moment in your career, or be featured in the Journal (especially if you are a new member), please contact the Chair and Vice-Chair of the Publications Committee. I have no doubt they will welcome your contributions given that we had these special new sections when I was involved with the Publications Committee.

The IPBA Manual

We are proud to say that there is progress being made with the update of the IPBA Manual and IPBA Annual Conference Manual. These tomes serve as guides for the IPBA Council and Officers on how to conduct and take care of the business of the association to make sure we grow the association while maintaining the initial spirit of the founders. Like many things, the association is

changing over time and the manuals are being updated to keep up with current and actual practices to reflect our new needs. For example, current technology which didn't exist when the association was founded nearly thirty years ago now impacts how the business is run on a daily basis. The association's incorporation in 2015 also required changes to the IPBA Constitution, in addition to the institution of and continuing compliance with Singapore laws. The manual also has the objective of assisting in the transition from one council member or officer to the next one elected, and for succession planning. While general members may not know, or may not care to know, the inner workings of the IPBA, you are all affected by the way the association is operated; therefore, we want to make sure there is consistency and continuity in the way we provide member services even while the Council members come and go.

Various local events...not to be missed!

In other news, the IPBA has become active with several local and regional events such as the 'Asian-European M&A and Dispute Resolution Day' jointly organised by the IPBA and the Swiss Arbitration Association to be held on September 14th, 2017 in Geneva, Switzerland; the '3rd IPBA Asia-PAC Arbitration Day' on September 25th to be held in Kuala Lumpur, Malaysia; 'Investment in Emerging Markets - the APEC Perspective' in November in Vietnam; and several others. Again, these events are great if you wish to gain knowledge on Asia-specific topics, network with other lawyers from around the world, and it can also lead to opportunities to be a speaker if you have an interest. For younger members these local and regional events may be more affordable than travelling to a faraway jurisdiction where the annual conference is held. Some of these events are even becoming annual flagship events. If you would like to plan your own IPBA event, please contact the IPBA Program Coordinator and copy the Secretariat.

London Mid-Year Council Meeting

As many of you know, it is almost time for yet another Mid-Year Council Meeting. This year's meeting will be taking place in London and IPBA Council members will gather for internal meetings from November 10th to November 12th. All officers and council members attend this meeting (or should attend it!). We discuss, plan and network...the upcoming Annual Conference in Manila is in the final planning stages, the following mid-year meeting topics are considered, and challenges we face are discussed openly. Meeting face to face for a few days is key to the success of the IPBA in order to continue growing our association, brainstorming on our challenges to keep our edge compared to

other associations involved in Asia and to nurture the friendship which is and has always been key to the IPBA since its foundation. On November 13th, there will be a Regional Conference open to the public, and you are all welcome to attend. The topic will be 'Focus of Change: Modernization and a Shifting International Landscape'. It's going to be an exciting event and we look forward to seeing many of you there to learn and network.

Constant global outreach of the IPBA

I am always impressed by the interest many other legal associations in the world have towards the IPBA. The IPBA is well known in the international legal sphere and this is why various key legal associations reach out to us. We are also approached with increasing frequency by local bar associations. The French Bar Association has invited the IPBA Council members to attend the Opening Ceremony of the Paris Bar, with events taking place from November 27th to December 2nd, 2017. Leaders of the Law Association of England and Wales have requested to meet with IPBA leaders, and President Denis McNamara will be getting together with their President several times at various events over the course of the next few months. In September, the IPBA will sign an MOU with the Japan Federation of Bar Associations; this has been in the works for several months. We have already established close ties with other international legal associations, too. After the success of one of our many sessions in Auckland, AIJA and the IPBA agreed to cooperate in a joint session during the AIJA Annual Congress held in Tokyo during the last week of August. This is a testament to how interesting and amazing the sessions with our own speaker members are.

Manila

The planning for Manila 2018 is well under way and making great progress. The Early Bird registration deadline for Manila is September 30th, so now is the best time to get the cheapest rate. The IPBA Scholarship deadline is also September 30th, so anyone interested in applying must get all application documents to the Scholarship Committee by then. The winner of the 'Best Article Prize' will also be announced in Manila.

In conclusion, please contribute to the IPBA by attending local and annual conferences and writing articles for the IPBA Journal. The IPBA is a great association well regarded in the legal community worldwide and we need active members.

Caroline Berube
Secretary-General

IPBA European Regional Seminar in Düsseldorf 12 June 2017



Investment Controls in Europe, The United States and Asia—A Comparative View

IPBA Germany and IPBA France, with the support of the European Regional Coordinator, organised and held a regional seminar on 'Investment Controls in Europe, the United States and Asia—a Comparative View' on 12 June 2017 in Düsseldorf, Germany at the offices of Gleiss Lutz. The seminar was conducted in English.

This very up-to-date topic was of interest to a group of around 30 people—mostly lawyers—from all over Europe. The seminar was opened by the IPBA President-Elect Perry L Pe, who gave an introduction on the IPBA and presented in particular next year's annual conference to be held in Manila, Philippines.

Thereafter, the participants listened to and participated in a discussion with speakers from the United States, France, Germany and China. In addition, a commentator from Russia gave a short introduction on the Russian approach to investment control. The speakers covered not only the different approaches in their respective countries but also the procedure, including the applicable rules, and their respective experiences with obtaining governmental approvals for various transactions. The participants were able to understand the differences and the similarities between the approach and the procedures within each jurisdiction and the need to further look into these issues in any case of subsequent investment or M&A transactions.



The seminar lasted the whole afternoon and was rounded off by cocktails followed by dinner, which was well attended, with ongoing discussions. It was a typical IPBA event with interesting discussions among good and old friends as well as new friends of the IPBA community.

The organisers—Sebastian Kühn, JCM for Germany; Jeffrey Holt, JCM for France; and Gerhard Wegen, At-Large Council Member for Europe—want to express their special thanks to the following speakers:



- Alan WH Gourley, Partner, Crowell & Moring, Washington, USA
- Bertrand Cardi, Partner, Darrois Villey Maillot Brochier, Paris, France
- Jacob von Andreae, Partner, Gleiss Lutz, Düsseldorf, Germany
- Audrey Chen, Partner, JunHe, Beijing, China
- German Zakharov, Partner, Alrud, Moscow, Russia

The organisers also want to thank Gleiss Lutz for providing the seminar facilities and drinks and Huth Dietrich Hahn for additional sponsorship.



IPBA Upcoming Events

Event	Location	Date
IPBA Annual Meeting and Conferences		
28th Annual Meeting and Conference 'Fostering Seamless Cooperation in ASEAN and Beyond'	Manila, Philippines	March 14-16, 2018
29th Annual Meeting and Conference	Singapore	Spring 2019
IPBA Mid-Year Council Meeting & Regional Conferences		
2017 Mid-Year Council Meeting (IPBA Council Members Only)	London, England	November 10-12, 2017
Regional Conference 'Forces of Change: Modernisation and a Shifting International Landscape (English and Asian Perspectives on How Legal Systems Adapt)' (Open to the Public)	London, England	November 13, 2017
IPBA Events		
IPBA/Swiss Arbitration Association's 'Corporate Acquisitions and Resulting Disputes'	Geneva, Switzerland	September 14, 2017
IPBA/KLRCA's '3rd Asia-PAC Arbitration Day'	Kuala Lumpur, Malaysia	September 25, 2017
Investment in the Emerging Markets—the APEC Perspective	Vietnam	November, 2017
IPBA-supported Events		
AIJA Annual Congress	Tokyo, Japan	August 28-September 1, 2017
ALB's 'Philippine Law Awards'	Manila, Philippines	October 6, 2017
ALB's 'Japan Corporate Compliance and Governance Forum'	Tokyo, Japan	October 18, 2017
Marcus Evans' 'IP Law Asia Summit'	Tokyo, Japan	October 19-20, 2017
Duxes' '10th China Anti-corruption Compliance Summit 2017'	Hongqiao, China	October 26-27, 2017

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

Impact of GST on Aircraft Leasing and Financing: An Indian Perspective

This article gives a bird's eye view on the impact of newly introduced Goods and Services Tax Act, 2017 in India effective from 1 July, 2017 on aircraft leasing and financing transactions. It further highlights certain issues such as transfer of title in aircraft in light of the new tax regime which will require attention whilst structuring the cross-border transactions.



Implementation of Goods and Services Taxation System

India, after almost two decades of deliberations, implemented the much awaited Central Goods and Services Tax Act, 2017 ('CGST Act') on 1 July 2017. The Goods and Services Tax ('GST'), in its present form, subsumes a number of indirect taxes previously being levied by the Federal and State Governments and paves a way for a common national market. It is a destination-based tax on consumption of goods and services. It is proposed to be levied at all stages, from manufacturing to final consumption, with availability of tax credit, paid at previous stages, as set-off. In other words, only value addition would be taxed and the burden of tax would be borne by the end consumer.

Although introduction of GST would have a very significant effect in the field of indirect tax reforms in India, but being in its nascent stage there are certain ambiguities, issues and challenges involved in its applicability and implementation. One such area which has caught the attention of the stakeholders is aircraft leasing and financing into India.

Aircraft leasing is a common practice adopted by Indian carriers. It not only helps increase fleet size quickly, but also reduces the cost of airlines' operations. Indian low-cost carriers such as IndiGo, GoAir and SpiceJet have resorted to leasing in a big way in order to expand their operations. Before the implementation of GST, Indian carriers were not required to pay customs duty on import of aircraft into India. Similarly, where leases were signed overseas, no value added tax, that is, VAT, was payable. In the case of finance leases, service tax was payable on 10% of the interest component. Under the new regime under GST, aircraft leasing would attract GST in the hands of Indian carriers. Although it might be possible for them to avail themselves of input tax credit but the upfront payment may have huge cash flow implications. Further, purchase of aircraft or transfer of aircraft title may attract GST. Therefore, this article attempts to provide some insight on the impact of GST on certain aspects of aircraft leasing and financing into India.

Taxation on Leasing

Under the CGST Act, tax is levied on all intra-state 'supply of goods' or 'supply of services'.¹ Per section 7 of the CGST Act, 'supply', *inter alia*, includes sale, transfer, lease, import of services and certain activities specified



in Schedules I and II of the CGST Act. In order to be regarded as 'supply of goods', title as well as possession both have to be transferred. Certain transactions which contemplate transfer of title on a future date may also be considered as 'supply of goods'. Any transfer of the right to use any goods for any purpose (whether or not for a specified period) for valuable consideration would be regarded as a 'supply of services'.

In usual aircraft lease transactions, there is a 'transfer of right to use' the equipment by lessors to lessees. As a result, under the CGST Act aircraft lease transactions would be treated as 'supply of services' and may be liable to GST. The rate of GST on 'transfer of the right to use equipment' would attract the same tax as applicable on the 'transfer of title in similar goods'. In other words, leasing would attract GST at a rate which would be applicable on the sale of such item. However, there is specific provision in respect of leasing of aircraft by scheduled operators which specifies the rate at 5%.

Indian low-cost carriers such as IndiGo, GoAir and SpiceJet have resorted to leasing in a big way in order to expand their operations.

The CGST Act tries to resolve an important issue: which place will have the jurisdiction to tax? The extant law provides that GST would be levied at the place where the service is provided. It further clarifies that the place of the recipient of such service would be regarded as a place of supply of service for GST purposes. Thus, in most of the cross-border aircraft leasing transactions, the locations of carriers would be the place of supply of services. In such cases one wonders if it is possible to avoid GST if documents are signed overseas and aircraft are also located overseas. It appears that airlines operating in India would be subject to GST on lease of their aircraft, whether such lease documents are executed in India or overseas. Consequently, GST will need to be paid upfront along with lease rentals. Despite a tax credit being available to airlines, this would significantly impact their cash flows. Earlier, by virtue of judicial pronouncement, the place where leases (which used to transfer the right to use equipment) were executed had the right to tax. In view of the aforesaid, leases were usually signed overseas and no VAT was payable.

As to the time of taxation, the liability to pay GST would arise at the time of supply.² The time of supply of services would be the earlier of the following: (1) the date of issue of invoice by the supplier or date of provision of service, if the invoice is not issued; or (2) the date of receipt of payment. In the event the aforesaid two provisions are not applicable, the date on which the recipient shows the receipt of services in its books of account would be deemed the time of supply. The value of a taxable supply is the price actually paid or payable for such supply.³ Accordingly, in the case of aircraft leases, entire lease rentals would be taxable.

Duty on Import of Aircraft into India

Per the Integrated Goods and Services Tax Act, 2017 ('IGST Act'), the supply of goods and/or supply of services imported into India would be treated as 'supply of goods' or 'supply of services' in the course of interstate trade or commerce, as the case may be. The import of aircraft under a leasing transaction would therefore attract integrated GST at 5% under the IGST Act. As a consequence, the aircraft imported into India under leasing transactions would have been subject to double taxation. Previously, there was no customs duty on import of aircraft into India by scheduled air operators.

For the above reason and in absence of clarity, aircraft of many scheduled operators were lying in hangars. After representations from industries and other stakeholders, the Indian Government, vide a notification dated 8 July 2017, exempted import of aircraft, aircraft engines and its parts procured on leases from GST. The said notification essentially provided that GST on import need not be paid if the operator, *inter alia*: (1) pays integrated tax levied on supply of services covered under the CGST Act; and (2) does not sell or part with the aircraft, without the prior permission of the Commissioner of Customs of the port of importation. The said notification does not clarify whether it is prospective or retrospective in its operation. However, one may assume it to be clarificatory in nature in which case it should even apply to imports made prior to the said notification. Further, it requires airlines to seek permission of the relevant authority in case they want to transfer the title of aircraft. Transfer of title/ownership is a usual phenomenon in aircraft leasing transactions and is done at a brisk pace. The aforesaid requirement might delay the process and increase the transaction costs.

Position on Finance Leases

Another contentious issue is a divergence in interpretation as to classification of finance leases. The CGST Act, *inter alia*, provides⁴ that transfer of title in goods under an agreement which stipulates that 'property in goods shall pass' at a future date upon payment of full consideration as agreed would be regarded as a 'supply of goods'. This refers to a transaction which must positively result in a 'transfer' as evident from the use of the expression 'property in goods shall pass'. In other words, the aforesaid seems to cover a 'conditional sale' and not finance leases. Since, in finance leases, lessees have options but not an obligation to purchase the aircraft, they should ideally not be covered under 'supply of goods'. However, the frequently asked questions published by the Indian tax department suggest otherwise, that is, a finance lease would be treated as a supply of goods. If this is the case, this might entail additional burden on airline operators. This is still to be clarified by the Department. The correct approach would be to treat finance leases, like other leases, as a supply of services for the purpose of GST, as it involves transfer of the right to use the aircraft.

Transfer of Title in Aircraft

As to the transfer of title, the legal position under the CGST Act seems to be different compared to the previous tax regime. Item 1 of Schedule II of the CGST Act provides that *any transfer of the title in goods is a supply of goods*. If the place of supply is within the territory of India, such supply is liable to GST. The place of supply⁵ of goods (other than supply of goods imported into, or exported from India), where:

- (1) it involves movement of goods, whether by the supplier or the recipient or by any other person, would be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;
- (2) the supply does not involve movement of goods, whether by the supplier or the recipient, would be the location of such goods at the time of the delivery to the recipient.

In view of the aforesaid, integrated GST may be attracted on transfer of ownership/title of an aircraft



GST brings much needed reform in indirect taxation and may prove to be a boon for the industry.

between two non-residents, if the aircraft is located in India. It thus may not be possible to transfer title in aircraft if such aircraft is physically present in India without incurring additional cost.

Share Transfer of a Company Which Owns Aircraft Registered in India

'Securities'⁶ are excluded from the definition of goods as well as services. Per section 2(101) of the CGST Act, 'securities' have the same meaning as ascribed in section 2(h) of the Indian Securities Contracts (Regulation) Act 1956. The said provision defines securities as follows: ' "securities" include shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate...'. In view of the aforesaid, transactions relating to securities would not be liable to GST. In other words, no GST will be applicable where shares of a company (which owns aircraft registered in India) are transferred.

Transfer of Beneficial Interest in Trusts

Per section 2(52) of the CGST Act, an 'actionable claim' is included within the definition of 'goods'. Under section 2(1) of the CGST Act, an actionable claim shall have the same meaning as assigned to it under section 3 of the Transfer of Property Act 1882, which defines it as follows:

'Actionable claim' means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Previously, actionable claim was not included in the definition of 'goods' under the Central Sales Tax Act, 1956. However, Item 6 of Schedule III of the CGST Act provides that actionable claims, other than lottery, betting and gambling, would not be treated as a 'supply of goods or services'. In other words, only such actionable claims which are in the nature of lottery tickets, betting and gambling would fall under the ambit of the CGST Act. In view of the aforesaid, the sale of a beneficial interest in a trust, being an actionable claim, would not attract GST.

Conclusion

GST brings much needed reform in indirect taxation and may prove to be a boon for the industry in the long run. It creates a single taxation system and provides clarity as to the rate and point of taxation. However, there are certain issues, as discussed above, which still need clarification. Despite provision of cross credits available to airlines, the new tax system may increase the cost of aircraft leasing into India and airlines will need to factor this in while structuring transactions. Also, there may be additional costs involved in transactions relating to title transfer of aircraft, which is quite common and frequent. Lessors and/or airlines will need to be cautious while structuring transactions, as the legislation, being in a nascent stage, may entail litigation, increasing financial burden.

Notes:

- 1 CGST Act, s 9(1).
- 2 *Ibid* s 13.
- 3 *Ibid* s 15.
- 4 *Ibid*, Schedule II, Item 1.
- 5 The IGST Act, s 10 determines the place of supply of goods.
- 6 The CGST Act, s 2(52) provides:

'Goods' means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Section 2(102) provides:

'Services' means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.



Mahesh Kumar
Partner, Legalics Law Offices

Mahesh Kumar has over 10 years of experience and works across several time zones. He has advised well-known lessors, leading banks and financial institutions on cross-border leasing and financing, structured finance, securitisation M&A transactions. His practice areas also include foreign exchange and foreign direct investment laws, securities laws, taxation and dispute resolution.

Third-Party Funding: Liability of Third-Party Funders to Pay Costs in Arbitration; Entitlement of Successful Claimants to Costs of Third-Party Funding

As third-party funding carves inroads into financing of arbitration proceedings, a host of novel issues have arisen to garner the attention of the business and legal stakeholders. This article analyses the legal feasibility and repercussions of an award of costs—for and against the third party funder, in the event of success or failure of the claim, respectively.



Introduction

Third-party funding ('TPF') is a financing method whereby an entity that is not party to a dispute and the proceedings arising therefrom, finances all or part of a party's costs of proceedings, in return for a percentage of recovery made under the judgment or award. TPF is commonly associated with non-recourse outcome-based financing—where funder's fees are repaid only upon success. Historically, TPF was introduced to facilitate access to justice for an impecunious party (usually the claimant). Today, the need to manage and allocate risks of proceedings; maintain healthy cash flow in business; or find alternative avenues for investment have led to exploring TPF for diverse goals.

'Funding' includes classic costs of proceedings viz. attorney fees, evidentiary hearings, arbitrator fees, administrative fees, payment under judgment or award or others. It may also include exceptional costs such as security and adverse costs of the successful party. A funding agreement may stipulate a cap on funding, deposit of security, percentage of return, success fee, payment of adverse costs and termination rights among other conditions. An arbitral tribunal holds discretion to award or allocate costs of proceedings. Typically, costs are awarded *vis-à-vis* 'parties'. This article examines the issue of liability as well as entitlement of funders in arbitration proceedings. It analyses whether a third-party funder ('funder'), being 'third' to the proceedings, can be ordered to step into the shoes of a party and pay the adverse costs of the successful party? Conversely, can the losing party be ordered to pay the costs of the TPF incurred by the funded party? This is confined to funders and no other mode of financing such as bank loans and insurance.

Liability of Funders to Pay Costs of the Successful Party Litigation

Typically, courts have powers to make orders against third parties. With respect to funders, the situation is atypical and fact based. A funder may merely fund a genuine claim. To hold him liable as a 'party' by default would deter funding, thereby hindering access to justice. However, where the funded claim is spurious, speculative and opportunistic,¹ such that due diligence by the funder (rigorous analysis of law, facts, witnesses, review at regular intervals—not interfering with administration of justice thereby being champertous)² would adequately reveal its nature and character of action, courts in the United States and the United Kingdom have ordered costs against funders.³

Where a funder uses a spurious claim to gain access to justice, he usurps the 'real party' position.⁴ It may exercise control over proceedings in a manner that steers the conduct of the party and has a causal link with its impact on the other party. Considering the extent of economic interest, involvement, control and the derivative nature of a funder's involvement,⁵ courts ordinarily consider it just and equitable to order adverse costs against funders as it would be assessed against the funded party.



Final Allocation/Award of Costs in Arbitration

In contra-distinction with courts, arbitration is consent-based. A tribunal derives powers to award costs from the arbitration agreement or institutional rules of arbitration. Several institutional rules prescribe recovery of costs that are 'reasonable'.⁶

An award of costs depends on the cost-allocation approach of the tribunal, often also reflected in institutional rules.⁷ The tribunal may follow the 'costs follow event' approach (where the unsuccessful party pays costs unless circumstances call for a different order) or where each party pays its own costs. Issues of funder's liability arises when tribunals employ the former approach. Akin to Courts, can an arbitral tribunal pass an order of costs against funders?

Upon disclosure, the tribunal will assess if the funding agreement stipulates funder's liability to pay adverse costs. Where silent, the tribunal would turn to the arbitration agreement to assess if the same extends to the funder. This may be rare since parties do not contemplate disputes, let alone funding, during the signing of the agreement. Since a funder is not involved

in negotiation and performance of the agreement and may emerge only post-dispute, he is not a 'party' to the agreement. Majority institutional rules⁸ and national laws⁹ provide that costs may be ordered against 'parties' to the agreement. Hence, in principle, a tribunal will lack jurisdiction to issue a costs order against a funder.¹⁰

International Centre for Settlement of Investment Disputes. This may justify a wider interpretation of the term 'parties' today for the purposes of costs.


Although tribunals exercise jurisdiction over 'parties', it is not uncommon to employ common law principles to implead third parties in arbitration. Some principles are: (1) involvement of third party in performance of contract; (2) intrinsic linkage between the parent agreement and contracts involving third parties; (3) incorporation of arbitration by reference; (4) necessity of third party for adjudication; (5) agent-principal relationship; (6) assignment; (7) subrogation; (8) implied consent; (9) third party beneficiaries; (10) interest in the dispute; (11) control over proceedings; (12) piercing of corporate veil (alter ego); (13) estoppel; and (14) good faith and equity.

Publications Committee Guidelines for Publication of Articles in the IPBA Journal

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 **Leonard Yeoh** at leonard.yeoh@taypartners.com.my and **John Wilson** at advice@srilankalaw.com. 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.

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

1. The article has not been previously published in any journal or publication;
2. The article is of good quality both in terms of technical input and topical interest for IPBA members;
3. The article is not written to publicise the expertise, specialization, or network offices of the writer or the firm at which the writer is based;
4. The article is concise (2500 to 3000 words) and, in any event, does not exceed 3000 words; and
5. The article must be written in English, and the author must ensure that it meets international business standards.
6. The article is written by an IPBA member. Co-authors must also be IPBA members.



Historically, TPF was introduced to facilitate access to justice for an impecunious party.

Can third party principles be extended to funders? At the outset, it is essential to note that third-party principles are widely used by courts. The rigors of the principles diminish, although not disappear, in the case of consensual arbitration. For example, principles of agency or assignment are inapplicable due to lack of transfer of contractual rights in a TPF agreement. Funders also have no involvement in performance of the contract. However, principles of interest, control and the umbrella of equity may encompass the funder. If it can be established that a funder has a substantial interest (economic or otherwise) in the proceedings, such as to be the real interested party; or that the funder has sufficient control over the proceedings to steer its course and be responsible for the conduct of the funded party; or that the award has an effect on the third party funder, other than loss of its funding in the event of defeat, it would be equitable for the tribunal to award adverse costs against the funder. However, it is essential to note that the mere fact of third party funding is not conclusive of determination of costs—neither against the funded party nor in favour of the successful party.¹¹ In parallel with third party principles, the tribunal may find it relevant to consider other circumstances such as the nature of the claim, extent of benefit from the funding, economic interest and control, among others, to fasten liability on funders.

Security for Costs in Arbitration

Another species of costs that tribunals can award is security for costs ('security'). This is a discretionary power of exceptional nature. Tribunals derive this power from arbitration agreements, institutional rules, national laws on interim measures or even from inherent powers to preserve integrity of the proceedings.¹² Considering the arduous path to a final costs order, a procedural order of security against impecunious claimants appears more effective for the defendant, when the factum of TPF has been disclosed. Primarily, a security would appear contrary to the essence of an arbitration agreement since parties are deemed to accept risks for costs or damages associated with future disputes while signing the agreement.¹³

The first threshold for a security order is to *prima facie* assess the case and the likelihood that final costs may be awarded to the defendant. Again, the approach of the tribunal (costs follow event or each party pays its own) would determine its approach towards security. Akin to final costs order, TPF *per se* does not entail security by default.¹⁴ A security also envisages a material change in the circumstances of the party that were not foreseeable at the signing of the agreement,¹⁵ since parties would not enter into an agreement while one is impecunious. Material change in circumstances is therefore a crucial determinant for security.



It is notable that funders may voluntarily pay security to prevent undermining their investment and to continue proceeding with a genuine claim.

Upon arriving at a finding of financial doldrums or the possibility of potential default at the final stage, various circumstances can merit the passing of a security order. Clauses in a funding agreement on termination rights and funder's liability to pay adverse costs may inform the decision of the tribunal while it balances the funded party's access to justice with the need of the unfunded party to recover its costs.¹⁶ If a security results in renegotiation of a TPF arrangement and prejudice to the funded party, or 'walking out' by the funder as per a termination clause, this may stifle a meritorious claim. On the contrary, this may fortify the demand of security by the unfunded party since this increases the risk of non-recovery. Tribunals may order security and cast onus upon the funded party to disclose other factors to prevent security.¹⁷ The other circumstances would be classic circumstances for grant of interim measures, namely urgency of relief (for continuing legal costs and potential future losses)¹⁸ and potential prejudice. The stage of the application for security and the potential or resultant delay in proceedings are other relevant circumstances. It is notable that funders may voluntarily pay security to prevent undermining their investment and to continue proceeding with a genuine

claim.¹⁹ In investment arbitrations where the State and the investor seldom sign an arbitration agreement (in the wake of Bilateral Investment Treaties), bad faith or abusive conduct of the funded party are prevalent determinants.

Entitlement of Successful Funded Party to Receive Costs of TPF

The primary concern is: does a 'funded' party 'incur' any costs of funding at all, when all its costs are borne by the funder? Indeed, if successful, the funded party often pays a percentage of its proceeds to the funder. In addition, it may also pay a 'success fee' over and above the percentage of proceeds—thereby reducing the effective quantum of recovery of the funded party. This implies that a funded party does bear the costs of TPF—when successful.²⁰ Certain tribunals refuse to consider TPF in determining the amount recoverable by the funded claimant for its costs,²¹ at the cost of reduced recovery by the funded party.

Are TPF fees 'costs' within the purview of applicable laws? Can the successful funded party be entitled to an order for costs of its TPF? Various arbitral institutions²² and national laws²³ include 'other costs' within the definition of 'costs'. In *Essar Oilfields Services Ltd v Norscot Rig Management Pvt Ltd*,²⁴ the United Kingdom High Court included TPF costs within 'other costs', giving it a functional construction. Majority laws also indicate that such 'costs' shall include 'reasonable' costs for the purposes of arbitration proceedings. Legal costs paid by the funder for the party would constitute costs incurred 'for the purposes of arbitration'. However, is it just to impose the burden of a private TPF agreement between the funder and the funded—on the shoulders of the unsuccessful unfunded party? It would be so if the costs awarded are 'reasonable' and have been utilized for the purposes of arbitration.

However, would a 'success fee' be construed as being 'for the purposes of arbitration'? This is not procedural costs but costs agreed upon as a trade-off between the funder and the funded²⁵ owing to the risk assumed by the funder for investing in the proceedings. Since a 'success fee' is a creature of the commercial agreement between the funder and the funded party and is not related to the arbitration proceedings, it would not be just to order the unfunded unsuccessful party to pay a success fee. In view thereof, the *Essar* decision cannot be considered bad in law since the court heavily relied on

conduct of the unsuccessful party in driving the claimant to bankruptcy and compelling it to seek the TPF. If not 'other costs', can TPF costs be claimed as 'damages' if permitted under substantive law? This would have to satisfy the test of causation and foreseeability and remains to be seen.²⁶

Conclusion

In its recent years of development, TPF has been engulfed by diverse issues. Presently, the restrictive nature of applicable laws (including the definition of 'party' and 'costs') and the exceptionally exercised jurisdictional powers of tribunals on third parties (except traditional principles of agency and assignment) result in a shortfall of arbitral practice *vis-à-vis* third party funders. Interestingly, while the majority of applicable laws state that the award shall be binding between parties, the English Arbitration Act 1996 also includes within the ambit of 'party'—'persons claiming under or through them'. This could be interpreted to include funders. However, courts have accorded a narrow interpretation to the term 'party' to only include parties by way of principles of agency and subrogation. Unless arbitral practice establishes, or applicable laws evolve, to expressly include funders in costs orders, this power remains largely subject to discretion and application of third party principles, keeping alive the pervasive foundation of arbitration, that is, party consent. While it will be quintessential to consider the roots of consensual dispute resolution, arbitral practice beckons wider purview to encompass third party funders in certain circumstances to meet the interests of justice and equity.

Notes:

- 1 *Excalibur Ventures LLC v Texas Keystone Inc & Ors* [2014] EWHC 3436 ('Excalibur').
- 2 *Excalibur* *ibid* at para, ¶31.
- 3 *Arkin v. Borchard Lines Ltd.* [2005] EWCA Civ.655; *Excalibur*; *Abu Ghazaleh v. Chaul* (Florida District Court of Appeal, 36 So.3d 691).
- 4 *Excalibur*, at para, ¶1.
- 5 *Excalibur* *ibid*, at para, ¶27.
- 6 ICC, Art 37(1); LCIA, Art28(3); HKIAC, Art 33.1; AAA, Art 34; UNCITRAL, Art 40(2)(e).
- 7 LCIA, Art 28(4); UNCITRAL, Art 42; DIS, Art 35(2).
- 8 ICC, Art 37(1); LCIA, Art 28(3); AAA, Art 34.
- 9 English Arbitration Act 1996, s S.61(1);, Indian Arbitration and Conciliation Act 1996, s S.31A.
- 10 ICCA-QMUL TPF Task Force Report on Security for Costs and Costs, p 10 ('*ICCA Report*').
- 11 *Kardassopoulos & Fuchs v Republic of Georgia*, ICSID ARB/05/18 and ARB/07/15 ('*Kardassopoulos*').
- 12 Craig, Park and Paulsson, ICC Arbitration, p 467 on finding of inherent powers by ICC tribunals.
- 13 *Third Party Funding in International Arbitration*, Nieuwveld *et al* (2012), p 27.
- 14 *EuroGas Inc v Slovak Republic*, ICSID ARB/14/14.
- 15 *XXX Inc v YYY S.A.*, ICC Case No 15951/FM; ICCA Report p 13.
- 16 *X v Y & Z*, ICC Case, Procedural Order 3 August 2012, published in Pinsolle, Cah.Arb. (2013).
- 17 Lucia, Assenting Reasons of Gavan Griffith, paras ¶16,18.
- 18 'Provisional Measures in International Commercial Arbitration', Ali Yesilirmak (2005), p 149.
- 19 Kirtley *et al*, *Journal of International Arbitration* 30, No 1 (2013).
- 20 ICCA Report, p 3.
- 21 *Kardapossoulos; RSM Production Corporation v. Grenada*, ICSID ARB/05/14.
- 22 ICC, Art 37(1); LCIA, Art 28(3); SIAC, Art 37.
- 23 English Arbitration Act 1996, sS. 59(1)(c), Indian Arbitration and Conciliation Act 1996, s S. 39A.
- 24 [2016] EWHC 2361 (Comm).
- 25 ICCA Report, p 10.
- 26 ICCA Report, p.10 *Ibid*.



Vyapak Desai Partner, International Litigation and Dispute Resolution Practice, Nishith Desai Associates

Vyapak Desai heads the International Litigation & Dispute Resolution Practice at Nishith Desai Associates, holding a Bachelors degree in law and a Masters degree in Commercial Laws. He is a trained Mediator and member of the Arbitration Committee of the International Bar Association (IBA) and the Bar Council of Maharashtra & Goa.



Kshama Loya Modani Senior Member, International Litigation and Dispute Resolution Practice, Nishith Desai Associates

Kshama completed her LL.M. in International Commercial Laws from King's College London in 2011, and a postgraduate diploma on Negotiation & Dispute Resolution from Harvard Law School in 2012. She has taken specialised courses in International Investment Law from the World Trade Institute, Switzerland; Skills and Techniques for Cross-Examination of Witnesses in International Arbitration in London and taught advocacy skills to students in London. She graduated from ILS Law College, Pune in 2009 with distinction in legal practical training. Kshama focusses on international arbitration, litigation and pre-litigation strategies and has handled complex civil, criminal and commercial disputes. She has previously worked in London in the field of international commercial and investment arbitration. She began her practice in the chambers of Justice S.V. Gangapurwala, has appeared independently in various High Courts and Tribunals, and has conducted several arbitrations. Kshama also serves as an arbitrator in the global rounds of Foreign Direct Investment International Arbitration Moot since 2012.

Railway Station Redevelopment: New Opportunities in India

The Indian Railway's ambitious US\$16 billion Railway Station Redevelopment Programme presents an exciting opportunity for potential investors. This article intends to present a broad overview of the programme, its operation as well as India entry options.



Introduction

The Indian Railways ('the Railways') constitutes the backbone of transportation infrastructure and provides an economic and environmental option compared to other modes of land transportation. Given the competing demands for capacity addition, the Railways is usually short of resources for the upkeep and renovation of their assets such as the railway stations, most of which were constructed decades ago.

To address this gap and as a part of its larger modernisation scheme, the Indian Railways has initiated an ambitious Railway Station Redevelopment Programme ('Programme') for which it has identified more than 400 stations spread over 2,200 acres of land across India's top 100 cities. The entire cost of station redevelopment under this Programme is to be met by leveraging commercial development of vacant separable land and air space in and around the station. Such commercial development would include retail



development, office-space development, hospitality development as well as restaurants.

As per a statement by the Honourable Minister of Railways, Mr Suresh Prabhu:

Today's customer is at the centre of railway infrastructure. Besides improvement in service, a redeveloped railway station will also provide opportunities for generating significant non-tariff revenues. Station redevelopment, a major initiative, is a promise in motion-gather momentum across India.¹

The Programme seeks to attract foreign investors by offering:

- encroachment-free prime land with clear titles;
- assistance through potential partnerships with state governments for expedited clearances (land use, environment, etc.);
- 100% FDI through automatic route;

- 45 years' lease period;
- bidding by consortium;
- appointment of a nodal officer with dedicated team in each zone for expedited bidding and station redevelopment projects;
- a transparent, objective selection process; and
- station facility management rights—additional revenue stream from non-fare revenue collected at railway stations.

As per reports, investors from countries including China, Singapore, Canada, Belgium, South Korea, Germany, the United Kingdom, France and Malaysia have expressed interest in partnering with Indian Railways for the Programme. Malaysia's state-owned Construction Industry Development Board ('CIDB') will participate in the auction for redevelopment of Udaipur, Howrah, Indore, Secunderabad, Pune and Faridabad railway stations which would involve an outlay of INR5,000 crore (around US\$781 million).²

Operation of the Programme

The Indian Railways Stations Development Corporation Limited ('IRSDC'), a joint venture company of Ircon International Limited ('IRCON') (a Government of India undertaking under the Ministry of Railways) and the Rail Land Development Authority ('RLDA'), is the nodal agency for the implementation of the Programme. It has been particularly tasked with the following:

- (1) To develop/redevelop the existing/new railway station(s) which will consist of upgrading the level of passenger amenities by new constructions/renovations including redevelopment of the station buildings, platform surfaces, circulating area, etc., to better standards so as to serve the needs of the passengers.
- (2) To undertake projects for development of real estate on Railway/Government land and its commercial utilisation as may be required in connection with development of railway stations.
- (3) To undertake projects including planning, designing, development, construction, improvement, commissioning, operation, maintenance, and financing of projects and various services relating thereto including marketing, collecting revenues, etc. relating to railway stations and railway infrastructure and all matters relating thereto.

(4) To carry on any railway infrastructure work including development of railway stations on Build-Operate-Transfer ('BOT'), Build-Own-Operate-Transfer ('BOOT'), Build-Lease-Transfer ('BLT'), etc. or otherwise or any other scheme or project found suitable in and related to the field of railway station infrastructure projects and other ancillary fields that may be assigned to or secured by the company on its own or through its holding company or subsidiary(ies) including financing of those projects and their services including commissioning, operation, maintenance, etc., as well as marketing, collecting revenues, etc.

In current projects such as the redevelopment of the railway station in Gandhinagar, Gujarat, the IRSDC has acted on behalf of the joint venture company between the Ministry of Railways/IRSDC and the respective state government.

The auction process for the redevelopment of railway stations under the Programme has been envisaged as a two-staged process:

The issue of the LoA is subsequently followed by the execution of the EPC Agreement as well as the furnishing of performance security. A potential participant has to keep in mind the requirements in the EPC Agreement including the scope of the project; the obligations of the contractor; the part of the works permitted to be sub-contracted; employment of foreign nationals; applicable provisions on contractor's personnel; restrictions on advertisement of the project; environmental clearances; and maintenance and operation of the existing station and facilities.

India Entry

A foreign investor looking to invest under the Programme is required to conform with India's foreign exchange regulations, specifically, the regulations governing foreign direct investment ('FDI'). As noted earlier, the FDI cap in the railway infrastructure sector has been extended to 100% under the automatic route.

Subsequent to compliance with foreign exchange regulations, a foreign investor can choose to set up its operations in India, to participate in the Programme, in one of the following manners:

Incorporation of a company under the Companies Act 2013 is the most common mode for participation in large projects.



Project Office

A foreign company, subject to obtaining necessary approval, may set up a project office which is an unincorporated entity, in India under the automatic route subject to certain conditions being fulfilled including existence of a contract with an Indian company to execute a project in India. A project office is permitted to operate a bank account in India and may remit surplus revenue from the project to the foreign parent company. Project offices are generally preferred by companies engaged in one-time turnkey or installation projects. Such offices cannot undertake or carry on any activity other than the activity relating and incidental to execution of the project.

Limited Liability Partnership

A limited liability partnership ('LLP') is a form of business entity which permits individual partners to be shielded from the liabilities created by another partner's business decision or misconduct. In India, LLPs are governed by the Limited Liability Partnership Act 2008. An LLP is a body corporate and exists as a legal person separate from its partners. Presently, FDI in LLPs has been permitted under the automatic route in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.

Company under the Companies Act 2013

Incorporation of a company under the Companies Act 2013 is the most common mode for participation in large projects. Such a company can be either private limited or public limited.

A private limited company in its Articles of Association restricts the right to transfer shares. The number of members in a private limited company is minimum of two and a maximum of 200 members (excluding the present and past employees of the company); its Articles of Association must prohibit any invitation to the public to subscribe to the securities of the company.

A public limited company is defined as a company which is not a private company (but includes a private company that is the subsidiary of a public company). A public limited company shall have a minimum of seven members but may have more than 200 shareholders and may invite the public to subscribe to its securities. A public limited company may also list its shares on a recognised stock exchange by way of an IPO.

A foreign company shall, within a period of 30 days of the establishment of its place of business in India, register itself with the registrar of companies, as either a private or a public company.

Conclusion

Steady economic growth in recent years has enhanced the relevance of railways as a critical element in the global competitiveness of the Indian economy. While the commercial viability of each of the stations proposed to be redeveloped should be examined in depth, it is generally understood that the stations presently being offered under the Programme would be commercially viable. This, along with the favourable investment climate in India, makes the Programme an attractive investment proposition for foreign investors.

Notes:

- 1 Indian Railways, E-booklet on Station Redevelopment, available at <http://www.indianrailways.gov.in> (Last accessed 17 July 2017).
- 2 *Economic Times*, *Malaysian Firms Eye Rs.5,000 Crore Station Makeover Kitty in 1st Big FDI Boost for Railways*, 30 June 2017.



Praveen Agarwal Founding Partner, Agarwal Jetley & Co

Praveen Agarwal is one of the founding partners and heads the firm's Corporate, Commercial and M&A practice areas. With his wide-ranging experience of over three decades and added qualification of Chartered Accountancy, he brings a sophisticated understanding of clients' business and commercial requirements. Clients find him both a lawyer and a strategist. With his particular experience in inbound transactions, he has advised more than 250 foreign companies in either setting up business or doing business in India. Praveen has been instrumental in building the Corporate practice area of the firm and provides strategic advice on matters relating to foreign direct investment, joint venture agreements, business entity and start-up registrations, mergers & acquisitions, regulatory approvals, commercial contracts, banking, employment and tax laws, litigation and alternate dispute resolution. Praveen is a fellow member of the Institute of Chartered Accountants of India and alumnus of Delhi University (LLB). He has served on the governing council of the International Centre for Alternate Dispute Resolution and the Indo-French Chamber of Commerce. He was also a two-term India Jurisdictional Council Member of the Inter-Pacific Bar Association.

Thailand Throws Down the Gauntlet to Online Digital Media Providers

This article offers a detailed insight into recent attempts by the Thai government to regulate online digital media providers in the form of legislation to counteract the perceived misuse of operators' networks. With the ever-increasing implications of social media becoming far more apparent, the Thai government is taking bold moves to introduce legislation which aims to control online digital media providers.

Background

The rise of large and small technology companies penetrating Thailand's online digital media market has caused regulators to consider employing a new 'over-the-top' ('OTT') framework. According to the National Broadcasting and Telecommunications Commission ('NBTC'), a new regulatory structure is under construction to be installed before the end of the year. However, the initiative to regulate OTT services has raised questions regarding its effects, enforcement and structure. Concerns over extra-territorial jurisdiction, international free trade contradictions and regulatory governance issues has caused private experts and public officials to thoroughly review issuing a new regulatory scheme.

OTT is the broadcasting of film and TV content via the internet without requiring users to subscribe to a traditional cable or satellite pay-tv service.¹ OTT services are commonly divided into two types: free platform (advertising-driven) and paid platform (monthly payment and pay-on-demand).² The services include mobile VoIP apps, mobile instant messaging, online video and TV and online music. Consumers can access OTT content through internet-connected devices such as smart phones and smart TVs, set-top boxes, gaming consoles, and computers.



In Thailand, free OTT platforms include Line TV, YouTube and some digital TV channels that broadcast their programs via OTT platforms such as channels 3, 7, 8 and Workpoint channel. Paid OTT platforms include Netflix, iflix, Hollywood HDTV, Primetime, AIS Play, and Truevisions Anywhere.

Innovation in OTTs has led to a rich and diverse internet, stimulating consumer demand for broadband Internet access. This is a key driver for network operators to upgrade and expand their networks as the increase in usage has caused a larger load on its infrastructure. Mandating OTT services to pay for upgrading infrastructure and data networks would require a implementing a new regulatory structure by either a taxes or royalties scheme.

However, attempts to impose additional regulation on OTTs may risk stifling innovation. Although various internet service and content companies are diverse and fast changing, regulatory regimes are slower

to react and adapt, often remaining static whilst technologies rapidly advance. This is particularly true in regards to technologies that do not yet exist. Prematurely implementing regulations risk becoming outdated due to unforeseen changes that make it economically or structurally inappropriate. Such unintended negative consequences could involve business uncertainty and lower economic growth and investment as a result of ambiguous or misapplied rules.³

Currently, international OTT operators such as Facebook, Netflix and Uber are not locally registered in Thailand. Thus, by acting under a 'branch-capacity' company, they are not required to pay taxes by revenues received through their platforms. OTT operators who ride on mobile operators' networks are not required to pay any licensing fee or corporate income tax to the Thai government, while digital TV operators and pay-TV broadcasters must be licensed by the NBTC and paying an annual license fee.



Innovation in OTTs has led to a rich and diverse internet, stimulating consumer demand for broadband Internet access.

This unregulated space in the OTT market has caused the NBTC to consider measures to set proper policies to govern the content and operations of OTT operators. In April, the NBTC passed a resolution to categorise video-on-demand by OTT operators as a broadcast business.⁴ Thereafter, an appointed subcommittee ordered such platform providers to register themselves with the NBTC by 22 July or 30 days after the framework was announced as completed. The reasoning behind the new regulatory police was to confront OTT operators not paying fees to the state from its advertising revenues, while significant changes in the TV/mobile viewing experience effected the state's overall social and digital infrastructure.

The NBTC attempted to sanction unregistered OTT platforms by forcing ad agencies and the top 50 online spenders to stop doing business with them. Three companies did not register—Facebook, YouTube and Netflix. The subcommittee's actions were seen as overly authoritative and in need of review due to fears the move would negatively impact the economy. On 5 July, the NBTC board decided to scrap their attempt and proceed with a new scheme. Nevertheless, critics aver that a regulatory framework could potentially deter players from entering the Thai market, creating competitive ripples in the digital economy.

Reasons to Regulate

The reasons to regulate include:

- (1) OTTs, particularly communications-based OTTs, provide the same services as traditional communications service providers, and thus a form of regulation is needed.
- (2) OTTs are free riding on operators' networks and provide minimal to no obligations to data servers or infrastructure. OTT providers may find themselves paying operators for the use of their networks.
- (3) OTT providers have a negative economic impact on operators, which hampers network build-out, traditional local operators, and investment.

There are currently no rules obligating OTT businesses to pay taxes, leading the Thai government to look at installing a regulatory structure. In this view, regulation is needed to remedy the existing structural imbalance and level the playing field between OTTs and traditional

operators. Any successful regulation is likely to need public agencies, regulators, and major international companies to cooperate in addressing the context of the OTT business based on the advantages and disadvantages to the public.

Although the NBTC emphasises the need to handle 'improper content' such as for social media streaming and create fair competition in the TV industry, the tax-related implications cannot be diminished.

Col Natee Sukolrat, chairman of the NBTC, has said that both free-TV and pay-TV operators must adjust their strategies with rapidly changing viewing habits. He has further explained the decision to implement a proper policy is based on the risks an unregulated structure would create to the ecosystem of the broadcasting and telecom industries. Thus, although fair regulations are essential to protect the public and the market, a newly devised framework may be more collaborative in nature. Specifically, by establishing an environment conducive to business growth while protecting consumers' interests and providing them with affordable access to more innovative services and options.



**To properly
implement OTT
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be clear.**

Issues

Major encompassing issues regarding a new regulatory framework include:

- lack of clear objectives;
- no clear classification of affected digital broadcasters;
- competitive disadvantage and chilling effects on tech companies (foreign and domestic);
- lack of clear governance structure for implementation and enforcement; and
- jurisdictional issues.

To properly implement OTT regulations, the objectives of the regulations should be clear. Here, critics argue the NBTC's goals seem unfocused and broad. Concerns over content control, fair competition and state tax collections have created a gap between the purpose of a new regulation and its targeted impact. Currently, the Thai government claims the primary aim is to create a level playing field between OTT services and competing traditional broadcasting/telecommunications industries. However, the financial impact of lost revenue from taxes cannot be minimised.

Adding to the issues is the difficulty to classify groups of broadcasters under the current digital convergence platform. Currently, there has been no clear definition of content on broadcast and telecom networks. There are also questions as to whether the NBTC has the authority, under existing legislation, to regulate OTT services, require registration or issue an OTT notification.

Established telecom providers globally have argued that regulation of OTT content causes competitive disadvantages for telecoms providers who are subject to sector-specific regulation while providers of OTT communication services are free from comparable regulatory burdens.

Critics have also expressed concern that imposing a fee might not only impact global OTT players, but could also affect local companies and startups whose inventions by definition entail the creation of OTT products and services. A way to mitigate this risk could be potentially done through a framework that outlines separate requirements or structures for foreign and local entities.

Structural governance issues also need addressing under a new regulatory framework. In Thailand, unregulated content on OTT platforms and state benefits from taxation are two reasons behind calls for regulation. However, controlling improper or illegal content via internet networks and taxation are handled separately by Thai state agencies.

The authority to govern improper content on internet networks is controlled by the Digital Economy and Society Ministry under the Computer Crime Act. The Technology Crime Suppression Division is also administered as a supplementary agency to take action against any illegal or harmful content. Income tax issues are overseen by the Revenue Department along with other parts of the Commerce Ministry. The NBTC however, only governs licenses awarded to internet service providers and mobile operators. Thus their only form of enforcement would be limited to revoking operators' licenses. Therefore, since the NBTC's concerns regarding OTT regulations are decentralised through various divisions of the government, a consolidated framework may be necessary for efficient implementation.





No country has yet to settle upon a regulatory regime for OTT video service.

Even when a policy has been implemented such as the NBTC's most recent, OTT operators have stated that the proposed regulatory framework is unclear. Moreover, even if such regulations were imposed, issues of enforcement have been brought to attention due to Facebook's and Google's leverage in their respective verticals.

No country has yet to settle upon a regulatory regime for OTT video service. One reason is jurisdiction because OTT is virtually operated and delivered via the internet, which is global by nature. This makes it difficult for each country to impose their own OTT regulation and enforce national obligations on traditional OTT providers. There are complexities as to how rules would or could be applied to OTTs without a physical presence in a country or are otherwise not subject to a particular country's legal jurisdiction. The underlying factor relates to the borderless nature of the internet. OTT operators generally do not have control over the access of their applications and where those users are located. This is especially true for OTTs that are freely available and do not rely on a subscription model.

In particular, identifying an OTT user's location is challenging even for subscription-based OTT operators due to the mobile nature of the internet. Proxies such as a virtual private network ('VPN') allows a subscriber or OTT user to mask their location when using a service in a different city, state or country from the billing address.

In certain policy areas, regulators may find it suitable to 'level down' the regulatory environment and deregulate providers of traditional broadcasters and telecommunications services thereby encouraging competition and innovation. It will be critical that new regulations in Thailand do not act as an unnecessary barrier to entry into the market for OTT services. Increasing compliance costs imposed by a strict and unyielding regulatory framework may ultimately reduce competition.

Impact

Because the internet is inherently global, regulation in one country can adversely impact innovation, economic growth and the availability of services in another. Imposing a rule to protect a state's own operators or

users may start a trend in other surrounding countries. Such an occurrence is possible as Thailand is among the more developed ASEAN nations to which surrounding countries often look to for regulatory guidance. Thus, Thailand installing a regulatory practice on OTTs could cause regionally similar countries to raise entry barriers for innovative digital products from international providers.

Traditional licensing and regulatory frameworks may also be ill suited to the dynamic and emerging services available in a developing markets such as Thailand. Typically, traditional regulatory frameworks have been characterised by high barriers to entry and other specific local requirements. Such regulations may not fit well in competitive markets with Internet-based services, which tend to be global in nature. OTTs would also be potentially subject to vastly different and burdensome regulatory obligations in every country around the world. This would create a redundancy and possibly an additional barrier to investment or growth.⁵

An additional wary impact to imposing regulations on OTT services is the potential harmful impacts on the internet networks. Domestic localisation requirements could force inefficient and uneconomic network structural designs, raising costs and limiting consumer choices. To mitigate this effect, a proposed framework may be to bring OTT providers directly under local jurisdiction. Bringing offshore OTTs under local jurisdiction would impose data localisation laws on OTT providers and require them to install servers locally to allow government access and monitoring, as well as subject providers to the state's laws.

Although banning a handful of websites or domain names is a possibility, subjecting potentially hundreds (or more) OTT providers from around the world to licensing and regulatory obligations would require a strict governmental control system in constantly monitoring citizens' access to information. This would may lead to increased costs as well as difficulties to establish liability and enforcement. Certain procedural or instructive



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guidelines may be necessary to objectively determine which OTT contents and applications would be deemed unlawful. However, whether major international powerhouse OTT operators would consent to such a structure remains to be seen.

Study

Many countries have attempted to control content such as hate speech or fake news in cyberspace. Indonesia's attempt to regulate OTT video services provides some context. There, a circular was implemented regulating OTT service providers currently operating in the ASEAN outside a specific legal and tax framework. The regulation was targeted at application and content services. The circular instructed OTT operators to comply with Indonesian laws and regulations on monopolies and unfair competition, trade, consumer protection, intellectual property rights, broadcasting, advertisement, anti-terrorism, taxation, and illicit content.⁶ The practices include content filtering and censorship in accordance with prevailing laws and regulations.

More notably, offshore OTT services targeting Indonesia could find themselves subject to the payment of domestic corporate income tax in the country. The country's Director General of Tax issued an additional circular building on the guidance set by Circular Letter No. 3/2016. The 2016 Circular states that applications and/or content services delivered over the internet can be provided by a foreign individual or business entity if they have a 'permanent establishment'.⁷

Although economic fairness and competition factors provide substantive reasons for OTT regulation, the primary aim may be seen as a method to establish a criteria to ensure that owners and operators of foreign OTT services are subject to the paying domestic corporate income taxes. The expansive technological development and change in the broadcasting industry has made the issue inevitable for government regulators to address.

Conclusion

OTT services' increasing popularity and traditional media's decline has led to OTT TV viewership habits to drastically change. This has created a sub-effect on TV advertising businesses, subscriptions, and consumer engagement. Such alterations in the digital media industry has the NBTC looking to devise a new framework. However, the complexities involving legal

jurisdictional issues, economic impacts, and structural governance between public and private players has left many experts and industry leaders puzzled as to the type of framework that will be implemented.

Thailand may look to Indonesia in installing a similar framework to target foreign OTT services to realize lost revenues through taxation or fees. Although it is unclear how the government will consolidate all the moving parts of the different government divisions with the private and public sector's interests, a collaborative scheme may prove beneficial for all parties. The agency is expected to install a new regulation on the matter by the end of the year after the drafting and commenting/hearing stages conclude.

Notes:

- 1 Hun Media Law, National Media and Infocommunications Authority, Hungary.
- 2 *Ibid.*
- 3 <http://www.asiainternetcoalition.org/wp-content/uploads/2015/10/AIC-White-Paper-on-OTT.pdf>.
- 4 <http://www.bangkokpost.com/news/general/1288507/how-not-to-make-a-regulation>.
- 5 <http://www.asiainternetcoalition.org/wp-content/uploads/2015/10/AIC-White-Paper-on-OTT.pdf>.
- 6 Minister of Communication and Information Technology of the Republic of Indonesia No. 3 of 2016, No.19/M-IND/PER/3/2016, March 31, 2016.
- 7 *Ibid.*



Vinay Ahuja
Senior Regional Adviser, Head – T&IT
Division & DFDL India Desk, Deputy –
Regional Banking & Finance Practice

Vinay Ahuja has a decade of experience advising several multinational clients in complex corporate and commercial law transactions in Asia and specializes in fintech transactions in the ASEAN Region. Vinay is a gold medalist graduate from Symbiosis Law School, University of Pune, India and is a member of the Bar Council of India, Bar Council of New Delhi, International Bar Association, and Inter-Pacific Bar Association.

IPBA New Members June – August 2017

We are pleased to introduce our new IPBA members who joined our association from June – August 2017. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

Australia , Terri Mottershead <i>Centre for Legal Innovation, College of Law</i>	Singapore , Felicia Tan <i>Incisive Law LLC</i>
Hong Kong , James H.M. McGowan <i>Admiralty Chambers</i>	Singapore , Shobna V Chandran <i>Clifford Chance Asia</i>
Japan , Miho Hoshino <i>Miyakezaka Sogo Law Offices</i>	Sri Lanka , Dushyantha Perera <i>Sudath Perera Associates</i>
Japan , Grant Tanabe <i>Sonderhoff & Einsel Law and Patent Office</i>	Switzerland , Minyeong Park
Korea , Gih Young Jang <i>Korea Midland Power</i>	United Kingdom , Karen Gough <i>39 Essex Chambers</i>
Malaysia , Eleo Szulc <i>Kuala Lumpur Regional Centre for Arbitration</i>	Vietnam , Phuc Kieu Diem <i>KP Law Firm</i>

Members' Notes

Bart Kasteleijn, Netherlands

Bart Kasteleijn (formerly HIL/Buren, Amsterdam) has from 1 June 2017 joined the 30-member law firm Wintertaling in Amsterdam, co-heading Wintertaling's

China desk with his son Laurens Kasteleijn (with eight years' working experience in Mainland China and Hong Kong).



Inter-Pacific Bar Association Scholarship Programme

The Inter-Pacific Bar Association (IPBA) is pleased to announce that it is accepting applications for the IPBA Scholarship Programme to enable practicing lawyers to attend the IPBA's 28th Annual General Meeting and Conference to be held in Manila, The Philippines, 14-16 March, 2018.

What is the Inter-Pacific Bar Association?

The Inter-Pacific Bar Association is an international association of business and commercial lawyers with a focus on the Asia-Pacific region. Members are either Asia-Pacific residents or have a strong interest in this part of the world. The IPBA was founded in April 1991 at an organising conference held in Tokyo attended by more than 500 lawyers from throughout Asia and the Pacific. Since then, it has grown to become the pre-eminent organisation in respect of law and business within Asia with a membership of over 1300 lawyers from 65 jurisdictions around the world. IPBA members include a large number of lawyers practising in the Asia-Pacific region and throughout the world that have a cross-border practice involving the Asia-Pacific region.

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

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

What is the IPBA Scholarship Programme?

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

During the conference, the Scholars will enjoy the opportunity to meet key members of the legal community of the Asia-Pacific region through a series of unique and prestigious receptions, lectures, workshops, and social events. Each selected Scholar will be responsible to attend the Conference in its entirety, to make a brief presentation at the Conference on a designated topic, and to provide a report of his/her experience to the IPBA after the conference. The program aims to provide the Scholars with substantial tools and cross-border knowledge to assist them in building their careers in their home country. Following the conference, the Scholars will enjoy 3 years of IPBA membership and will be invited to join a dedicated social networking forum to remain in contact with each other while developing a network with other past and future Scholars.

Who is eligible to be an IPBA Scholar?

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

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

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

Applicants from multi-national firms will normally be considered only if they have a substantial part of their attendance expenses paid by their firm. Former Scholars will only be considered under extraordinary circumstances.

How to apply to become an IPBA Scholar

To apply for an IPBA Scholarship, please obtain an application form and return it to the IPBA Secretariat in Tokyo no later than **30 September, 2017**. Application forms are available either through the IPBA website (ipba.org) or by contacting the IPBA Secretariat in Tokyo (ipba@ipba.org).

Please forward applications to:

The IPBA Secretariat

Roppongi Hills North Tower 7F, 6-2-31 Roppongi, Minato-ku, Tokyo 106-0032, Japan

Telephone: +81-3-5786-6796 Facsimile: +81-3-5786-6778 E-mail: ipbascholarships@ipba.org

What happens once a candidate is selected?

The following procedure will apply after selection:

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



An Invitation to Join the Inter-Pacific Bar Association

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

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

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

IPBA Activities

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

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

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

APEC

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

Membership

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

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

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

Membership renewals will be accepted until 31 March.

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

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

Corporate Associate

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

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

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

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

- Annual Dues for Corporate Associates ¥50,000

Payment of Dues

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

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

IPBA Secretariat

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

See overleaf for membership
registration form





IPBA SECRETARIAT

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

IPBA MEMBERSHIP REGISTRATION FORM

MEMBERSHIP CATEGORY AND ANNUAL DUES:

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

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

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

Firm Name: _____

Jurisdiction: _____

Correspondence Address: _____

Telephone: _____ Facsimile: _____

Email: _____

CHOICE OF COMMITTEES (PLEASE CHOOSE UP TO THREE):

- | | |
|---|---|
| <input type="checkbox"/> Anti-Corruption and the Rule of Law (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 |
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| <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
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 - Card Number: _____ Expiration Date: _____

- Bank Wire Transfer – Bank charges of any kind should be paid by the sender.
 - to DBS Bank Limited, MBFC Branch (SWIFT Code: DBSSGSG)
 - Bank Address: 12 Marina Boulevard, DBS Asia Central, Marina Bay Financial Centre Tower 3, Singapore 018982
 - Account Number: 0003-027922-01-0 Account Name: INTER-PACIFIC BAR ASSOCIATION
 - Account Holder Address: 10 Collyer Quay #27-00 Ocean Financial Centre, Singapore 049315

Signature: _____ Date: _____

PLEASE RETURN THIS FORM TO:

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



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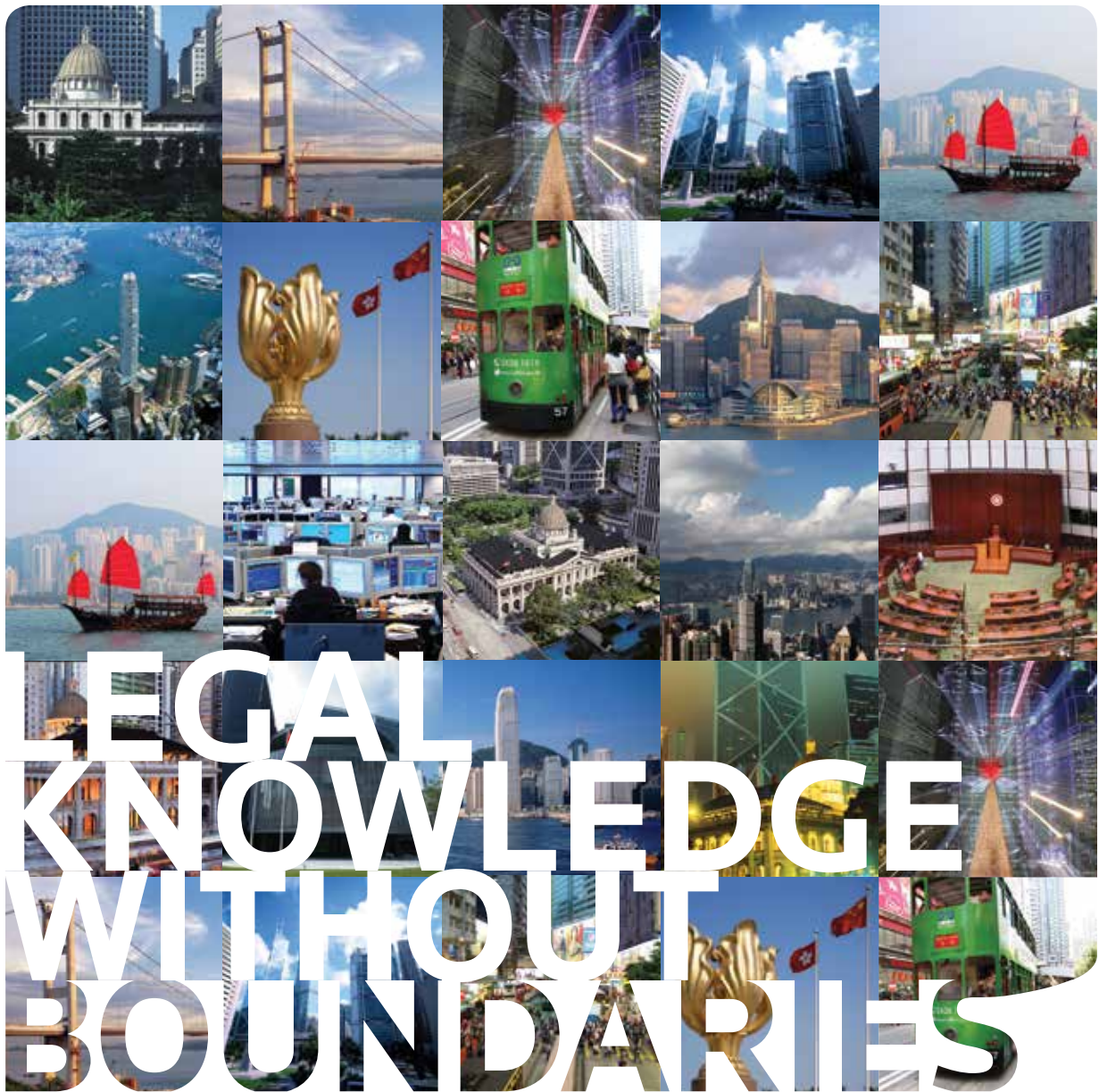
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